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federal register

Wednesday
March 19, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Common Carriers
Federal Communications Commission

Equal Access to Justice
National Labor Relations Board

Foreign Service
State Department

Grant Programs—Social Programs
Employment and Training Administration
Human Development Services Office

Hazardous Substances
Environmental Protection Agency

Indians—Education
Indian Affairs Bureau

Loan Programs—Agriculture
Commodity Credit Corporation

Meat and Meat Products
Agricultural Marketing Service

Motor Vehicle Safety
National Highway Traffic Safety Administration

Pesticides and Pests
Environmental Protection Agency

Prisoners
Prisons Bureau

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Radio Broadcasting
Federal Communications Commission

Reporting and Recordkeeping Requirements
Research and Special Programs Administration
Transportation Department

Supplemental Security Income
Social Security Administration

Surface Mining
Surface Mining Reclamation and Enforcement Office

Water Pollution Control
Environmental Protection Agency

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

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

WHO: The Office of the Federal Register.

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

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

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout,
Denver Federal Information Center,
303-236-7181,
for reservations

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
Earl Cabell Federal Building,
1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:

Dallas	214-767-8585
Ft. Worth	817-334-3624
Austin	512-472-5494
Houston	713-229-2552
San Antonio	512-224-4471,
	for reservations

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Presidential Documents

Title 3—

The President

Proclamation 5448 of March 16, 1986

Increase in the Rates of Duty on Certain Articles From Japan

By the President of the United States of America

A Proclamation

1. On September 7, 1985, I announced my decision to take action in response to quantitative restrictions on imports of United States leather and footwear maintained by Japan, in the event that a satisfactory settlement of the matter was not achieved by December 1, 1985. I have determined pursuant to Section 301 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2411), that these restrictions deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pts. 5 and 6)), are unreasonable, and constitute a burden or restriction on United States commerce. Discussions with Japan concerning the elimination of these restrictions have resulted in an understanding as to the appropriate course of action to be taken by both the United States and Japan. Accordingly, pursuant to Section 301 of the Act, I have determined to accept compensation from Japan and also to increase duties on certain imports of leather and footwear from Japan.

2. Section 301(a) of the Act (19 U.S.C. 2411(a)) authorizes the President to take all appropriate and feasible action to obtain the elimination of an act, policy, or practice of a foreign government or instrumentality that 1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or 2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce. Section 301(b) of the Act (19 U.S.C. 2411(b)) also authorizes the President to suspend, withdraw, or prevent the application of benefits of trade agreement concessions with respect to, and to impose duties or other import restrictions on the products of, such foreign government or instrumentality. Pursuant to Section 301(a) of the Act, such actions can be taken on a discriminatory basis solely against the foreign government or instrumentality involved. Section 301(d)(1) of the Act (19 U.S.C. 2411(d)(1)) authorizes the President to take action on his own motion.

3. I have decided, pursuant to Section 301(a), (b), and (d)(1) of the Act, to increase United States import duties on the articles provided for in the Annex to this proclamation that are the product of Japan.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Section 301(a), (b), and (d)(1) and Section 604 of the Trade Act of 1974 (19 U.S.C. 2483), do proclaim that:

1. Subpart B of part 2 of the Appendix to the TSUS is modified as provided in the Annex to this proclamation.

2. The United States Trade Representative (USTR) is hereby authorized to suspend, modify, or terminate the increase in United States import duties on any of the articles covered by the Annex to this proclamation, upon the publication in the **Federal Register** of his determination that such suspension, modification, or termination is justified by further actions taken by Japan with respect to this matter, or is appropriate to carry out the understanding between the United States and Japan, or is otherwise appropriate, taking into account relevant domestic production and employment in the United States.

3. This proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 15 days after the date on which this proclamation is signed.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-6205
Filed 3-18-86; 11:24 am]
Billing code 3195-01-M

ANNEX

Subpart B of part 2 of the Appendix to the Tariff Schedules of the United States is modified—

(1) by inserting the following new headnote 2:

"2. For purposes of items 945.75 and 945.76, inclusive, the duties provided for in this subpart are cumulative duties which apply in addition to the duties otherwise imposed on the articles involved."; and

(2) by inserting in numerical sequence the following new items, set forth herein in columnar form under the headings "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively:

"Articles the product of Japan:			
945.75	Bovine (including buffalo) and equine leather (provided for in items 121.25, 121.30, 121.35, 121.40, 121.45, 121.55, 121.61, 121.63, and 121.65, part 5A of schedule 1), the foregoing, except metalized leather; and goat, kid, sheep, and lamb leather, the foregoing dyed, colored, stamped, or embossed but not metalized (provided for in items 121.62, 121.63, 121.64, and 121.65, part 5A of schedule 1)	40% ad val.	No change
945.76	Footwear with uppers containing leather (provided for in part 1A of schedule 7), the foregoing, except slippers provided for in item 700.32, footwear which is designed for a sporting activity and has, or has provision for, attached spikes, sprigs, stops, clips, bars, or the like, and skating boots, ski-boots and cross-country ski footwear, wrestling boots, boxing boots, and cycling shoes	40% ad val.	No change"

Presidential Documents

Memorandum of March 16, 1986

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that the global quotas maintained by the Government of Japan on imports of leather and leather footwear deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT), are unreasonable and constitute a burden and restriction on U.S. commerce. Pursuant to Section 301(a) of the Trade Act, I have determined to accept compensation from the Government of Japan to restore the balance for the major portion of this case and also to proclaim an increase in duties on certain imports from Japan in order to resolve this case.

Reasons for Determination

In 1973, the United States initiated a Section 301 investigation after receiving a petition from the U.S. Tanners Council alleging that Japanese tariffs, quotas and administrative practices concerning leather imports effectively denied U.S. exporters access to the Japanese market. After bilateral discussions with the Japanese Government failed, the United States requested formation of a panel under Article XXIII of the General Agreement on Tariffs and Trade (GATT) and threatened preemptive retaliation. In early 1979, we reached an agreement with Japan in which Japan promised to: (1) give U.S. exporters a specified number of quota licenses; (2) provide the names of the quota holders, and (3) expand the quota on wet blue, finished and upholstery leather. We believed at that time that these measures would improve our access to the Japanese market. In 1982, however, the United States refused to extend the agreement. We noted that the U.S. industry was still unable to penetrate the Japanese market system, the deterrence imposed by the very low level of quotas to the significant marketing efforts by U.S. firms, and the high leather tariffs. Instead, we reinstituted our GATT complaint.

In 1984 a GATT panel found that Japan had violated Article XI of the GATT. The panel further determined that the illegal quota had damaged U.S. exports. Subsequent to the adoption of the GATT panel report, the Japanese Government: (1) reduced the tariff on semi-finished leather to zero; (2) promised to liberalize the allocation of the quota on semi-finished leather; and (3) agreed to publish the level of the quota on a regular basis. The tariff reduction on semi-finished leather imports has been of modest value to the U.S. industry, because it affects only a miniscule portion of their exports to Japan. Additionally, the publication of the level of the quota, while useful information, has not aided U.S. leather exporters in increasing their sales. U.S. exporters remain substantially excluded from the Japanese market and there is no prospect that this situation will change in the foreseeable future.

In December 1982, we initiated a Section 301 investigation based on a petition filed by the Footwear Industries of America, et. al. which included allegations that the quota and administrative practices maintained by the Government of Japan with respect to leather footwear imports effectively denied U.S. footwear exporters access to the Japanese market. Although there has been no GATT panel finding with respect to the leather footwear quota, it is identical to the leather quota which has been found by a GATT panel to be inconsistent with Article XI of the GATT. The Japanese have taken no steps to liberalize or eliminate the footwear quota.

On September 7, 1985, I announced that I would take counter-measures against Japan unless a satisfactory settlement of our complaint was reached by December 1, 1985.

On September 23, 1985, the Government of Japan notified the GATT Secretariat of its intention to enter into negotiations pursuant to Article XXVIII:5 of the GATT in order to modify or withdraw its tariff concessions on leather and leather footwear imports. The Government of Japan has notified the GATT of its intent to enter into Article XXVIII:5 negotiations so that it can remove its global quotas on leather and leather footwear imports and replace the quotas with new tariff measures.

The United States has agreed to accept compensation from Japan with an estimated value to the United States of $236 million and will increase duties on an estimated $24 million of U.S. imports from Japan that together will satisfy the United States fully for trade damage caused by import restrictions on leather and leather footwear. The settlement involves tariff concessions on $2.3 billion worth of U.S. exports to Japan in 1984. The settlement will increase opportunities for American producers to sell products in Japan. This is far preferable to protectionist measures that would restrict imports without increasing U.S. exports.

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

Ronald Reagan

THE WHITE HOUSE,
Washington, March 16, 1986.

[FR Doc. 86-6206
Filed 3-18-86; 11:43 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 53
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 3H5412/R813; FRL-2984-9]

Pesticide Tolerance for 3,6-Bis(2-Chlorophenyl)-1,2,4,5-Tetrazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends to March 15, 1987 the feed additive regulation to permit residues of the acaricide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on the feed commodity apple pomace. This extension will allow continued testing and gathering of data on the pesticide and marketing of apple pomace in connection with an experimental use program also concurrently extended to March 15, 1987. This extension was requested by the Nor-Am Chemical Co.

EFFECTIVE DATE: Effective on March 16, 1986.

ADDRESS: Written objections, identified by the document control number [FAP 3H5412/R813], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460
Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a regulation, published in the **Federal Register** of September 12, 1984 (49 FR 8999) to permit residues of the acaricide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on the feed commodity apple pomace in conjunction with an experimental use program (45639-EUP-14) to expire March 15, 1985. This regulation and program was extended to March 15, 1986 (50 FR 8999; March 6, 1985).

At the request of the Nor-Am Chemical Co., Wilmington, DE 19803, the regulation is further extended to March 15, 1987 to permit continued testing and gathering of data on the pesticide and marketing of apple pomace in connection with an experimental use program also concurrently extended to March 15, 1987.

The data and other relevant material submitted in support of the regulation have been evaluated. The toxicological data considered in support of the tolerance include a 90-day rat feeding study with a no-observed-effect level (NOEL) of 2.8 milligrams (mg)/kilogram (kg)/day (40 ppm); a 26-week feeding study in dogs with a NOEL of 1.25 mg/kg/day (50 ppm); a rat teratology study with a NOEL of 1,280 mg/kg/day for maternal toxicity and a teratogenic and fetotoxic NOEL of 3,200 mg/kg/day (highest dose tested); a rabbit teratogenicity study with a NOEL of 1,000 mg/kg/day for fetoxicity and maternal toxicity; and a 1-year dog feeding study with a NOEL of 1.25 mg/kg/day. Based on this 1-year dog study, the acceptable daily intake (ADI) for humans of 0.0125 mg/kg/day. The theoretical maximum residue contribution for existing tolerances for a 1.5-kg daily diet is calculated to be 0.00828 mg/day and represents 5.76 percent of the ADI. Studies on mutagenicity demonstrated negative potential.

The metabolism of 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine is adequately understood for this use, and an adequate analytical method, liquid chromatography, is available for enforcement purposes. No action is currently pending against registration of the pesticide.

Based on the data and information considered, the Agency concludes that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973; 7 U.S.C. 136a *et seq.*). Therefore the feed additive regulation is established as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels 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 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: March 4, 1986.

Steven Schatzow,
Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 561 is amended as follows:

PART 561—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 561.92 is revised to read as follows:

§ 561.92 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine.

A tolerance of 20.0 parts per million is established for residues of the acaricide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in apple pomace resulting from application of the acaricide to apples. Such residues may be present therein only as a result of the application of the acaricide in accordance with the provisions of the experimental use

permit number 45639-EUP-14 that expires March 15, 1986.

[FR Doc. 86-5750 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Nomenclature and Other Changes; Correction

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule; correction.

SUMMARY: This document corrects a citation included in the final regulations making nomenclature changes in Parts 1301 through 1316 of Title 21 of the Code of Federal Regulations which was published February 13, 1986 (51 FR 5319).

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Diversion Operations Section, Office of Diversion Control, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, DC 20537. Telephone (202) 633-1216.

Accordingly, the following correction is made in FR Doc. 86-2903 appearing on page 5319 in the issue of February 13, 1986:

On page 5320, second column, top of column, in paragraph 23 amending § 1308.11, "21 CFR 1308.11(b)(16)" should read, "21 CFR 1308.11(b)(17)".

Dated: March 13, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-5980 Filed 3-18-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 56

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 224

Work Incentive Program for AFDC Recipients Under Title IV of the Social Security Act

AGENCIES: Employment and Training Administration, Labor, and Office of Human Development Services, HHS.

ACTION: Final rules.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor (DOL), and the Office of Human Development Services (HDS), Department of Health and Human Services (HHS), are amending the final rules for the Work Incentive Program (WIN) published on February 14, 1985 (50 FR 6164) with a 60 day comment period. That rule implemented changes made in the WIN program by the Deficit Reduction Act (DRA) of 1984. A technical amendment to the final rule deletes one word in the section on sanctions regarding the caretaker relative in order to comport with the exact language of the statute.

EFFECTIVE DATES: The provisions of 29 CFR 56.20(b)(12) and 56.51(b)(1) and 45 CFR 224.20(b)(12) and 224.51(b)(1) are effective as of October 1, 1984, as required by statute. The provisions of 29 CFR 56.20(b)(13) and 45 CFR 224.20(b)(13) are effective as of July 18, 1984, the date of enactment of the DRA.

FOR FURTHER INFORMATION CONTACT: William J. Kacvinsky, (202) 376-6890.

SUPPLEMENTARY INFORMATION: The Work Incentive Program was established by amendments to Title IV (Parts A and C) of the Social Security Act in 1967, Pub. L. 90-248. The purpose of the program is to: (1) Assist AFDC recipients in finding employment, (2) train them to work, and (3) assist them in participating in on the job training and public service employment, thus restoring them and their families to economic independence and useful roles in the communities. All persons applying for AFDC must register for WIN unless specifically exempt by law.

The Deficit Reduction Act of 1984 (DRA) includes three provisions which affect the WIN program and for which final rules with a 60 day comment period were published in the **Federal Register** on February 14, 1985 (50 FR 6164). First, section 2631 of the DRA adds a specific new exemption from WIN registration for women, in the sixth month of pregnancy. The new exemption appears in the final rules at 29 CFR 56.20(b)(12) and 45 CFR 224.20(b)(12). Second, section 2634 of the DRA modifies the protective payment requirements in sanction cases. It permits a sanctioned caretaker relative to continue to receive the AFDC payment on behalf of the remaining members of the assistance unit if a suitable protective payee cannot be located. The final rules at 29 CFR 56.51(b)(1) and 45 CFR 224.51(b)(1) reflect this change. Third, section 2638(a)(4) of the DRA provides that any individual participating in a work supplementation program under section 414 of the Social Security Act shall be exempt from the WIN work program. The final rules at 29 CFR 56.20(b)(13) and 45 CFR 224.20(b)(13) implement this exemption.

Response to Comments and Change Made in This Final Rule

Three letters were recieved from State governments and one from a public interest group containing a total of 9 comments. The comments from the State governments were favorable. They appreciated the changes that eliminated paperwork previously imposed on AFDC clients and on WIN and AFDC staff.

One comment from a State government expressed concern about the lack of a difinition for what constitutes "reasonable efforts" to locate a protective payee to receive the AFDC payments instead of the sanctioned parent or caretaker.

The Department believes that States are best able to decide what constitutes a "reasonable effort" in the context of their various circumstances. However, the comment caused us to look again at those sections of the rules (29 CFR 56.51(b)(1) and 45 CFR 224.51(b)(1)).

In the rules published on February 14, 1985, the wording was identical with the language of the DRA except that the word "all" preceded the phrase "reasonable efforts" in the second sentence of paragraph (b)(1). The Department added this word in an attempt to emphasize Congressional intent, as reflected in the legislative history, that States make every diligent effort to identify a suitable payee before continuing the grant to the sanctioned caretaker. However, upon reconsideration, we believe the word "all" is not necessary to convey that intent and we want to use the precise statutory language. Accordingly, the word "all" has been removed from these final rules.

The public interest group recommended that the Targeted Job Tax Credit program could be better utilized to help provide employment for caretaker relatives who refuse to work, a matter best raised with the IRS. However, it should be noted the Targeted Jobs Tax Credit Program expired on December 31, 1985.

Impact Analysis

Regulatory Flexibility Act

The Secretaries certify in accordance with section 603 of the Regulatory Flexibility Act, Pub. L. 96.354 (5 U.S.C. 603), that these final rules will not have a significant economic impact on a

substantial number of small entities including small businesses, small organizational units and small governmental jurisdictions. Consequently, a regulatory flexibility analysis has not been prepared for these rules. The primary impact of these rules is on State governments and individuals, and not on small entities.

Executive Order 12291

The Secretaries have also determined in accordance with Executive Order 12291 that these final rules do not constitute a major rule requiring the preparation of a regulatory impact analysis. These rules are not likely to result in:

(1) An annual effect on the economy of $100 million or more; (2) a major increase in cost prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, or innovation.

They implement statutory requirements that will reduce administrative burdens on States. Program costs are expected to be minor.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. These final rules do not contain information collection requirements or increased Federal paperwork burden on the public or private sector. However, we are taking this opportunity to add the Office of Management and Budget (OMB) approval numbers to give sections of the HHS-WIN regulations that contain reporting and recordkeeping requirements. Those sections and approval numbers are: § 224.10(c)-OMB number 1205-0155; § 224.10 (f) and (g)-OMB number 1205-0214; § 224.11-OMB number 1205-0214; § 224.17-OMB number 1205-0155; § 224.22-OMB number 1205-0156; and § 224.63-OMB number 1205-0175. They are effective through September, 1985. A request has been submitted to OMB to extend the approval on these sections. The approval numbers already appear in identical sections of the Labor Department WIN regulations in 29 CFR Part 56.

List of Subjects in 29 CFR Part 56 and 45 CFR Part 224

Administrative practice and procedure, Grant programs/social programs, Reporting and recordkeeping requirements, Work Incentive (WIN) program, Aid to Families with Dependent Children.

(Catalog of Federal Domestic Assistance Program No. 13-646, Work Incentive Program (WIN)).

Dated: August 19, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: September 18, 1985.

Margaret M. Heckler,

Secretary, Department of Health and Human Services.

Dated: January 8, 1986.

Roger D. Semerad,

Assistant Secretary of Labor for Employment and Training.

Approved: March 7, 1986.

William E. Brock,

Secretary, Department of Labor.

For the reasons set forth in the preamble, 29 CFR Part 56 and 45 CFR Part 224 are amended as follows:

Title 29—Labor

PART 56—[AMENDED]

1. The authority citation for 29 CFR Part 56 is revised to read as follows:

Authority: Secs. 402(a)(19), 430-444 and 1102 of the Social Security Act as amended (42 U.S.C. 602(a)(19), 630-44 and 1302).

2. In § 56.51(b)(1) of Title 29 the word "all" preceding "reasonable efforts" is removed.

Title 45—Public Welfare

PART 244—[AMENDED]

3. The authority citation for 45 CFR Part 224 is revised to read as follows:

Authority: Secs. 402(a)(19), 430-444 and 1102 of the Social Security Act as amended (42 U.S.C. 602(a)(19), 630-44 and 1302).

4. The Office of Management and Budget control numbers are added at the end of § 224.10 for paragraphs (c), (f), and (g) as follows:

§ 224.10 General administration provision.

* * * * *

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under OMB control No. 1205-0155. The information collection requirements contained in paragraphs (f) and (g) were approved under control No. 1205-0214)

5. The Office of Management and Budget control number is added at the end of § 224.11 as follows:

§ 224.11 Annual State WIN plans.

* * * * *

(Approved by the Office of Management and Budget under OMB control No. 1205-0214)

6. The Office of Management and Budget control number is added to § 224.17 as follows:

§ 224.17 Reports, records, financial statements and audits.

* * * * *

(Approved by the Office of Management and Budget under OMB control No. 1205-0155)

7. The Office of Management and Budget control number is added to § 224.22 as follows:

§ 224.22 Appraisal and certification.

* * * * *

(Approved by the Office of Management and Budget under OMB OMB control No. 1205-0156)

8. The Office of Management and Budget control number is added to § 224.63 as follows:

§ 224.63 Requirement of conciliation and notice.

* * * * *

(Approved by the Office of Management and Budget under control No. 1205-0175)

9. In 45 CFR 224.51(b)(1) the word "all" preceding "reasonable efforts" is removed.

[FR Doc. 86-5975 Filed 3-18-86; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 884 and 886

Abandoned Mine Land Reclamation Programs; State Reclamation Plan Amendments

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining (OSM) Reclamation and Enforcement is promulgating revisions to the requirements in 30 CFR 884.15 concerning amendments or revisions to State Abandoned Mine Land Reclamation (AMLR) Plans. Under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, States having approved abandoned mine land reclamation plans are eligible to receive grants from OSM to reclaim lands and water damaged by mining prior to August 3, 1977. Current regulations do not specifically address whether a State must amend its AMLR plan in response to regulatory changes adopted by OSM. To correct this situation, OSM is promulgating rules specifying that either OSM or a State can initiate procedures for amending State AMLR plans. This will ensure that

State AMLR plans can be adjusted to meet changes in the Act or regulations.

EFFECTIVE DATE: April 18, 1986.

FOR FURTHER INFORMATION CONTACT: Jim Fary, Abandoned Mined Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Room 5401-L, Washington, D.C. 20240, Telephone (202) 343-7960.

SUPPLEMENTARY INFORMATION: Title IV of the SMCRA establishes an abandoned mine land program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Department a State reclamation plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Department may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of the SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 47 FR 28600-28601, June 30, 1982). Under these regulations, the Director of the Office of Surface Mining is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the State plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to the Office on an annual basis an application for funds to be expended in that State on specific reclamation projects which are necessary to implement the State reclamation plan as approved. Such annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM established Subchapter T of 30 CFR Chapter VII. Subchapter T consists of parts 900 through 953.

Procedures for amending State reclamation plans are found at 30 CFR 884.15. They specify that a State may submit at any time a proposed amendment to the Director. If the proposed revision or amendment changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the Director is to follow the procedures in 30 CFR 884.14 in approving or disapproving the submission. Those regulations, however, until now did not address whether the Director, on his own initiative, can require States to amend their State reclamation plans in response to regulatory, statutory, or other changes. This rulemaking adds this authority for the Director in order to ensure that all State AMLR Plans reflect current regulatory and statutory provisions.

Disposition of Comments

Proposed rules were published on January 4, 1985 (50 FR 483), and the public comment period was reopened on February 19, 1985. Numerous comments were received and are discussed below.

General Comments

One commenter stated that OSM rule changes should not be grounds for requiring States to amend their State reclamation plans because "rules are in too much of a state of flux", and States should not have to be put in the position of constantly amending reclamation plans to the detriment of other activities. For this commenter, the only instances in which a State should be made to amend its reclamation plan are if amendments are made to the enabling legislation or if a State is "clearly not following" the procedures set forth in its plan. In addition, this commenter notes that the Director of OSM has not needed to require States to change their plans in the first eight of the Program's fifteen year life and, at this time, there is no compelling reason or specific need for the Director to be able to require States to amend their plans. OSM's response is that the reclamation plans were approved because they were found to be compatible with the regulations implementing Title IV of the Surface Mining Control and Reclamation Act. If these implementing regulations should change, then the State reclamation plans should also be amended to incorporate revisions to the regulations. Otherwise, the basis for approval of the State plans could be questioned. The purpose of this rulemaking is to avoid this situation by ensuring that the State reclamation plans will be no less effective than the implementing regulations. OSM does not intend to put the States in the position of "constantly amending reclamation plans to the detriment of other activities" as the commenter fears. As the commenter notes, few rule changes have occurred during the first eight years of the abandoned mine land program and few are expected in the future.

Two commenters indicated that the proposed expansion of the OSM Director's authority to require plan revisions is appropriate. One of these commenters further noted that any regulatory revision which requires State programs to "mirror Federal regulations, insofar as the State programs must be equally as stringent, if not more stringent than Federal regulations require, is in accordance with the goals established by the SMCRA and is in the best interests of the environmentally concerned public." OSM's response is that the purpose of this rulemaking is not to require the State reclamation plans "to mirror" Federal regulations as the commenter appears to assume, but rather to ensure that State regulations are no less effective than the Federal.

One commenter indicated that OSM already has regulatory authority to suspend a State's plan if that State is not conducting its abandoned mine land reclamation program in accordance with its approved plan. This commenter concludes that, for the above reason, this "additional regulatory authority to force States to amend approved plans is unnecessary." While OSM agrees with the commenter that it has the authority to suspend a State plan if a State is not conducting its program in accordance with its approved plan, it believes that this rulemaking is necessary because it provides for less drastic actions than suspension of a State's plan. These less drastic actions are discussed below in responses to § 884.15(f).

Section 884.15(a)

Section 884.15(a) provides that a State may submit to the Director of OSM a proposed amendment to the State reclamation plan at any time. If the proposed amendment changes the objectives, scope or major policies followed by the State in the conduct of or reclamation program, § 884.15(a) requires the Director to follow the procedures in existing § 884.14 in approving or disapproving the proposed amendment. One commenter indicated

concern over the language in this subsection in that it does not provide examples of procedural changes which are considered to be "minor changes" by OSM.

OSM's response is that given the complexity of the State plans it is not advisable to attempt to define what constitutes a "major" or a "minor" change in a State plan. OSM will continue to follow a rule of reasonableness in determining which revision to a State plan requires an amendment because it "changes the objectives, scope or major policies followed by the State in the conduct of the reclamation program."

Section 884.15(b)

Proposed § 884.15(b) would have required the Director to promptly notify the States of all changes in the SMCRA, the Secretary's regulations or other circumstances which will require an amendment to the State reclamation plan. Three commenters requested that the word "will" be changed to "may" in the final rule. The purpose of this change would be to give a State the opportunity to present possible arguments that in some instances a plan amendment might not be necessary. OSM agrees and has changed the regulations to read "which may require an amendment to the State reclamation plan."

One commenter requested deletion of the words "or other circumstances" in the proposed rule. For this commenter, section 405 of SMCRA "seems to limit the (Director's) authority to request changes (in State Plans) to rule changes". OSM has declined to delete the words requested by the commenter because it interprets section 405 of SMCRA as not limiting the Director's authority to request changes in State Plans to only those changes required by amendment of the Statute or regulations.

Section 884.15(c)

Section 884.15(c) provides that States shall promptly notify OSM of any conditions or events that prevent or impede administration of their State reclamation program in accordance with their approved reclamation plans. One commenter contends that this subsection is unnecessary because "conditions or events that prevent or impede a State from administering its program in accordance with its approved reclamation plan will be identified through normal coordination between the State and OSM through the oversight process." OSM's response is that merely because the oversight process identifies conditions or events that prevent or impede a State from administering its program in accordance with its approved reclamation plan, it does not follow that these conditions or events will be addressed or resolved and that the proposed rule is therefore unnecessary. The purpose of the proposed rule is to provide a mechanism to require changes in State plans when the oversight process reveals, but does not resolve, conditions or events that prevent or impede a State from administering its State reclamation program in accordance with its approved reclamation plan.

Section 884.15(d)

Section 884.15(d) provides that State reclamation plan amendments may be required by the Director when there are changes in the Act or regulations that result in approved State reclamation plans no longer meeting the requirements of the Act or the regulations or whenever a State is not conducting its State reclamation program in accordance with its approved State reclamation plan. Four commenters opposed proposed sections (d)(2) and (3) because they refer to unnamed conditions and unspecified events that are too vague. For these commenters the only conditions or events which should initiate a required plan amendment would be if a plan no longer meets the requirements of the Act and regulations. While OSM disagrees that the Director's authority to require a State plan amendment is limited to changes in the statute or regulations, it has decided to delete sections (d)(2) and (3) since they are not necessary. OSM believes that proposed section (d)(4) (now renumbered as (d)(2)) provides the Director with sufficient authority to require State plan amendments because it allows the Director to require State Plan amendments whenever a State "is not conducting its reclamation program in accordance with the approved State reclamation plan".

Section 884.15(e)

Section 884.15(e) provides that if the Director determines that a State reclamation plan amendment is required, the Director, after consultation with the State, shall establish a reasonable timetable which is consistent with established administrative and legislative procedures in the State for submitting an amendment to the reclamation plan. No comments were received on this subsection.

Section 884.15(f)

Proposed § 884.15(f) provides that failure of a State to submit an amendment within the timetable established or to make reasonable or diligent efforts to submit an amendment may result in either suspension of the reclamation plan, reduction suspension or termination of existing AML grants or withdrawal from consideration for approval of grant applications.

Four commenters requested deletion of the second part of proposed section (f). These commenters said that if a State does not have a reclamation plan which meets the requirements of the Act and regulations promulgated pursuant thereto and has not submitted an amendment in accordance with the established timetable, plan suspension would be initiated as provided by § 884.16.

Reduction, suspension, or termination of existing AMLR grants under § 886.18 would be the next step following suspension of the plan. These commenters said that reduction, suspension, or termination of existing AMLR grants should follow suspension of the plan and not precede it. Likewise, they said that "withdrawal from consideration for approval of all grant applications submitted under § 886.15" should follow, not precede, plan suspension.

OSM has decided to retain the regulation as proposed because it offers increased flexibility for the Director of OSM. The commenters are correct in noting that, under the existing regulations, grants cannot be reduced, suspended or terminated until after a State plan has been suspended. The result is that, under the existing regulations, the Director of OSM has only two options—suspension or termination. Such actions by the Director would force a State reclamation program to begin to close down. Moreover, if the situation which caused the plan to be terminated is remedied, the plan would have to go through a formal re-approval process. The result would be cumbersome and costly. These regulations, by giving the Director of OSM more flexibility, allow less drastic actions to be considered that could accomplish the purpose of ensuring that States are conducting their reclamation programs in accordance with their reclamation plans.

Section 886.18(a)(7)

Section 886.18(a)(7) provides that if an agency fails to submit a reclamation plan amendment, OSM may reduce, suspend, or terminate in whole or in part

all existing AML grants or may refuse to process all future grant applications. Three commenters oppose the proposed regulation for the same reasons given to support their position on proposed § 884.15(b). OSM disagrees; see the discussion on § 884.15(b) above and OSM's response thereto.

One commenter requests that the proposed rule be amended to require that reduction, suspension or termination of grants should be done in accordance with the conditions and procedures stated in § 886.18(b). Section 886.18(b) provides for written notice of intent to reduce, suspend or terminate a grant, opportunity for consultation and remedial action prior to reducing or terminating, and other procedural safeguards for a State agency against which an action to reduce, suspend, or terminate a grant is taken. OSM does not believe that granting the commenter's request is necessary since if any action is taken to reduce, suspend, or terminate a grant because of application of any part of § 884.15, OSM must follow the procedures set forth in § 886.18(b).

Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibilty Act (5 U.S.C. 601 et seq.).

The revisions to §§ 884.15, 884.16, 886.18 of the abandoned mine regulations would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign markets; nor would they increase costs or prices for consumers, individual industries, Federal, State, Tribal or local governmental agencies or geographic regions.

There would be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

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

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on this rule that reached the conclusion that this rule should not significantly affect the quality of the human environment. The EA is on file in the OSM Administrative Record Room 5315, 1100 "L" Street, NW., Washington, D.C.

List of Subjects in 30 CFR Parts 884 and 886

Grants Program-natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

For the foregoing reasons, OSM amends 30 CFR Parts 884 and 886 as follows:

Dated: January 31, 1986.

James E. Cason,

Assistant Secretary, Land and Minerals Management.

PART 884—STATE RECLAMATION PLANS

1. The authority citation for Part 884 is revised to read as follows:

Authority: Pub. L. 95-87; 30 U.S.C. 1201 *et seq.*

30 CFR 884.15 is revised as follows:

§ 884.15 State reclamation plan amendments.

(a) A State may, at any time, submit to the Director a proposed amendment or revision to its approved reclamation plan. If the amendment or revision changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the Director shall follow the procedures set out in § 884.14 in approving or disapproving an amendment or revision of a State reclamation plan.

(b) The Director shall promptly notify the State of all changes in the Act, the Secretary's regulations or other circumstances which may require an amendment to the State reclamation plan.

(c) The State shall promptly notify OSM of any conditions or events that prevent or impede it from administering its State reclamation program in accordance with its approved State reclamation plan.

(d) State reclamation plan amendments may be required by the Director when—

(1) Changes in the Act or regulations of this chapter result in the approved State reclamation plan no longer meeting the requirements of the Act or this chapter; or

(2) The State is not conducting its State reclamation program in accordance with the approved State reclamation plan.

(e) If the Director determines that a State reclamation plan amendment is required, the Director, after consultation with the State, shall establish a reasonable timetable which is consistent with established administrative or legislative procedures in the State for submitting an amendment to the reclamation plan.

(f) Failure of a State to submit an amendment within the timetable established under paragraph (e) of this section or to make reasonable or diligent efforts in that regard may result in either the suspension of the reclamation plan under § 884.16, reduction, suspension or termination of existing AML grants under § 886.18, or the withdrawal from consideration for approval of all grant applications submitted under § 886.15.

§ 884.16 [Amended]

3. 30 CFR 884.16 is amended by revising paragraph (a) as follows:

§ 884.16 Suspension of plan.

(a) The Director may suspend a State reclamation plan in whole or in part, if he determines that—

(1) Approval of the State regulatory program has been withdrawn in whole or in part;

(2) The State is not conducting the State reclamation program in accordance with its approved State reclamation plan; or

(3) The state has not submitted a reclamation plan amendment within the time specified under § 884.15.

* * * * *

PART 886—STATE RECLAMATION GRANTS

4. The authority citation for part 886 is revised to read as follows:

Authority: Pub. L. 95-87; 30 U.S.C. 1201 *et seq.*

5. 30 CFR 886.18 is amended by adding paragraph (a)(7) as follows:

§ 886.18 Grant reduction, suspension, and termination.

(a) * * *

(7) If an agency fails to submit a reclamation plan amendment as required by § 884.15, OSM may reduce, suspend, or terminate all existing AML grants in whole or in part or may refuse to process all future grant applications.

[FR Doc. 86-5892 Filed 3-18-86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-022, -025, A-4-FRL-2986-6]

Approval and Promulgation of Implementation Plans, Tennessee; Visible Emission Evaluation Method 3

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves Tennessee Visible Evaluation Method 3, which the State submitted as an implementation plan revision on January 16 and June 14, 1985. This method gives the State a means of enforcing permit conditions requiring "zero percent opacity." It will also be used to enforce the "no visible emissions" provisions of EPA's standards for asbestos (40 CFR Part 61, Subpart M).

EFFECTIVE DATE: This action will be effective on May 19, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Rosalyn Hughes of EPA Region IV's Air Program Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 9th Avenue North, Nashville, Tennessee 37203

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn Hughes, Air Programs Branch, EPA Region IV, at the above address, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: Measuring the opacity of emissions from an air pollution source is one way of determining whether the source is in compliance with the particulate emission limits to which it is subject. Written procedures for evaluating visible emissions are useful in assuring that emission limits are enforced fairly and uniformly. EPA previously approved Tennessee Visible Evaluation (TVEE) Methods 1 and 2 (50 FR 15892, April 23, 1985). The State has adopted a third method for use in evaluating sources subject to a visible emission requirement of zero percent opacity. Such a requirement is incorporated in the construction permit whenever the agency feels it will be necessary to assure compliance with mass particulate limits to which the source is subject. In addition, Tennessee will use TVEE Method 3 as a tool to enforce the "no visible emissions" provisions of EPA's national emission standards for asbestos (40 CFR Part 61, Subpart M) until such time as EPA promulgates a method for this purpose.

TVEE Method 3 is comprised of five sections:

1. Principle and Applicability,
2. Procedures,
3. Observational Error,
4. Certification Procedures, and
5. Rules of Certification.

The procedures specify details governing the observer's position; field records; method of observations, including those for attached steam plumes, detached steam plumes, and fugitive emissions; the recording of observations; and data reduction. Opacity is determined as an average of 24 consecutive observations recorded at 15-second intervals. To allow for observational error, any combination of readings not to exceed 10% opacity (that is, one reading of 10% or two of 5% in the set of 24) will be allowed before a notice of violation is issued.

Final Action. Since TVEE Method 3 is consistent with EPA policy and requirements, it is hereby approved. 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 another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Incorporation by reference of the Tennessee State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, particulate matter, incorporation by reference.

Dated: March 10, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

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

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

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(69) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(69) Tennessee Visible Emission Evaluation Method 3, was submitted on January 16 and June 14, 1985, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(*a*) January 16, 1985 letter from Tennessee Department of Health and Environment and Tennessee Visible Emission Evaluation Method 3, §§ 1, 2, and 5, became State-effective on December 12, 1984.

(*b*) June 14, 1985 letter from Tennessee Department of Health and Environment and Tennessee Visible Emission Evaluation Method 3, §§ 3 and 4, became State-effective on May 30, 1985.

(ii) Other material—none.

[FR Doc. 86-5970 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3128/R821, FRL-2985-7]

Pesticide Tolerance for 2-(2-Chlorophenyl)Methyl-4, 4-Dimethyl-3-Isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, in or on the raw agricultural commodity soybeans. The regulation, to establish maximum permissible level of residues of the herbicide in or on soybeans, was requested in a petition by the FMC Chemical Corp.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections, identified by the document control number [PP 4F3128/821], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM-25), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 17, 1984 (49 FR 40659), which announced that the FMC Chemical Corp., 2000 Market St., Philadelphia, PA 19103, submitted pesticide petition 4F3128 to EPA, proposing to amend 40 CFR 180 by establishing a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

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

The pesticide is considered useful for the purposes for which the tolerance is sought. The data submitted in the petition and other relevant material have been evaluated.

The data considered include the following acute studies: an acute oral study in rats; an acute dermal study in rabbits; an acute inhalation study in rats; a primary eye irritation study in rabbits (moderate to severe); a primary dermal irritation study in rabbits (moderate to severe); skin sensitization study in guinea pigs (non-sensitizer); a teratology study in rats at dosage levels of 0, 100, 300, and 600 mg/kg/day, with a maternal no-observed-effect level (NOEL) of 100 mg/kg/day, maternal lowest-effect level (LEL) of 300 mg/kg/day and a fetotoxicity NOEL of 100 mg/kg/day, fetotoxic LEL of 300 mg/kg/day; a teratology study in rabbits at dosage levels of 0, 30, 240, and 1,000 (700) mg/kg/day with negative results at the highest dose tested (HDT, 700 mg/kg/day) for teratogenic effects, maternal NOEL of 240 mg/kg/day, a maternal LEL of 700 mg/kg/day and a fetoxicity NOEL of 240 mg/gk/day, fetotoxic LEL of 700 mg/gk/day; a 90-day feeding study in rats with no established NOEL due to an incomplete report; a 90-day feeding study in dogs with no established NOEL due to insufficient numbers of animals sacrified; a 90-day feeding study in mice with no established NOEL due to liver cytomegaly at the lowest dose tested (20 ppm); a 1-year feeding study in dogs at dose levels of 0, 100, 500, 2,500, 5,000 ppm with an NOEL of 12.5 mg/kg/day, an LEL of 62.5 mg/kg/day; a 2-year feeding study in rats at dose levels of 0, 20, 100, 500, 1,000, 2,000 ppm with a NOEL of 4.3 mg/kg/day and a LEL of 21.5 mg/kg/day; a 2-year feeding study in mice at dose levels of 0, 20, 100, 500, 1,000, 2,000 ppm with a NOEL of 14.3 mg/kg/day and a LEL of 71.4 mg/kg/day; mutagenic testing including, an unscheduled DNA synthesis test negative for mutagencity, reverse mutation tests (two studies) *(Salmonella)* both negative with/without activation, point mutation test (CHO/HGPT) weakly positive with a positive control, in vivo cytogenics (chromosomal aberations) test negative for mutagenicity.

An acceptable daily intake (ADI) of 0.043 mg/kg/day has been established based on a NOEL of 4.30 mg/kg/day in a two-generation rat reproduction study using a safety factor of 100. The per cent of ADI utilized is 0.03 percent.

The nature of the residue of dimethazone in soybeans is adequately understood. From the proposed use on soybeans there is no reasonable expectation of residues in meat, milk, poultry, and eggs (40 CFR 180.6(a)(3)), and tolerances are not required for these items. An adequate analytical method, gas chromatography, is available for enforcement purposes.

Based on the information and data considered, the Agency has determined that the establishment of the tolerance for residues of the herbicide in or on the commodities will protect the public health. Therefore, the tolerance is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 27, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.425 is added to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

Tolerances are established for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, in or on the following raw agricultural commodities:

Commodities	Parts per million
Soybeans	0.05

[FR Doc. 86-5755 Filed 3-18-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-3000132A; FRL-2982-6]

Ammonium Polyphosphate; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts ammonium polyphosphate from the requirement of a tolerance when used as an inert ingredient (sequestrant, buffer, or

surfactant) in pesticide formulations. This regulation was requested by the Rohm and Haas Co.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of June 26, 1985 (50 FR 26388), which announced that Rohm and Haas Co., Philadelphia, PA 19105, had requested that 40 CFR 180.1001(d) be amended by establishing an exemption from the requirement of a tolerance for ammonium polyphosphate when used as a sequestrant, buffer, or surfactant in pesticide formulations applied to growing crops only.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment.

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

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 4, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Ammonium polyphosphate (CAS Reg. No. 68333-79-9).		Sequestrant, buffer, or surfactant.
* * * * *		

[FR Doc. 86-5492 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300134A, FRL-2982-8]

Croscarmellose Sodium; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts croscarmellose sodium from the requirement of a tolerance when used as an inert ingredient disintegrant, solid diluent, carrier, and thickener in pesticide formulations. This regulation was requested by the FMC Corp.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By Mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 10, 1985 (50 FR 28108), which announced that FMC Corp., Newark, DE 19711, had requested that 40 CFR 180.1001(c) be amended by establishing an exemption from the requirement of a tolerance for croscarmellose sodium when used as a disintegrant, solid diluent, carrier, and thickener in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment.

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

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

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

objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 4, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
Croscarmellose sodium (CAS Reg. No. 74811-65-7).		Disintegrant, solid diluent, carrier, and thickener.
* * * * *		

* * * * *

[FR. Doc. 86-5493 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300137A, FRL-2982-4]

Sulfur; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: This rule exempts sulfur from the requirement of a tolerance when used as an inert ingredient stabilizer in pesticide formulations applied to animals. This regulation was requested by the Ralston Purina Co.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 31, 1985 (50 FR 30966), which announced that the Ralston Purina Co., St. Louis, MO 63164, had requested that 40 CFR 180.100,(e) be amended by establishing an exemption from the requirement of a tolerance for sulfur when used as a stabilizer in pesticide formulations applied to animals.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment.

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

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 4, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * *		
Sulfur (CAS Reg. No. 7704-34-9).		Stabilizer.
* * * * *		

* * * * *

[FR Doc. 86-5494 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2E2736/R822; FRL-2985-8]

Pesticide Tolerances for Thiabendazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide thiabendazole in or on imported cantaloupes and strawberries. This regulation, to establish maximum permissible levels of residues for thiabendazole in or on the raw agricultural commodities, was requested by Merck and Co., Inc.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections, identified by the document control number [PP 2E2736/R822], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Henry M. Jacoby, Product

Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 29, 1982 (47 FR 42806), which announced that Merck and Co., Inc., P.O. Box 2000, Rahway, NJ 07065, had filed pesticide petition 2E2736 with EPA. The petition proposed to amend 40 CFR 180.242 by establishing tolerances for residues of the fungicide thiabendazole [2-(4-thiazolyl)benzimidazole] in or on the raw agricultural commodities cantaloupe at 12.0 parts per million (ppm), strawberries at 5.0 ppm, and tomatoes at 0.5 ppm.

The petition was subsequently amended (48 FR 52975; November 23, 1983) by deleting tomatoes and increasing the tolerance level for cantaloupes from 12.0 to 15.0 ppm.

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

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the tolerances include an acute oral lethal dose rat study (median lethal dose (LD_{50})=3.3 grams per kilogram (g/kg)); an acute oral lethal dose mouse study (LD_{50}=3.8 g/kg); a 2-year rat-feeding study with a no-observed-effect level (NOEL) of 10 mg/kg/day that was negative for oncogenic effects under the conditions of the study up to, and including, 160 mg/kg/day; a 2-year dog-feeding study with a NOEL of 50 mg/kg/day; a mouse oncogenicity feeding study was negative for oncogenic effects under the conditions of the study up to, and including, 799.5 mg/kg/day; a rat teratology study that was negative at 80 mg/kg; a rabbit teratology study that was negative at 800 mg/kg; a mouse reproduction study with a NOEL of 150 mg/kg/day; and a rat reproduction study with a NOEL of 20 mg/kg/day. Based on the 2-year rat-feeding study (NOEL=10 mg/kg/day) and using a 100-fold safety factor, the allowable daily intake (ADI) is 0.10 mg/kg/day; the maximum permissible intake (MPI) is 6.0 mg/kg/day for a 60-kg person. Established tolerances and these tolerances result in a maximum theoretical exposure of 2.5788 mg/day for a 60-kg person and utilize 42.98 percent of the ADI. Tolerances have previously been established for residues of thiabendazole in on a variety of raw agricultural commodities in 40 CFR 180.242. There are no regulatory actions pending against continued registration of the pesticide, and there are no other considerations involved in establishing the tolerances. The metabolism of thiabendazole is adequately understood, and an adequate analytical method, spectrophotometric analysis, is available for enforcement purposes. No secondary residues in meat, milk, poultry and eggs would be expected from the use of the pesticide in the culture of strawberries and cantaloupes.

Based on the information and data considered, the Agency concludes that the establishment of these tolerances for thiabendazole in or on cantaloupes and strawberries, will protect the public health. Therefore, the tolerances are established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 10, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

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

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

2. Section 180.242(a) is amended by adding, and alphabetically inserting, the following commodities to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Cantaloupes	15.0
* * * * *	
Strawberries	5.0
* * * * *	

[FR Doc. 86-5754 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5F3260/R820; FRL-2987-8]

Pesticide Tolerance for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide chlorpyrifos and its metabolite in or on the raw agricultural crop grouping legume vegetables. This regulation was requested in a petition submitted by Dow Chemical Co.

EFFECTIVE DATE: March 19, 1986.

ADDRESS: Written objections may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 14, 1985 (50 FR 32767), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640, had filed a pesticide petition (PP 5F3260) to EPA proposing that 40 CFR 180.342 be amended by establishing tolerances for the residues of the insecticide chlorpyrifos [0,0-diethyl 0-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in

or on the raw agricultural commodity group legume vegetables (succulent or dried snapbeans, kidney beans, field beans, peas, and lima beans (except soybeans)) at 0.1 part per million (ppm).

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

This tolerance action is an administrative change as requested by the Agency in the document "Guidance for the Reregistration of Pesticide Products Containing Chlorpyrifos," dated September 28, 1984. This is a change in the expression of certain established chlorpyrifos tolerances rather than the establishment of a tolerance for any additional commodities. This action revises the crop grouping designation for bean and pea crop commodities from the seed and pod vegetable group, which is obsolete (see the **Federal Register** of June 29, 1985 (48 FR 29855)), to the legume vegetable crop group. In making this conversion there will be no impact on the dietary exposure of chlorpyrifos residues.

The Agency has considered the following toxicological data in support of the chlorpyrifos tolerance. The data include a 2-year rat feeding/oncogenicity study (core supplementary data) with a red-blood cell (RBC) cholinesterase (ChE) no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg)/day and negative for oncogenic effects at all levels tested (0.03, 0.1, 1.0, and 3.0 mg/kg); a 2-year dog feeding study (core minimum) with an RBC ChE NOEL of 0.01 mg/kg/day and a NOEL of 0.03 mg/kg/day (highest dose tested) for systemic effects; a voluntary human study with a ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level); a 2-year mouse oncogenicity study (core minimum data) that was negative for oncogenic effects at all levels tested (0.5 ppm, 5.0 ppm, and 15.0 ppm); a 3-generation rat reproduction study (core minimum data) with a NOEL for reproductive effects at 1.0 mg/kg/day (highest dose tested); a rat teratology study (core minimum data) that was negative for teratogenic effects at 0.1 mg/kg/day; and an acute delayed neurotoxicity study in the hen (core minimum data) that was negative at 100 mg/kg. The existing rat feeding/oncogenicity study is not adequate for regulatory purposes (core supplementary data) and represents a data gap for the chemical.

The provisional acceptance daily intake (PADI), based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.003 mg/kg of body weight/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.18 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.6322 mg/day; the current action will have no effect upon the TMRC.

The nature of the residue is adequately understood, and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Secondary residues in meat and milk of livestock and meat and eggs of poultry would be adequately covered by the already established tolerances for these commodities. There are no regulatory actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, it is concluded that the pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 10, 1986

Steven Schatzow,

Director, Office of Pesticide Programs

Therefore

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

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

2. 40 CFR 180.342 is amended by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Legume vegetables, succulent or dried (except soybeans)	0.1
* * * * *	

[FR Doc. 86-5971 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 721

[OPTS-50520A, FRL-2986-1]

Hexamethylphosphoramide and Urethane; Significant New Uses of Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) pursuant to section 5(a)(2) of the Toxic Substances Control Act (TSCA), for two chemical substances. These substances are hexamethylphosphoramide (HMPA; CAS No. 680-31-9) and urethane (CAS No. 51-79-6). The Agency believes that these substances may be hazardous to human health, and that the use of these substances rule may result in significant human and environmental exposures. Persons who intend to commence a designated significant new use of these substances must notify EPA at least 90 days before commencing such an activity. This notice will furnish EPA with the information needed to evaluate an intended use and the opportunity to protect against a potentially adverse exposure to the chemical substance before it can occur.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on April 2, 1986. This rule becomes effective on May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M

Street, SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a significant new use. EPA must make this determination by rule, after consideration of all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, pursuant to section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

The notice is subject generally to the same statutory requirements and EPA regulatory procedures as a premanufacture notice (PMN) submitted pursuant to section 5(a)(1)(A) of TSCA. In particular, these include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action pursuant to section 5(e), 5(f), 6, or 7 to control the activities on which it has received a SNUR notice. If no action is taken, section 5(g) requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed there in detail, and interested persons should refer to that document for further information. These general provisions apply to this SNUR.

III. Summary of This Rule

The chemical substances which are the subject of this significant new use rule are HMPA (CAS No. 680-31-9) and urethane (CAS No. 51-79-6). Urethane is also known as ethyl carbamate. A detailed discussion of the production, end uses, health and environmental effects, past and current exposures, and regulatory background of HMPA and urethane is contained in the preamble to the proposed rule (49 FR 39703). In summary, both HMPA and urethane are known animal carcinogens; are suspect human carcinogens; are not currently used and, thus have not been manufactured, imported, or processed for commercial purposes for some time; and are not subject to any regulation that would notify EPA of potentially adverse exposures to these chemical substances or provide EPA with a regulatory mechanism that could protect human health or the environment from an adverse exposure before it occurred.

This rule designates "any use" of HMPA and urethane as a significant new use. EPA has modified this language from the proposed rule which would have designated the "manufacture, importation, and processing for commercial purposes" as the significant new uses. EPA has made this language change to clarify that it is concerned about all potential uses of HMPA and urethane and the activities associated with such uses, including manufacturing, importing, and processing for such uses. However, the change in language does not change the effect of the rule, for any person who intends to manufacture, import, or process HMPA or urethane for any use must submit a SNUR notice. This rule will allow EPA to review the potential risks resulting from any use of HMPA and urethane, including risks that would result from manufacturing, importing, or processing the substances for those uses. EPA's analysis shows that no uses of HMPA or urethane have occurred for some time, and thus, that it is appropriate to designate any uses as a significant new use at this time.

Consistent with EPA's concern about any exposure to HMPA and urethane resulting from any use, including exposure resulting from manufacture, importation, or processing related to any use of HMPA or urethane, the regulatory text clarifies that any person who intends to manufacture, import, or process HMPA or urethane and intends to distribute the substance in commerce must submit a significant new use notice so that EPA can review all activities before they occur. See paragraph (b)(1) in §§ 721.350 and 721.1125.

IV. Designation of Significant New Uses

To determine what would constitute a significant new use of these substances, EPA considered relevant information about the toxicity of the substances, likely exposures to the substances, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA is designating the significant new uses of HMPA and urethane as any use. Therefore persons who intend to manufacture, import, or process either of these substances for any use must submit a significant new use notice to EPA. Exempt by law from the SNUR requirements are the manufacture, importation, and processing of HMPA or urethane in small quantities solely for research and development purposes.

EPA believes that resumption of the manufacture, importation, or processing of HMPA or urethane for commercial purposes has the potential to substantially increase human and environmental exposures to these substances. Each one of these activities has a high potential to increase the magnitude and duration of exposure above, and to change the type or form of exposure from, that which currently exists. Given the toxicity of these substances, the reasonably anticipated circumstances of exposure, and the lack of available regulatory controls, individuals who would be involved in any use of and the related manufacture, importation, or processing of HMPA or urethane may be exposed to these substances at levels which may result in adverse effects. Furthermore, such uses and related activities may result in the environmental release of these substances, thereby creating additional opportunities for adverse effects on human health or the environment.

V. Alternatives

In the proposed SNUR, EPA considered another information gathering approach for these two substances, that is promulgation of a section 8(a) reporting rule. For the reasons discussed in the preamble to the proposed rule, EPA has decided to proceed with the promulgation of a SNUR for HMPA and urethane.

VI. Applicability of Rule to Uses Which May Have Occurred Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR rather than as of the promulgation of a final rule. If uses begun during the proposal period of the SNUR were considered ongoing, it would be extremely difficult for the Agency to establish SNUR notice requirements. Any person could defeat the SNUR by initiating a proposed

significant new use before the rule became final.

Thus, persons who began manufacture, importation, or processing of HMPA or urethane for any use between proposal and promulgation of this rule, must cease any such activity before the effective date of this rule. To resume their activities, they must comply with all SNUR notice requirements, and wait until the notice review period, including all extensions, expires.

VII. Test Data and Other Information

EPA recognizes that, pursuant to TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, since EPA lacks data on the potential environmental effects of HMPA or urethane, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of the substance's potential for adverse effects to the environment when utilized for an intended use.

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substances. As part of this prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed in accordance with the TSCA Good Laboratory Practice standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health or environmental effects of the substance.

As an alternative to testing the substances, potential SNUR notice submitters may want to consider the use of engineering controls to reduce the release of these substances. In addition, EPA urges persons to submit information on potential benefits of these substances and information on risks posed by these substances compared to risks posed by potential substitutes. SNUR notices submitted with such data would improve EPA's ability to make a reasoned evaluation of the environmental effects of these substances.

VIII. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for these substances. This evaluation is summarized in the preamble to the proposed rule (49 FR 39703).

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50520A) which is available for inspection in Room E-107, 401 M Street SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The record includes basic information considered by the Agency in developing this rule. The record includes the following:

1. Use and substitute analysis of HMPA.
2. Use and substitute analysis of urethane.
3. A chemical hazard information profile for HMPA.
4. A chemical hazard information profile for urethane.
5. IARC Monograph on the evaluation of the carcinogenic risk of chemicals to man: Urethane (Vol. 7, 1974).
6. IARC Monograph on the evaluation of the carcinogenic risk of chemicals to humans: Appendix 2 (Supplement 4, 1982).
7. IARC Monograph on the evaluation of the carcinogenic risk of chemicals to humans: HMPA (Vol. 15, 1977).
8. American Conference of Governmental Industrial Hygienists, Threshold Limit Values Appendix 2.
9. July 1975 Department of State Telegram on "The Use of Urethane in Analgesic Injections."
10. Relevant pages of the United Nations Document "Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or Not Approved by Governments" (first issue revised).
11. EPA memorandum on the Classification of Urethane and HMPA as Potential Human Carcinogens.
12. Comment to the proposed rule.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, for the reasons explained in the preamble to the proposed rule, EPA believes that the cost will be low. EPA believes that, because of the nature of the rule and the two substances identified in it, there will be few SNUR notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial end uses of these substances.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, because EPA has no evidence of recent commercial manufacture, importation, or processing of these substances, and substitutes are available for all identified uses of these substances, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned them the OMB control number 2070-0038.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: March 7, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, 40 CFR Part 721 is amended as follows:

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding §§ 721.350 and 721.1125 to read as follows:

§ 721.350 Hexamethylphosphoramide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance hexamethylphosphoramide, CAS Number 680-31-9, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is: any use.

(b) *Special provisions.* The provisions of Subpart A of the Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070-0038)

§ 721.1125 Urethane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance urethane, CAS Number 51-79-6, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is: any use.

(b) *Special provisions.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070-0038)

[FR Doc. 86-5756 Filed 3-18-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-655; RM-4687]

FM Broadcast Station in Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates Channel 286C2 to Las Vegas, Nevada, as the community's ninth FM service, at the request of Nevada Number One Radio Company.

EFFECTIVE DATE: April 17, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order

(Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations: (Las Vegas, Nevada); MM Docket No. 84-655 RM-4687.

Adopted: March 5, 1986.

Released: March 11, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making,* 49 FR 29425, published July 20, 1984, proposing the allocation of Channel 300 to Las Vegas, Nevada, as the community's ninth FM service, at the request of Nevada Number One Radio Company ("petitioner"). Comments were filed by the petitioner, by Minority Media of Pahrump, Inc. ("MMP"), and by Hualapai Broadcasters, Inc. ("Hualapai"), and reply comments were filed by petitioner, by MMP, and by JaDonn Communications, Inc. ("JaDonn"). MMP also filed a petition for reconsideration of the issuance of the *Notice* to which William H. Hernstadt ("Hernstadt") filed an opposition and MMP filed a reply. New Radio, Inc. ("New Radio") filed a counterproposal seeking the allocation of Channel 300 to Paradise, Nevada, to which Las Vegas Electronics, Inc. ("LVE") filed a "Motion to Dismiss." [1]

2. As stated in the *Notice,* Channel 300 can be allocated to Las Vegas in compliance with the Commission's minimum distance separation requirements if the transmitter is restricted to an area at least 22.6 miles northeast to avoid a short-spacing to Station KYRK (then KEER), Channel 246, Las Vegas. It also noted that the site restriction would avoid a conflict with one of two pending applications for Channel 298 at Pahrump, Nevada (BPH-830901AA, Tamarack Investment Corporation). The *Notice* inadvertently omitted mention of MMP's application for Channel 298 at Pahrump (BPH-840105AJ) which specified a site in conflict with the Las Vegas proposal.

3. MMP objects to the allocation of Channel 300 at Las Vegas since it would be short-spaced to the Mt. Potosi transmitter site specified in its application. It argues that cut-off applicants have "equities which cannot be readily deprived," citing *Howard University,* 23 F.C.C. 2d 714 (1970); *Camelot, Inc.* 61 F.C.C. 2d 15 (1976); *220 Television, Inc.,* 81 F.C.C. 2d 575 (1980); and *Cook, Inc.,* 10 F.C.C. 2d 160 (1967). It also contends that grant of the petitioner's request would result in MMP's loss of due process and a full and fair hearing on the merits of its application. However, should the Commission decide that Las Vegas should receive a ninth FM service, MMP counterproposes that: (1) Channel 285A be allocated to Las Vegas, as a simple "drop-in," or (2) Channel 290C2 be allocated to Las Vegas by substituting Channel 294 for Channel 293 at Las Vegas and substituting Channel 255 for Channel 290 at Kingman, Arizona.[2]

4. MMP filed supplemental comments stating that the Commission had issued a *Memorandum Opinion and Order* in the comparative hearing granting its application conditioned on the outcome of this rule making proceeding (FCC 84M-2518, released June 17, 1985).[3]

[1] New Radio filed its counterproposal after the comment period had closed and thus is not acceptable for consideration herein. See paragraph 3 of the Appendix to the *Notice* and § 1.420(d) of the Commission's Rules. In view of this decision, LVE's opposition will not be discussed.

[2] The allocation of Channel 290C2 at Las Vegas is not technically feasible. The required substitution of Channel 255 for Channel 290 at Kingman, Arizona, is short-spaced to the recent allocation of Channel 256 at Prescott, Arizona, and was filed too late to be considered as a counterproposal (MM Docket 84-512). No interest in the use of a Class A channel at Las Vegas has been expressed and absent such an expression of intent, the channel shall not be allocated. Therefore, MMP's counterproposal cannot be accepted and the comments of Hernstadt and Hualapai need not be discussed.

[3] We believe that MMP's supplemental comments should be accepted. Although it could have provided us with the first and second aural service showing in its earlier comments, we could not have accorded it any decisional weight until the comparative hearing was resolved. Therefore, the comments will be considered herein.

While reiterating much of what is contained in its earlier comments, MMP states that if it is able to construct at its specified Mt. Potosi site, the new Pahrump station would provide a first fulltime aural service to 2,357 persons in a 2,142 square mile area and a second fulltime aural service to 743 persons in a 1,096 square mile area, in addition to providing Pahrump with its first local service. MMP also proposes that in lieu of Channel 300, the Commission could allocate Channel 286 as a Class C1 or C2 to Las Vegas, which would provide the additional service sought by the petitioner, as well as maintaining the first and second aural service benefits from use of MMP's Mt. Potosi transmitter site.

5. Petitioner filed comments reiterating his intention to apply for Channel 300, if allocated to Las Vegas. In reply comments, it states that it has no interest in a Class A allocation but supports any counterproposal which would allocate a Class C, C1 or C2 channel there.

6. In comparing the need for the proposed Pahrump FM station and the need for a ninth FM channel at Las Vegas, we believe it is appropriate to consider MMP's proposed site since a permit has been granted conditioned on the outcome of this proceeding. We believe that MMP has made a clear and convincing showing that its use of the Mt. Potosi site for Channel 298 at Pahrump should prevail over the allocation of another FM channel to Las Vegas. As stated in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88, 92 (1982), "[i]n adopting new priorities, we continue to believe that greatest emphasis needs to be given to assuring the availability of at least one fulltime radio service to as many people as possible." We have confirmed that MMP's station would indeed provide both first and second fulltime aural service to persons currently lacking such reception. Therefore, Channel 300 will not be allocated to Las Vegas. However, we have also examined MMP's proposed allocation of Channel 286C2 to Las Vegas in light of petitioner's statement of intent and find that it can be allocated in compliance with the Commission's minimum distance separation requirements and not conflict with the Mt. Potosi transmitter site.[4] The use of Channel 286C2 at Las Vegas requires the imposition of a site restriction of 22.9 kilometers (14.2 miles) northwest to avoid a short spacing to Station KRRI, Channel 288A, Boulder City, Nevada.

7. While not of decisional significance here, we would like to take this opportunity to clarify a cut-off applicant's status and its right to a full and fair hearing on its application. MMP argues that a cut-off applicant has the same rights and protection against a conflicting petition for rule making as that of a licensee or permittee. While an applicant is protected against the acceptance of untimely filed competing applications, as stated in each of the cases which MMP cites, we do not believe, and MMP has not provided us with any case to the contrary, that the Commission has ever protected an applicant's preferred transmitter site from a rule making which proposes a new service. As the Commission has held on previous occasions, an applied for but unauthorized transmitter site reflects only a preference for a particular location and absent a compelling showing that use of the site would provide a greater public benefit, we would favor the provision of a new service. See, *Andalusia, Alabama*, 49 Fed. Reg. 32201, published August 13, 1984, and cases cited therein. An applicant is provided an opportunity to make such a showing in response to the *Notice of Proposed Rule Making*. Here, MMP could not argue that denial of its preferred site would result in the loss of a first local service at Pahrump since there was another applied for site which did not conflict with the proposed Channel 300 Las Vegas allocation. It did provide us with a showing that its proposed operation would better serve the public interest by providing both first and second fulltime aural service to currently unserved and underserved populations which a Channel 300 operation at Las Vegas would not. However, as stated in footnote 3, *supra*, this first and second aural service showing took on decisional significance only after MMP's status changed from that of only an applicant to that of a permittee. Therefore, we believe that MMP has received both a full and fair hearing on its application as well as being afforded every protection to which it is entitled as an applicant.

8. Based on the above discussion, we believe the public interest would be served by allocating Channel 286C2 to Las Vegas, as the community's ninth local FM service. Accordingly, IT IS ORDERED, That effective April 17, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended for the community listed below to read as follows:

City	Channel No.
Las Vegas, NV	222, 226, 242, 246, 253, 270, 277, 286C2, and 293.

9. It is further ordered, That the Petition for Reconsideration filed by Minority Media of Pahrump, Inc., IS DISMISSED AS MOOT.

10. It is futher ordered, That the counterproposal filed by New Radio, Inc., is dismissed.

11. It is further ordered, That this proceeding is terminated.

12. The window period for filing applications on this allocation will open on April 18, 1986, and close on May 19, 1986.

13. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-6063 Filed 3-18-86; 8:45 am]

BILLING CODE 6712-01-M

[4] Petitioner filed supplemental comments detailing transmitter site problems associated with the use of Channel 286C1 at Las Vegas. However, it states that no such obstacles should occur with the use of Channel 286C2 and therefore requests its allocation.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 84-4; Notice 4]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule—Modifications to type F headlamp systems: Optional Compliance.

SUMMARY: This notice amends Safety Standard No. 108 to allow a manufacturer to provide an enhanced upper beam in Type F headlamp systems by wiring the lower beam headlamp to be activated simultaneously with the upper beam headlamp.

Type F headlamps feature identical aiming and seating planes, with the intention that re-aiming will not be necessary when a correctly aimed Type F headlamp is replaced with another Type F. The standard is also amended to provide that each half of the system may be aimed simultaneously if the manufacturer chooses (aiming the lower

beam headlamp would automatically re-aim the upper beam lamp), but in order to permit this option, the re-aim tolerance of ¼ degree for photometric performance compliance will not be permitted for the upper beam headlamp in the Type F system.

This rule is based upon comments to a notice of proposed rulemaking published on May 13, 1985. The agency also proposed, but is not adopting the proposal that Type F lamps be permitted to have an auxiliary filament in the lower beam lamp to be used for purposes other than upper or lower beam performance.

DATES: Effective date of the amendment is April 18, 1986. Petitions for reconsideration of the rule must be filed not later than April 18, 1986.

ADDRESS: Petitions for reconsideration should refer to the docket number and notice number and be submitted to: Administrator, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, DC 20590 (202–426–2720).

SUPPLEMENTARY INFORMATION: When Standard No. 108 was amended to adopt the small four-lamp rectangular headlamp system known as Type F (49 FR 50176), three aspects of the original proposal (49 FR 18321) were reserved for further discussion. These were the use of the lower beam headlamps (Type LF) when the upper beam lamps (Type UF) were activated, simultaneous aim of pairs of headlamps on each side of the vehicle, and the desirability of an optional auxiliary filament in the lower beam lamp. NHTSA had decided that further comment on these issues was desirable before a decision could be made about incorporating them into the Type F system, and issued a second proposal on May 13, 1985 (50 FR 19986). This notice discusses the second proposal and NHTSA's decisions with respect to modifications in the Type F system.

Simultaneous Use of Upper and Lower Beam Headlamps

NHTSA finds merit in the concept of having additional light available during upper beam operation to increase roadway illumination. Such light is readily available from the lower beam filament in the LF lamp. However, since Type F's upper beam (Type UF) lamp alone can meet current upper beam photometric requirements and already exceeds current minimum requirements, there is little or no basis upon which to mandate even more light by requiring the simultaneous use of both beams during upper beam selection, and NHTSA therefore proposed that this method of wiring the headlamps be at the option of the vehicle manufacturer. However, in order to reduce the possibility of excessive foreground light and glare resulting from simultaneous use, NHTSA proposed two new lower beam test points in Type LF lamps, and maximum photometric values for them, 7,000 cd at test point 4D–V (Down-Vertical), and 5,000 cd at the H–V (Horizontal-Vertical) axis. NHTSA tentatively concluded that adopting these new maximum values at 4D–V and H–V would allow safe simultaneous use of the lower and upper beam headlamps during upper beam operation.

Commenters supported the proposal as specified. The California Highway Patrol (CHP) expressed reservations about removing the option from the driver's control though convinced of the occasional utility of a supplement to the upper beam.

NHTSA does not agree with the CHP on this issue. While a driver might be in the best position to decide whether to use additional illumination, as NHTSA has stated before, it believes that additional specifications would be needed to ensure fail-safe switching from the upper beam or upper/lower beam to the lower beam alone, and that an additional warning telltale might be required as well. NHTSA does not believe that the benefits of allowing this choice to the driver would outweigh the costs, and the final rule adopts simultaneous use as a wiring option for the manufacturer rather than an operational option for the driver.

Simultaneous Aim (Co-Aiming) of Headlamps

General Motors, the developer of the Type F system, recommended a method to aim simultaneously both the upper and lower beam headlamps. Both lamps would be mounted in a common housing and have a common aim adjustment to permit such "co-aiming." It would be possible to co-aim both lamps as long as the combination of the two lamps in the common co-aiming assembly could meet the overall photometric requirements. The agency proposed that Type F lamps could be mounted on common and parallel seating and aiming planes provided that: (a) when tested in accordance with the provisions of Standard No. 108, the assembly is designed to conform to the test point values of the revised Figure 15 and (b) there shall be no provision for adjustment between the common or parallel aiming and seating planes of the two lamps. The agency also proposed to remove the ±¼ degree re-aim tolerance for the UF headlamp and to permit that tolerance to be allowed for the co-aiming assembly.

Ten of the 11 commenters to the docket concurred, the eleventh, Insurance Institute for Highway Safety, offering no comment on the point. Many of the comments asked for clarification of the language in the test procedure for co-aiming. The agency has clarified the test procedure by providing that the assembly shall be located on a goniometer placed at least 60 feet from the photometer. The LF lamp is aimed mechanically by centering the unit on the photometer axis and aligning its aiming plane to be perpendicular to the photometer axle. The assembly is then moved in a plane parallel to the established aiming plane of the LF unit until the UF lamp is centered on the photometer axis. The photometry measurement of the UF lamp is completed by using the aiming plane thus established, and allowing a ±¼ degree reaim tolerance for meeting the test points as measured in the co-aimed assembly.

To provide consistency in the aiming requirements, it was also proposed that testing of the individual lamps could not include a ±¼ degree re-aim tolerance for the UF lamp alone. Therefore, paragraph S4.1.1.43(b) and Figure 15 have been revised to accomplish this. Heretofore, such allowances were placed in Figure 15, however for regulatory consistency, such allowances and restrictions should be placed in the text as other requirements are. Paragraph S4.1.1.43(b) now includes such requirements and Figure 15 does not. This arrangement of photometric and construction specifications assures that the entire assembly will be properly aimed in service if a mechanical aimer is used to aim the LF lamp in co-aimed assembly. However, if optical aiming is used or if a mechanical aimer is used in conjunction with the UF lamp of the assembly, the in-service aim of the assembly may be in error. As a partial remedy to the possibility of using a mechanical aimer in conjunction with the UF lamp, a safeguard was originally proposed in the first NPRM for the Type F headlamp system. This proposal would have required manufacturers to provide a means of preventing use of the mechanical aimer on the UF lamp of the co-aimed assembly. However, the proposal was not included in the second NPRM because NHTSA tentatively concluded that without similar provision to prevent optical or visual aiming, only

a portion of the problem would be addressed. Labelling could be provided as a guide to reduce the likelihood of optical aim, but the likelihood of success is unknown.

There is also the question of whether or not the possibility of use of inappropriate aiming procedures in service is likely to have a significant safety impact. NHTSA believes that the likelihood of there being a significant safety impact is low. Because properly aimed Type F headlamps may be replaced without re-aim, and because the co-aim assembly will have only two aiming screws, NHTSA believes that these assemblies will usually be treated as a two beam headlamp is treated in that the lower beam is used for aiming purposes. Consequently, NHTSA will allow the optional use of co-aiming, using the clarified procedure above, but will not require the prevention of aim of the upper beam lamp.

Optional Auxiliary Filament in the Lower Beam Lamp

Incorporation of an optional auxiliary filament in the Type F system was a feature of the original GM design, which was subsequently deleted by the developer. In the original rulemaking, NHTSA determined that there were no safety reasons to mandate or permit its use. However, because Chrysler Corporation strongly recommended the incorporation of the auxiliary filament for safety purposes other than upper beam or lower beam use, the agency again proposed its optional inclusion. Specifically, Chrysler would use the auxiliary filament to increse conspicuity of the vehicle during daytime operation.

Five commenters opposed the proposal while three were in favor of it and one, the California Highway Patrol, was neutral. Of the three, Chrysler suggested that it could be used to provide a daytime running light. North American Phillips saw no reason to oppose it. American Motors commented that manufacturers should have the design flexibility to use such a filament. GM offered arguments against the auxiliary filament similarly to those previously offered, stating that the auxiliary filament would reduce lamp life and reliability, reduce bulb reliability, cause a filament shadow during lower beam use, and increase cost. Commenters recommended against it on the basis that it was premature to permit such a feature which could adversely affect headlamp performance when the need and specifications for daytime running lights remained to be determined. Additionally, because the auxiliary filament would be unregulated in both design and performance, manufacturers could choose to use the filament for other functions where optics must be controlled, such as for use as driving or fog lamps, with the possibility of a resulting optical prescription for the lens that would be in conflict with that necessary for a headlamp. The inappropriate prescription would thereby compromise lower beam performance. Should lamps with auxiliary filaments be produced, the headlamps would be physically interchangeable, but would not be functionally interchangeable. In addition this would result in proliferation without accompanying advantages for the public. Accordingly, NHTSA has not adopted the proposal to allow a third type of Type F headlamp, one incorporating an auxiliary filament.

Standardization of SAE References

Under Standard No. 108, Type F headlamps and those incorporating standardized replacement light sources are designed to meet the requirements of SAE J579c, December 1978, but original equipment sealed beam headlamps must conform to SAE J579c, December 1974. For regulatory clarity, NHTSA proposed that the December 1978 version be the sole version incorporated by reference. Similarly it proposed that a standardized reference to SAE J580 be adopted. The changes between the earlier and later versions of the two SAE standards were discussed in detail in the notice of proposed rulemaking and their effect deemed non-substantive. These changes have been adopted, there being no negative comments submitted.

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291, "Federal Regulation," or significant under Department of Transportation regulatory policies and procedures. Therefore, a regulatory evaluation has not been prepared. Since us of the headlamps is optional, the rule will not impose additional requirements or costs but will permit manufacturers greater flexibility in use of headlighting systems.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will have no effect on the human environment.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis has been prepared. Manufacturers of motor vehicle headlamps, those affected by this rule, are generally not small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps, and aimer adjusters will be minimally impacted.

Because of the necessity of vehicle, headlamp, and bulb manufacturers to plan production and distribution on an orderly basis, it is found that an effective date earlier than 180 days after issuance of the final rule is in the public interest.

The engineer and lawyer primarily responsible for this rule are Richard Van Iderstine and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

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

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

The authority citation for Part 571 is revised to read as follows:

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

§ 571.108 [Amended]

1. In § 571.108, subparagraph (b) of paragraph S4.1.1.43 is revised to read:

* * * * *

(b) The photometric requirements of Figure 15. A reaim tolerance of ± ¼ degree is allowed for any test point on the Type LF lamp when tested alone, and such a tolerance is not allowed for the Type UF lamp when tested alone. For the test point 10U–90U, measurement shall be from the normally exposed surface of the lens face.

* * * * *

2. A new paragraph S4.1.1.46 is added to § 571.108 to read:

* * * * *

S4.1.1.46 Type F headlamps may be mounted on common or parallel seating and aiming planes to permit simultaneous aiming of both headlamps provided that or when tested with any conforming Type UF and LF headlamps according to paragraph S8—

(a) The assembly (consisting of the Type UF and LF headlamps, mounting rings, the aiming/seating rings, and aim adjustment mechanism), shall be designed to conform to the test point values of Figure 15.

(b) There shall no provision for adjustment between the common or parallel aiming and seating planes of the two lamps.

3. A new paragraph S4.5.12 is added to § 571.108 to read:

* * * * *

S4.5.12 On a motor vehicle equipped with a Type F headlighting system, the lower beam headlamps (Type LF) may be wired to remain permanently activated when the upper beam headlamps (Type UF) are activated.

* * * * *

4. A new paragraph S8 is added to § 571.108 to read:

* * * * *

S8. *Photometry Test for Simultaneous Aim, Type F Headlamps.* The assembly shall be located on a goniometer placed not less than 60 feet (18.3 m) from the photometer. The LF unit shall be aimed mechanically by centering the unit on the photometer axis and aligning the aiming plane of the lens perpendicular to the photometer axis. Then the assembly shall be moved in a plane parallel to the established aiming plane of the LF headlamp until the UF headlamp is centered on the photometer axis. Photometry measurements of the UF photometry unit shall be completed using the aiming plane so established. A reaim tolerance of ±¼ degree is allowed for any test point.

5. Figure 15 of § 571.108 is revised as follows:

FIG.15.—PHOTOMETRIC TEST POINT VALUES

Upper beam			Lower beam		
Test points deg	Cd. max.	Cd. min.	Test points deg	Cd max.	Cd. min.
2U-V		1,500	10U-9)U	125	
1U-3R and 3L		5,000	1U-1-½L to L	700	
H-V	70,000	40,000	½U-1-½L to L	1,000	
			½D-1-½L to L	3,000	
			1-½U-1R to R	1,400	
H-3R and 3L		15,000			
H-6R and 6L		5,000	½U-1R to 3R	2,700	
H-9R and 9L		3,000	½D-1-½R	20,000	10,000
H-12R and 12L		1,500	1D-6L		1,000
			1-½D-2R		15,000
1-½D-V		5,000	1-½D-9L and 9R		1,000
1-½D-9R and 9L		2,000	2D-15L and 15R		850
2-½D-V		2,500	4D-4R	12,500	
2-½D-12R and 12L		1,000			
4D-V	5,000		4D-V	7,000	
			M-V	5,000	

6. In § 571.108, paragraphs S4.1.1.13(b), S4.1.1.21, S4.1.1.33, S5.1 and Tables I and III (under the right hand column "Applicable SAE standard or recommended practice" parallel to the item "Headlamps") are amended by changing "December 1974" to "December 1978."

7a. In § 571.108, Tables I and III, the right hand columns "Applicable SAE standard or recommended practice" are amended by adding the wording "(See S5 for subreferenced SAE materials)".

7b. In § 571.108, tables I and III (under the right hand column "Applicable SAE standard or recommended practice" parallel to the item "Headlamps") are amended by changing "J580b February 1974" to J580 AUG 79".

Issued on March 13, 1986.

Diane K. Steed,
Administrator.

[FR. Doc. 86-5962 Filed 3-18-86; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 51, No. 53
Wednesday, March 19, 1986

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-86-3]

Petitions for Rulemaking; Summary and Dispositions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, May 19, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 13, 1986.

John H. Cassady,
Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the Petition
24674	National Association for Rocketing and Hobby Industry Association.	*Description of Petition:* To increase model rocket exempted limits to 125 grams (4.4 ounces or propellant, and total weight to 1500 grams (52.91 ounces). *Regulations Affected:* 14 CFR 101.1(a), (3), (ii), (a), and (c).
24897	Mr. Stephen B. Jordan	*Description of Petition:* To establish Flight Level intervals between FL 290 and FL 420 as follows: Westbound: FL300, FL330, FL360, FL390, FL420; Eastbound: FL290, 315, 345, 375, 405. *Regulatons Affected:* 14 CFR 91.121. *Petitioner's Reason for Rule:* 1. There would be a 33⅓ increase in available flight levels. 2. Fuel Savings: (a) increased flight levels should allow greater controller flexibility and more direct flights; (b) very heavy aircraft would be able to use step climbs of 3,000 feet vs 4,000 feet which is closer to the ideal cruise climb; (c) ability of aircraft to operate closer to their most efficient cruising altitude for their goss weight. 3 Reduced controller workload by reducing aircraft conflicts caused by increased spacing. 4. Passenger comfort increased by greater capability in finding a smoother, less turbulent cruising altitude. 5. More effective use of aircraft equipped with INS, RNAV or OMEGA.
24902	Sierra Academy of Aeronautics	*Description of Petition:* To amend Paragraph (3)(iv)(a) of Appendix C of Part 63 to require that the 5 hours of flight instruction time in an airplane be reduced to 2 hours, provided that (1) the remaining 3 hours of required flight instruction in an airplane be substituted on a 2 to 1 basis by an FAA-approved Phase II Simulator with crew; (2) the test required by § 63.39(b)(3) be conducted in an FAA-approved Phase II Simulator with full crew; (3) instruction in an FAA-approved training device and FAA-approved Simulator in accordance with the formula of Part 63, Appendx C, Paragraph (3)(iv) will not equal 10 hours of flight instruction time in an airplane and willl not be reduced to less than the 10-hour equivalency; (4) ground course will not be reduced below 240 hours of instruction; and (5) 6 hours of aircraft preflight instruction on a static aircraft will be included in the course. *Regulations Affected:* 14 CFR § 63, Appendix C (3)(iv)(a).
24890	Strong Enterprises, Inc. and the Relative Workshop, Inc.	*Description of Petition:* To permit general use of approved dual harness, and dual parachute packs. *Regulations Affected:* 14 CFR 105.43(a)

Research and Special Programs Administration

14 CFR Part 250

[Docket No. 43872; Notice No. 86-1]

Aviation Economic Regulations; Oversales; Recordkeeping and Reporting Requirements

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT) is proposing to reduce the reporting frequency of RSPA Form 251, "Report of Passengers Denied Confirmed Space" from monthly to quarterly. This proposed action would reduce reporting burden on the airline industry while bringing DOT's oversales rule into conformance with 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. Part 1320 implements the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. 5 CFR 1320.6(a) states that the Office of Management and Budget (OMB) will not approve a collection of information that requires respondents to report information more often than quarterly, unless the agency is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other substantial needs.

DATES: Comments to the proposed rule must be received on or before May 19, 1986.

ADDRESS: Comments should be directed to the Docket Clerk, Docket 43872, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jack Calloway or Bernard Stankus, Office of Aviation Information Management, Data Requirements and Public Reports Division, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426-7372.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed regulation would result in a reduction in reporting burden for U.S. and foreign scheduled passenger air carriers servicing the United States.

This proposed regulation is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, as it does not involve important Departmental policies. Its economic impact is minimal and full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities.[1] The proposed amendments would affect only large U.S. and foreign air carriers.

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. These requirements will be submitted to the OMB for review and comment. Persons may submit comments on the collection-of-information requirements to OMB. Comments should be directed to Sam Fairchild, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. It would be appreciated if a copy of any comments sent to OMB is also sent to the DOT rules docket.

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views or arguments as they may desire. Comments that provide factual basis supporting their views and suggestions on reporting frequency would be particularly helpful. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 43872. The post card will be date/time stamped and returned to the commenters. All communications received between the specified opening and closing dates for comments will be considered by the Administrator before taking action on any further rulemaking. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contract with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

The provision that requires air carriers to file Form 251 on a monthly basis was adopted during a period when there was a serious oversale problem in the airline industry. Carriers were overselling their seating capacity because a number of ticket holders did not use nor cancel their reservations. Under these circumstances, two avenues were open to the Civil Aeronautics Board [2] (CAB). It could reduce oversales by closely regulating the details of the carriers' reservation practices, with the inevitable result of curtailing the flexibility by which passengers make, change and cancel reservations. Carriers were strongly against this action. On the other hand, the CAB could take positive steps to assure prompt, effective and adequate compensation to passengers who were denied boarding, and to refrain from detailed regulation of carrier reservation practices.

The latter course was taken. On August 3, 1967, the CAB adopted Part 250 of its Economic Regulations (32 FR 11939). This part established financial compensation, usually equal to the amount of the unused tickets, to passengers who were denied confirmed space as well as a reporting provision to monitor carrier practices. Despite this regulation, the incidence of denied boardings continued to rise, reaching a peak of over 150,000 in 1977.

On May 30, 1978, the CAB amended Part 250 by requiring airlines not to deny boarding to any passengers against his will until volunteers were first sought to give up their reservations willingly in exchange for a compensatory payment (42 FR 24277). This amendment was adopted to minimize involuntary denied boardings. In the event of an oversold flight, air carriers are required to seek volunteers for denied boarding before using any other boarding priority. A volunteer is a person who willingly accepts the carrier's offer of

[1] For the purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) as small entities for purposes of the Regulatory Flexibility Act.

[2] The Airline Deregulation Act (Pub. L. 95-504, October 24, 1978) as amended by the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443, October 4, 1984) revised 49 U.S.C. 329(b)(1) to require the Secretary of Transportation to continue the data collection activities of the former CAB

compensation in any amount in exchange for relinquishing the confirmed reserved space. The denied boarding regulations were refined further on May 7, 1980 (45 FR 30064), November 24, 1982 (47 FR 52985), June 28, 1983 (48 FR 29680) and October 16, 1984 (49 FR 40401). Presently, if a passenger holding confirmed space is involuntarily denied boarding, that passenger must be compensated at the rate of 200 percent of the sum of the values of the passenger's remaining flight coupons to the passenger's next stopover, or if none, to the final destination, with a maximum of $400. Half this compensation shall be paid if the carrier arranges comparable air transportation at no additional cost and the passenger's planned arrival at his stopover or destination is not later than two hours after the original scheduled arrival (four hours on international flights). No compensation is required if the carrier arranges comparable air transportation at no additional cost and the planned arrival at the next stopover or destination is not later than 1 hour after the planned arrival time of the passenger's original flight.

Form 251 has been in place since the inception of the denied boarding rules. It is used to monitor the extent of the overselling in the industry and how passengers with a confirmed reservation who are denied a seat are being accommodated. Since 1978, the Form distinguishes between involuntary and voluntary denied boardings.

Between 1977 and October 31, 1984, annual enplanements have increased almost 100 million, the number of passengers who are involuntarily denied seats has remained relatively constant and the denied boarding rate per 10,000 passengers has decreased (see Appendix A). Although the Department still needs Form 251 reports to adequately monitor individual carrier and industry performance, it is felt that quarterly reporting will suffice for this purpose. However, if an individual carrier experiences an extremely abnormal high denied-boarding rate, the Department has authority to require that carrier to submit special reports, on a monthly basis, if needed.

The Paperwork Reduction Act of 1980 gave the Office of Management and Budget (OMB) the responsibility to set standards for information collections. OMB's General Information Guidelines, 5 CFR 1320.6 state that, unless the agency is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information requiring respondents to report information to the agency more often than quarterly. Since the denied boarding rate has improved and domestic air transportation has been economically deregulated to a large extent, there is no longer a need for monthly reporting.

List of Subjects in 14 CFR Part 250

Air transportation, Airlines, Oversales, Consumer Protection.

Proposed Rule

PART 250—[AMENDED]

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 250, *Oversales* as follows:

1. The authority for Part 250 continues to read:

Authority: Sec. 204, 401, 402, 404, 407, 411, 416, 1002 of the Federal Aviation Act of 1958, as amended; 49 U.S.C. 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1386 and 1482.

2. The Table of Contents would be amended by retitling § 250.10 *Reports of unaccommodated passengers* to read:

* * * * *

Sec.
250.10 *Report of passengers denied confirmed space.*

* * * * *

3. Section 250.10 *Reports of Unaccommodated Passengers* is amended by retitling and revising the section to read as follows:

§ 250.10 Report of passenger denied confirmed space.

Every carrier shall file, on a quarterly basis, the information specified in RSPA Form 251. The reporting basis shall be flights originating or terminating at, or servicing, a point within the United States. The reports are to be submitted within 30 days after the quarter covered by the report. The calendar quarters end March 31, June 30, September 30 and December 31. "Total Boardings" on line 7 of Form 251 shall include only passengers on flights for which confirmed reservations are offered. No reports need be filed for inbound international flights on which the protections of this part do not apply.

4. RSPA Form 251 "Report of Passengers Denied Confirmed Space" would be amended as shown in Appendix B attached.

Issued in Washington, DC on March 14, 1986.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

APPENDIX A.—PERCENTAGE RELATIONSHIP OF DENIED BOARDINGS (INVOLUNTARY) TO ENPLANEMENTS

[Calendar year 1977 through 1984]

Year	Denied boardings (involuntary) [1]	Enplanements	Involuntary denied boardings per 10,000 boardings
(1)	(2)	(3)	(4)
1977	150,000	241,326,000	6.24
1978	175,000	261,371,000	6.70
1979	172,000	311,482,000	5.52
1980	128,000	291,690,000	4.77
1981	139,000	276,664,000	5.02
1982	150,000	284,427,000	5.27
1983	147,000	308,472,000	4.76
1984	152,000	333,870,000	5.55

[1] Source: Taken from reports prepared by DOT's Office of Community and Consumer Affairs. Does not include foreign carrier statistics.

BILLING CODE 4910-62-M

Appendix B
Page 1 of 2

US Department of Transportation
Research and Special Programs Administration

REPORT OF PASSENGERS DENIED CONFIRMED SPACE

(To be filed with the Data Administration Division, Office of Aviation Information Management, RSPA within 30 days after the end of each quarter)

Name of Air Carrier

OAG Carrier Code

Quarter ended _____

(See Instructions on Back)

1.	Number of passengers denied boarding involuntarily who qualified for denied boarding compensation and:	
	(a) were given alternate transportation within the meaning of $250.5.	
	(b) were not given such alternate transportation.	
2.	Number of passengers denied boarding involuntarily who did not qualify for denied boarding compensation due to:	
	(a) accommodation on another flight that arrives within 1 hour after the scheduled arrival time of the original flight.	
	(b) substitution of smaller capacity equipment.	
	(c) failure of passenger to comply with ticketing, check-in, or reconfirmation procedures, or to be acceptable for transportation under carrier's tariff.	
3.	TOTAL NUMBER DENIED BOARDING INVOLUNTARILY	
4.	Number of passengers denied boarding involuntarily who actually received compensation.*	
5.	Number of passengers who volunteered to give up reserved space in exchange for a payment of the carrier's choosing.	
6.	Number of passengers accommodated in another section of the aircraft:	
	(a) Upgrades	
	(b) Downgrades	
7.	Total Boardings	
8.	Amount of compensation paid to passengers who:	
	(a) were denied boarding involuntarily and were given alternate transportation within meaning of $250.5 (See item 1(a) above).	
	(b) were denied boarding involuntarily and were not given alternate transportation. (See item 1(b) above).	
	(c) volunteered for denied boarding. (See item 5 above).	

I, the undersigned, (Title)_____ of the above-named carrier certify that the above report has been examined by me and to the best of my knowledge and belief is a true, correct and complete report for the period stated.

_____ (Date)

_____ (Signature)

* If any passengers qualified for denied boarding compensation but were not offered compensation, attach a statement as to the number of such passengers and an explanation of why the offer was not made.

RSPA Form 251
Formerly CAB Form 251

BILLING CODE 4910-62-C

Instructions

(a) Reports shall be filed by every carrier with respect to flight segments with large aircraft (more than 60 seats) in (1) interstate or overseas air transportation and (2) foreign air transportation originating at a point within the United States. Carriers are defined as air carriers holding certificates under section 401(d)(1), (2), (5), or (8) or exemptions from section 401(a) of the Federal Aviation Act of 1958, and all foreign route air carriers holding section 402 permits or exemption from section 402, authorizing the transportation of persons in scheduled service. See Part 250 of DOT regulations (14 CFR Part 250) for further information.

(b) With respect to line 1, "alternate transportation" for passengers denied boarding involuntarily means comparable air transportation accepted by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's destination or first stopover (of 4 or more hours) no later than 2 hours for domestic flights or 4 hours for international flights. See § 250.5 of DOT regulations for further information.

(c) "Total number denied boarding involuntarily" should equal the sum of lines 1 and 2. If this is not so, attach notes explaining any discrepancy.

(d) With respect to line 5, a passenger who "volunteers" is a person who responds to the carrier's request for volunteers pursuant to § 250.2b of DOT regulations and willingly consents to exchange his confirmed reserved space for a payment of the carrier's choosing. Any passenger selected by the carrier for denied boarding in accordance with any boarding priority other than a request for volunteers is considered to have been denied boarding "involuntarily," whether or not the passenger accepts denied boarding compensation.

(e) "Total Boardings" on line 7 shall include only passengers on flights for which confirmed reservations are offered. For international flights, "Total Boardings" shall include only passengers on flight segments from the United States that are subject to Part 250, and for which confirmed reservations are offered.

(f) With respect to line 8, "compensation paid" includes all payments made to passengers, *i.e.* payments actually accepted by passengers, plus payments offered or mailed that are not rejected.

(g) Note on the report any abnormal conditions, such as strikes, having a bearing on the results.

[FR Doc. 86-5988 Filed 3-18-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Residence and Citizenship

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing rules to implement the order of the United States Court of Appeals for the Second Circuit in the case of *Berger* v. *Heckler* 771 F. 2d 1556 (1985). The court order affirms the order of the District Court in *Berger* v. *Schweiker*, No. 76 C 1420 (E.D.N.Y. July 31, 1984) which sets out criteria for determining whether an alien is permanently residing in the United States (U.S.) under color of law and lists specific categories of aliens who meet the criteria and thus, may be eligible for Supplemental Security Income (SSI) benefits. The proposed regulations provide that aliens residing in the U.S. with the knowledge and permission of the Immigration and Naturalization Service (INS) and whose departure INS does not contemplate enforcing, are permanently residing under color of law. The proposed rules set out specific categories of aliens who meet these criteria and the documents an individual must provide to prove permanent residence in the U.S. under color of law for SSI purposes.

DATE: Comments must be received on or before May 19, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203 or delivered to 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301-594-7457.

SUPPLEMENTAL INFORMATION: Section 1614(a)(1)(B) of the Social Security Act requires that an individual must be a citizen, or an alien either lawfully admitted for permanent residence or permanently residing in the U.S. under color of law to be eligible for SSI benefits. The current regulations at § 416.1618 do not define color of law but rather set out what evidence an individual must provide to prove he or she is permanently residing in the U.S. under color of law. Our policies regarding this color of law requirement under the SSI program were the subject of litigation in *Berger* v. *Secretary*, No. 76C 1420 (E.D.N.Y. June 13, 1978). Under the final judgment entered June 13, 1978, aliens who were residing in the U.S. with the knowledge and permission of INS and whose departure INS did not contemplate enforcing were permanently residing in the U.S. under color of law and thus, may be eligible for SSI benefits. The final judgment contained language to that effect.

After further litigation, the District Court in *Berger* v. *Schweiker*, No. 76C 1420 (E.D.N.Y. July 31, 1984) set out more specific criteria for determining if an alien is permanently residing in the U.S. under color of law. The court order again provided that aliens residing in the U.S. with the knowledge and permission of INS and whose departure INS does not contemplate enforcing are aliens permanently residing in the U.S. under color of law for SSI purposes. Under the terms of the court order, INS will not be considered as contemplating enforcing an alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category or if from all facts and circumstances in a particular case it appears that INS is permitting the alien to reside in the U.S. indefinitely. The court order also listed certain categories of aliens as examples of categories which meet the criteria. The court order required that our regulations and operating instructions contain its criteria for color of law determinations and the specified categories of aliens who are considered as permanently residing under color of law. On appeal the United States Court of Appeals for the Second Circuit in *Berger* v. *Heckler*, 771 F. 2d 1556 (2d Cir. 1985), affirmed the district court order except that it did not require the Secretary to use the exact language specified by the district court. However, we have decided to adopt the language provided by the district court as it gives the most specific guidance on how the court's holding is to be interpreted. Because under the courts' orders more aliens will meet the definition of color of law than under our current regulations, more aliens may now be eligible for SSI benefits if they meet all other requirements for eligibility.

Provisions of the Regulations

We propose to amend § 416.1618 to set out the criteria as specified by the district court for determining whether an alien is permanently residing in the U.S. under color of law and to specify categories of aliens who meet these criteria. The proposed regulations also describe the documents an alien must furnish to us to enable us to determine whether he or she is permanently

residing in the U.S. under color of law. SSA cannot make independent judgments about an alien's status. These criteria depend on a determination of alien status by the INS. In instances in which an applicant cannot provide the required documentation, SSA will ask the INS to provide the alien's status.

The proposed regulations also contain an assumption that INS does not contemplate enforcing the departure of an individual who has a document valid for an indefinite period of time. Therefore, if all other factors of eligibility are met, we will begin payment immediately. However, we will contact INS to verify that it does not contemplates enforcing the departure of the individual. If INS indicates that it contemplates enforcing the departure of the individual, we will suspend benefits. Based on our experience with INS practice we will assume that INS does not contemplate enforcing the departure of an individual who has a document valid for at least 1 year, and, if all other factors of eligibility are met, we will begin payment immediately. However, we will contact INS to verify that it does not contemplate enforcing the departure of the individual. If INS indicates that it contemplates enforcing the departure of the individual, we will suspend benefits. If an individual presents a document valid for less than 1 year, we will assume that INS contemplates enforcing his or her departure and we will contact INS and ask whether it contemplates enforcing departure before we make any payments. Once we begin paying an individual with a definite status which must be renewed, we will contact INS when the status comes up for renewal to determine whether INS will renew the individual's status or whether it contemplates enforcing departure. If at any time after an individual begins receiving benefits INS indicates that it contemplated enforcing departure, we will suspend benefits and assess an overpayment for benefits received from that date. This policy was developed based on our experience in processing such claims and on information obtained from INS. Our experience with INS practices indicates that INS usually continues to renew statuses which are valid for at least a year and, therefore, does not contemplate enforcing departure of individuals with these statuses. By contrast it has been our experience that INS generally does not renew statuses that are valid for less than a year. This policy will enable us to pay benefits as promptly as possible to those individuals whose departure INS most likely does not contemplate enforcing.

We propose to delete the provision at § 416.1618(a)(3) that provides for certain aliens to be considered permanently residing in the U.S. under color of law as a result of a March 10, 1977 court order. That court order in *Silva* v. *Levi*, No. 76 C 4268 (N.D.Ill. 1977), enjoined INS from deporting certain aliens and required INS to notify the aliens that they were authorized to remain in the U.S. for an indefinite period of time. Since these aliens could reside in the U.S. indefinitely, we considered them permanently residing under color of law and our regulations at § 416.1618(a)(3) so provide. The *Silva* court order was dissolved as of November 1, 1981. Since *Silva* aliens who had not obtained an adjustment of their status while the March 10, 1977 court order was in effect were no longer protected from deportation, they are no longer being allowed to reside in the U.S. indefinitely. Therefore, we no longer consider these aliens to be permanently residing under color of law for SSI purposes. Since this provisions at § 416.1618(a)(3) is obsolete, we propose to delete it.

Regulatory Procedures

Executive Order 12291—This proposed rule has been reviewed under Executive Order 12291 and we have determined that it will not have an annual effect on the economy of $100 million or more, or otherwise meet the threshold of the Executive Order. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—This proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 2053, Attention: Desk Officer for Health and Human Services.

Regulatory Flexibility Act—We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities since they will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Program)

Administrative practice and procedures, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: January 22, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: February 19, 1986.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

Part 416 of Chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart P of Part 416 continues to read as follows:

Authority: Secs. 1102, 1614, and 1631, of the Social Security Act, as amended; 49 Stat. 647, as amended, 86 Stat. 1471, and 86 Stat. 1475; 42 U.S.C. 1302, 1382c, and 1383.

2. Section 416.1618 is revised to read as follows:

§ 416.1618 When you are considered permanently residing in the United States under color of law.

(a) *General.* We will consider you to be permanently residing in the United Stated under color of law and you may be eligible for SSI benefits if you are an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS) and that agency does not contemplate enforcing your departure. The Immigration and Naturalization Service does not contemplate enforcing your departure if it is the policy or practice of the Immigration and Naturalization Service not to enforce the departure of aliens in the same category or if from all the facts and

circumstances in your case it appears that the Immigration and Naturalization Service is otherwise permitting you to reside in the United States indefinitely.

(b) *Categories and proof you will need.* Aliens who are permanently residing in the United States under color of law include but are not limited to those listed below. Also listed is the proof that we ask for:

(1) Aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7), (section 203(a)(7) of the Immigration and Nationality Act). We ask for INS Form I-94 endorsed "Refugee-Conditional Entry";

(2) Aliens paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) (section 212(d)(5) of the Immigration and Nationality Act) including Cuban/Haitian Entrants. We ask for INS Form I-94 with the notation that the alien was paroled pursuant to section 212(d)(5) of the Immigration and Nationality Act. For Cuban/Haitian Entrants, we ask for INS Form I-94 stamped "Cuban/Haitian Entrant (Status Pending) reviewable January 15, 1981. Employment authorized until January 15, 1981." (Although the forms bear this notation, Cuban/Haitian Entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act.);

(3) Aliens residing in the United States pursuant to an indefinite stay of deportation. We ask for an Immigration and Naturalization Service letter with this information or INS Form I-94 with such a notation;

(4) Aliens residing in the United States pursuant to an indefinite voluntary departure. We ask for an Immigration and Naturalization Service letter or INS Form I-94 showing that a voluntary departure has been granted for an indefinite time period;

(5) Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition, who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for a copy of INS Form I-94 or I-210 letter showing that status;

(6) Aliens who have filed applications for adjustment of status pursuant to section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the Immigration and Naturalization Service has accepted as "properly filed" (within the meaning of 8 CFR 242.5(a) or (b)) or granted and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I-181 or a passport properly endorsed;

(7) Aliens granted stays of deportation by court order, statute or regulation, or by individual determination of the Immigration and Naturalization Service pursuant to 8 U.S.C. 1253(a) (section 243 of the Immigration and Nationality Act) or relevant Immigration and Naturalization Service instructions, whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I-94 or a letter from the Immigration and Naturalization Service, or copy of a court order establishing the alien's status;

(8) Aliens granted asylum pursuant to section 208 of the Immigration and Nationality Act (8 U.S.C. 1158). We ask for INS Form I-94 and a letter establishing this status;

(9) Aliens admitted as refugees pursuant to section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7). We ask for INS Form I-94 properly endorsed;

(10) Aliens granted voluntary departure pursuant to 8 U.S.C. 1252(b) (section 242(b) of the Immigration and Nationality Act) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I-94 or I-210 bearing a departure date;

(11) Aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1a(i) prior to June 15, 1984 or 242.1(a)(22) June 15, 1984 and later. We ask for INS Form I-210 or a letter showing that departure has been deferred;

(12) Aliens residing in the United States under orders of supervision pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 252(d)). We ask for INS Form I-220B;

(13) Aliens who have entered and continuously resided in the United States since before June 30, 1948 (or any date established by section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). We ask for any proof establishing this entry and continuous residence;

(14) Aliens granted suspension of deportation pursuant to section 244 of the Immigration and Nationality Act (8 U.S.C. 1254). We ask for INS Form I-94 and an order from the immigration judge; or

(15) Aliens whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). We ask for an order from an immigration judge showing that deportation has been withheld.

(c) *How we determine if the Immigration and Naturalization Service contemplates enforcing your departure.*

(1) If you have a document that shows that you have an Immigration and Naturalization Service status that is valid for an indefinite period, we will assume that the Immigration and Naturalization Service does not contemplate enforcing your departure. We will pay you benefits if you meet all other eligibility requirements. We will contact the Immigration and Naturalization Service to verify that it does not contemplate enforcing your departure. If the Immigration and Naturalization Service indicates it does not contemplate enforcing your departure we will continue your benefits. However, if the Immigration and Naturalization Service indicates it does contemplate enforcing your departure we will suspend your benefits under § 416.1329.

(2) If you have a document that shows you have an Immigration and Naturalization Service status valid for at least 1 year, we will assume that the Immigration and Naturalization Service does not contemplate enforcing your departure. Therefore, we will pay you benefits if you meet all other eligibility requirements. We will contact the Immigration and Naturalization Service to verify that it does not contemplate enforcing your departure. If the Immigration and Naturalization Service indicates it does not contemplate enforcing your departure we will continue your benefits. However, if the Immigration and Naturalization Service indicates it does contemplate enforcing your departure we will suspend your benefits under § 416.1329.

(3) If you have a document that shows you have an Immigration and Naturalization Service status valid for less than 1 year, we will contact the Immigration and Naturalization Service to verify that it will continue to renew your status and, therefore, does not contemplate enforcing your departure before we pay you any benefits.

(4) If the Immigration and Naturalization Service at any time after you begin receiving benefits indicates that it contemplates enforcing your departure, we will suspend your benefits under § 416.1329 and any benefits you have received after the date the Immigration and Naturalization Service began contemplating enforcing departure will be overpayments under Subpart E of this Part.

(d) *What to do if you do not meet one of the categories or cannot give us the*

proof listed in paragraph (b). If you are not within one of the above categories or you cannot give us any of the documents listed in paragraph (b), we may still find you to be permanently residing in the United States under color of law if you—

(1) Explain why you cannot give us any of the documents; and

(2) Give us any information you have which supports the fact that you are living in the United States with the knowledge and permission of the Immigration and Naturalization Service and the Immigration and Naturalization Service does not contemplate enforcing your departure from the United States. We will contact the Immigration and Naturalization Service to help establish that you meet this rule.

(e) *What "United States" means.* We use the term "United States" in this section to mean the 50 States, the District of Columbia, and the Northern Mariana Islands.

[FR Doc. 86-6088 Filed 3-17-86; 2:58 pm]

BILLING CODE 4190-11-M

DEPARTMENT OF STATE

Assistant Secretary for Consular Affairs

22 CFR Part 71

[No. SD-196]

Emergency Medical/Dietary Assistance for Temporarily Destitute U.S. Citizens Abroad

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to add a new Subpart C to 22 CFR Part 71 identifying the eligibility criteria and services covered in the Department of State's emergency medical/dietary assistance loan programs for temporarily destitute U.S. citizens abroad. These three loan programs—emergency medical, dietary, and subsistence assistance—in large part parallel the programs for incarcerated U.S. citizens abroad (see 22 CFR Part 71, Subpart B).

Emergency medical and short term dietary assistance to destitute U.S. citizens abroad was authorized by an amendment [Sec. 108, Pub. L. 95-426, 92 Stat. 966, 22 U.S.C. 2670 (j) (retroactively effective to October 1, 1978)] to Pub. L. 95-45, 91 Stat. 221, 22 U.S.C. 2670 (j)]. It was enacted to ensure that when an emergency occurs, all Americans abroad may have access to life-sustaining assistance. Although the Department implemented this program by internal instructions in 1979, experience now permits formal publication of rules with respect thereto.

DATES: Comments must be received on or before May 19, 1986.

ADDRESS: Written comments should be addressed to John H. Adams, Director, Citizens Emergency Center, Overseas Citizens Services, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Thomas L. Randall, Jr., Chief, Latin America and the Caribbean, Citizens Emergency Center, Department of State, Washington, DC 20520, (202) 647-5225.

SUPPLEMENTARY INFORMATION: Pub. L. 95-45, 91 Stat. 221, 22 U.S.C. 2670 (j), (1977), authorized the Department of State to provide emergency medical and dietary assistance to U.S. citizens incarcerated abroad. In implementing this law, it soon became apparent that there was another group of Americans overseas who frequently needed emergency assistance and whom the Department was unable to help. As the Assistant Secretary of Consular Affairs testified in 1978 before Congress: "We now have the authority and funds to assist Americans who are in prison and also those who need financial assistance to return home. We do not, however, have the authority or funds to help Americans who are traveling and who may be the subject of a tragic occurrence such as having their luggage, passport, or wallet stolen or who are injured in an accident. They are destitute, but only for a short period of time while they are sending back home for additional funds."

In response to the Department's request, the Congress enacted Sec. 108, Pub. L. 95-426, 92 Stat. 966, 22 U.S.C. 2670(j), which authorizes the Department to provide short term emergency loans to destitute Americans overseas. There are three programs the Department administers under this law. Emergency medical assistance is provided U.S. citizens abroad when such assistance is needed to protect life or limb and cannot be funded privately, or will not be provided by the host government, or supplied by a local medical facility unless an assurance of payment is provided in advance. Loans for dietary assistance are available to destitute U.S. citizens who are not seeking to return to the United States but require such assistance on an emergency basis. Finally, loans for up to three days emergency subsistence are available to those who are temporarily destitute but can show they are awaiting an overdue check from a U.S. Federal agency or funds from private sources. All three elements of this loan program are authorized only on a reimbursable basis and require the completion of a loan application and a promissory note before funds are disbursed.

The Department believes that the proposed rule for administering the emergency medical and dietary assistance programs for temporarily destitute Americans abroad complies with the intent of Congress and will not adversely affect any of the potential applicants.

Since 1979, the Department has successfully administered this program in tandem with the U.S. prisoner emergency assistance loan program under basically the same guidelines. The proposed rule will codify existing practice.

List of Subjects in 22 CFR Part 71

Foreign service, Security measures, Protection and welfare of U.S. citizens abroad, Emergency medical and dietary assistance.

PART 71—[AMENDED]

As proposed, Part 71 would be amended as follows:

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

Authority: Sec. 4 of the Act entitled, "An Act to strengthen and improve the organization and administration of the Department of State," of May 26, 1949, as amended (63 Stat. 111, 22 U.S.C. 2658); Sec. 2 of "An Act to authorize additional appropriations for the Department of State for fiscal year 1977," of June 15, 1977, as amended (Pub. L. 95-45, 9 Stat. 221, 22 U.S.C. 2670(j)); and Sec. 108(a) of the Foreign Relations Authorization Act, Fiscal Year 1979, of October 7, 1978 (Pub. L. 95-462, 92 Stat. 966, 22 U.S.C. 2670(j)).

2. Subpart C, consisting of §§ 71.13 through 71.15, is added to Part 71 to read as follows:

Subpart C—Emergency Medical/Dietary Assistance for Temporarily Destitute U.S. Citizens Abroad

Sec.
71.13 Emergency medical assistance.
71.14 Short term dietary assistance.
71.15 Temporary subsistence loans while awaiting funds.

Subpart C—Emergency Medical/Dietary Assistance for Temporarily Destitute U.S. Citizens Abroad

§ 71.13 Emergency medical assistance.

(a) *Eligibility criteria.* A destitute U.S. citizen abroad who is not in prison is considered eligible to receive funded medical treatment under the following general criteria:

(1) There is medical evidence that the emergency medical assistance is

necessary to prevent, or attempt to prevent, death or that failure to provide the service may result in permanent disablement;

(2) All reasonable attempts to obtain private resources in a timely manner (family, friends, etc.) have failed or are impracticable under the circumstances;

(3) Adequate treatment for an emergency physical or psychiatric condition cannot or will not be provided by the host government or by local medical facilities unless advance assurance of payment of costs incurred is given.

(b) *Services covered.* Funds, once approved, may be expended for:

(1) Emergency medical examination, when required;

(2) Emergency treatment;

(3) Non-elective surgery;

(4) Medications and related medical supplies and equipment required to sustain life (such as insulin) or to prevent permanent injury;

(5) Preventive or protective medications and medical supplies and equipment (vaccinations, inoculations, etc.) required to combat epidemic conditions (general or intramural);

(6) Childbirth attendance, including necessary medical care of newborn children; and

(7) Transportation for the U.S. citizen and attendant(s) between the citizen's residence or site where injury/illness occurred and the place(s) of treatment.

(c) *Consular responsibility.* As soon as the consular officer is aware that a destitute U.S. citizen, whether a resident abroad or a traveler, faces a physical or psychiatric emergency requiring immediate medical attention to prevent the loss of life or serious injury, the officer should take the following actions:

(1) Make every effort to contact the ill or injured U.S. citizen as soon as possible;

(2) Obtain a professional medical diagnosis and prognosis of the U.S. citizen's condition;

(3) Determine as accurately as possible the estimated costs of required treatment or transportation;

(4) Obtain the names and addresses of family or friends who might serve as a source of private funds for medical services, and attempt to obtain the necessary funds;

(5) If the circumstances permit, obtain a promissory note from the citizen, since funds expended by the Department to cover medical services are provided on a reimbursable basis to the extent feasible; and

(6) Report to the Department concerning the above information for approval and authorization.

(d) *Pre-authorized expenditures.* When a medical emergency precludes contacting the Department to obtain advance authority to expend funds, the consular officer can expend up to an amount to be established by the Department without prior Departmental approval if:

(1) Immediate emergency medical treatment or surgery is necessary to prevent death or permanent disablement, and there is insufficient time to explore sources or private funds or obtain Departmental approval; and

(2) A promissory note already has been executed by the U.S. citizen, or if the circumstances warrant, by the consular officer without recourse.

§ 71.14 Short term dietary assistance.

(a) *Eligibility criteria.* A U.S. citizen is considered eligible for financial assistance for food and lodging under the short term dietary assistance program if the following general criteria are met:

(1) The U.S. citizen is not seeking repatriation but is in a situation of an emergency nature;

(2) Food and lodging are not available from any other sources, including private funding from family or friends; and

(3) The U.S. citizen executes a promissory note for funds expended, since the assistance is on a reimbursable basis to the extent feasible.

(b) *Consular responsibility.* As soon as the consular officer is aware that a destitute U.S. citizen needs dietary assistance, the consular officer should:

(1) Contact the citizen in accordance with existing procedures;

(2) Determine the normal cost of basic diet and lodging and the best method of effecting payment;

(3) Attempt to secure funds from private sources such as family or friends.

(4) Because funds expended by the Department to cover the short term dietary assistance program are provided on a reimbursable basis to the extent feasible, have the citizen execute a promissory note; and

(5) Contact the Department, providing the above information, for approval and authorization.

(c) *Pre-authorized expenditures.* Since the immediate need for assistance under the short term dietary program often precludes contacting the Department and receiving authority to expend funds, consular officers can expend up to an amount to be establishment by the Department without prior Departmental approval if the citizen's case meets the criteria establsihed under paragraph (a) of this section. Expenditures above the predetermined limit must receive the prior approval of the Department.

(d) *Termination of loan.* This program is intended only to provide short term emergency dietary assistance for a citizen who may plan to remain abroad for some period of time. If the beneficiary does not obtain further assistance from private or local public sources, the consular officer should suggest that the applicant return to the United States, where sustained or long term assistance is available. If the beneficiary refuses to make application for a repatriation loan, the consular officer should obtain instructions from the Department.

§ 71.15 Temporary subsistence loans while awaiting funds.

(a) *Eligibility criteria.* A citizen (and accompanying alien spouse or unmarried children who are members of their households) are considered eligible for emergency temporary subsistence under the following general criteria:

(1) The applicant is not seeking repatriation, is temporarily destitute, and would suffer hardships while awaiting receipt of funds from private sources or an overdue check from a federal agency;

(2) The applicant can demonstrate that sufficient private funds have been requested and/or are readily available from private sources, a banking institution for immediate transfer, or an overdue federal benefits check; and

(3) The applicant agrees in writing to repay promptly the temporary subsistence loan upon receipt of funds from private sources and/or a Federal check.

(b) *Ineligible persons.* The following persons are specifically excluded from receiving temporary subsistence loans under this section:

(1) U.S. citizens seeking return to the United States;

(2) U.S. citizens not seeking to return to the United States who are incarcerated and who are eligible for assistance under sections §§ 71.10, 71.11, and 71.12; and

(3) U.S. citizens who have not repaid official funds previously expended in their behalf under this section.

(c) *Consular reponsibility.* As soon as a consular officer is aware that a temporarily destitute U.S. citizen needs assistance, the consular officer should:

(1) Determine if the U.S. citizen is eligible under paragraphs (a) and (b) of this section;

(2) Confirm that the applicant does, in fact, have a source of funds readily

available from which repayment can be made; and

(3) Have the applicant execute a loan application and promissory note agreeing to repay the loan upon receipt of funds from private sources and/or a Federal check.

(d) *Pre-authorized expenditures.* The consular officer may expend for the subsistence of each applicant an amount not to exceed the amunt of three days per diem at the U.S. Government authorized per diem rate applicable at the post. An additional two days of subsistence may be expended in exceptional circumstances.

Dated: July 29, 1985.

Joan M. Clark,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 86-5941 Filed 3-18-86; 8:45 am]

BILLING CODE 4710-06-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules; Implementation of Equal Access to Justice Act

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: On 25 July 1985, Congress passed Pub. L. 99-80, 99 Stat. 183, amending and reauthorizing the Equal Access to Justice Act, retroactive to 1 October 1984. On 5 August 1985, the President signed the legislation and the amended Equal Access to Justice Act became law. The rules of the National Labor Relations Board have not been changed since initially established in October 1981. These proposed revisions are to change the rules as they are affected by the 1985 amendments to the Equal Access to Justice Act and, in one instance, to conform language in the rules to the statutory language.

DATE: Comments by: April 18, 1986.

ADDRESS: Send or deliver written comments to: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, D.C. 20570, Telephone: (202) 254-9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, D.C. 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (29 U.S.C. 156), and in accordance with the requirements of 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1)), the National Labor Relations Board gives notice of its intent to promulgate a revision to its rules implementing the Equal Access to Justice Act governing the award of fees and other expenses to eligible parties who prevail in litigation before the Agency. In 1985, the Equal Access to Justice Act was amended with the changes in the Act made applicable to any case commenced after 1 October 1984. The amendments that affect the Board's procedures and require a revision of the Board's rules are those increasing the net worth eligibility limits and adding small local governmental units as parties eligible for an award. In drafting these rules, consideration has been given to the model prepared by the Administrative Conference of the United States (50 FR 46250) when appropriate.

Section 102.143(c) of the Board's rules presently provides that applicants who are eligible to receive awards include individuals with net worth of no more than $1 million, and the sole owner of an unincoporated business, a partnership, a corporation, an association, or a public or private organization with a net worth of not more than $5 million and not more than 500 employees. This section is amended to substitute the new net worth limitations of $2 million and $7 million for $1 million and $5 million, respectively. In addition, this section of the rules is amended to provide that a "unit of local government" is a party eligible to receive an award.

Section 102.144(a) is amended to include the statutory language "substantially justified" to evaluate the position of the General Counsel in place of the phrase "reasonable in law and fact." The case law under the Equal Access to Justice Act and Committee reports accompanying the amendments to the Act raise questions as to whether "reasonable in law and fact" remains a viable standard. To avoid any confusion or misunderstanding, the statutory language has been used.

Section 102.147(b) is amended to require that an application for an award include a statement that net worth does not exceed $2 million for an individual and $7 million for all other applicants, reflecting the higher net worth figures in the amended Act.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Equal access to justice.

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

Accordingly, it is proposed to amend 29 CFR Part 102 as follows:

1. The authority citation for 29 CFR Part 102 is revised to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Sections 102.143(c), 102.144(a), and 102.147(b) also issued under sec. 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.143(c) is revised to read as follows:

§ 102.143 "Adversary adjudication" defined' entitlement to award; eligibility for award.

* * * * *

(c) Applicants eligible to receive an award are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

* * * * *

3. Section 102.144(a) is revised to read as follows:

§ 102.144 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication or in connection with a significant and discrete substantive portion of that proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that the General Counsel's position in the proceeding was substantially justified.

* * * * *

4. Section 102.147(b) introductory text is revised to read as follows:

102.147 Contents of application; net worth exhibit; documentation of fees and expenses.

* * * * *

(b) The application shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

* * * * *

Dated, Washington, D.C., March 11, 1986.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 86-5961 Filed 3-18-86; 8:45 am]

BILLING CODE 7545-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300140 FRL-2984-8]

Polypropylene; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to expand the exemption from the requirement of a tolerance for polypropylene when used as an inert ingredient (Carrier) in pesticide formulations applied to animals. This proposed regulation was requested by Akzo Chemie America.

DATE: Written comments, identified by the document control number [OPP-300140], must be received on or before April 18, 1986.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-7700.

SUPPLEMENTARY INFORMATION: At the request of Akzo Chemie America, the Administrator proposes to amend 40 CFR 180.1001(e) by expanding the existing exemption from the requirement of a tolerance for polypropylene. This ingredient is listed for use as a component of plastic slow-release tags in pesticide formulations applied to animals, and the amendment would add the additional use use as a carrier. A separate entry is not necessary in order to reflect this change.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Polypropylene.

Name and address of requestor. Akzo Chemie America, McCook, IL 60525.

Bases for approval. Polypropylene is already cleared under 40 CFR 180.1001(e) for use as a component of plastic slow-release tags (see the **Federal Register** of August 8, 1984 (49 FR 31695)). The present clearance can be amended to reflect this change of an additional use as a carrier. The Agency does not consider this additional use as a carrier to be of toxicological significance. Accordingly, the present entry in 40 CFR 180.1001(e) should be amended to reflect this additional use as a carrier.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation 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 that contains this inert ingredient may request within 30 days after publication of this document 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 both the subject and the petition and document control number, [OPP-300140]. All written comments filed in response to this notice of proposed rulemaking will be availabe for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

1. The authority citation for 40 CFR Part 180 continues to read as set forth below:

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

2. Section 180.1001(e) is amended by revising the entry for Polypropylene, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Polypropylene (CAS. Reg. No. 9003-07-0).	Carrier, component of plastic slow-release tag.	
* * *	* * *	* * *

[FR Doc. 86-5751 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 765

[OPTS-62033A; FRL-2987-9]

Toxic and Hazardous Substances Control; Formaldehyde; Termination of Regulatory Investigation Concerned With Occupational Exposure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of termination of EPA's regulatory investigation of occupational exposure to formaldehyde.

SUMMARY: This notice announces the termination of EPA's regulatory investigation addressing potential risks arising from occupational exposure to formaldehyde. The Department of Labor's Occupational Safety and Health Administration (OSHA) has initiated regulatory action to address this risk. EPA has determined that OSHA has authority under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, to sufficiently reduce this risk, and EPA is taking this action, therefore, to avoid duplicative Federal regulatory activity and to redirect its own regulatory resources. In accordance with section 9(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2608(d) EPA has transmitted to OSHA all studies and documents in EPA's docket pertaining to this issue. EPA will continue to investigate formaldehyde exposures that are occurring in other non-occupational settings, especially those arising from the use of pressed wood products made with formaldehyde-based resins.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll-Free: 800-424-9065. In Washington, DC.: 554-1404.

SUPPLEMENTARY INFORMATION:

I. Background

On May 23, 1984, EPA issued a notice in the **Federal Register** entitled "Formaldehyde; Determination of Significant Risk" (49 FR 21898). This notice announced that EPA had determined, under section 4(f) of TSCA, that there might be a reasonable basis to conclude that certain exposures to formaldehyde present or will present a significant risk of widespread harm to humans from cancer. Concern for the health of persons exposed to formaldehyde in the following exposure conditions triggered this determination: (1) Occupational exposure arising from the manufacture of apparel using fabrics treated with formaldehyde-based resins, and (2) residential exposure occurring in conventional and manufactured (mobile) homes where construction materials are used that contain certain formaldehyde-based resins. In conjunction with that notice, EPA issued at the same time an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (49 FR 21870). The ANPR initiated "appropriate action," as required by section 4(f) of TSCA, by announcing that EPA had begun a full investigation of regulatory options to address the health risks associated with these exposure categories.

II. Occupational Exposure

A. Apparel Manufacturing Workers

Exposure to formaldehyde in apparel-manufacturing workers arises principally form the slow release of formaldehyde from textiles treated with most commercial durable press (DP) finishes. An estimated 50 percent of all garments sold in the U.S. have DP finishes. The rate of formaldehyde release varies according to the type of finish used and local environmental conditions existing within a given workplace.

Monitoring data available to EPA indicate that the average pre-1980 ambient workplace exposure level in the apparel-manufacturing industry was probably below 3 ppm; the average value may have declined since then. Current exposure data, however, are limited. Data from a 1983 National Institute for Occupational Safety and Health (NIOSH) study of two large manufacturers of shirts show that workplace levels were at, or below, 0.51 ppm on a time weighted average (TWA) basis, and the combined mean exposure level was 0.17 ppm. From other data, EPA has estimated that exposure levels may range from 0.23 to 0.64 ppm.

Approximately 800,000 apparel workers may be regularly exposed to formaldehyde emitted from DP-treated textiles. This number of workers constitutes 70 percent of the total population estimated to be at risk currently from occupational exposures to this chemical. In other occupational groups, the risk estimates for an individual worker were generally similar to that calculated for apparel workers, but far fewer workers are exposed in these other industries.

Workplace exposure to formaldehyde emitted from DP-treated textiles is believed to have diminished substantially over the last decade due to engineering controls put in place by the apparel manufacturing industry, and to advances in chemical technology that have yielded low or zero formaldehyde-emitting DP resins. This decline in formaldehyde emissions from DP-treated fabric is believed to have been encouraged, in part, by consumer preference for fabrics without a formaldehyde odor. High formaldehyde-emitting DP finishes are now rarely used. EPA believes that further reductions in, or elimination of, apparel workers' exposure to formaldehyde may be technically feasible and may be achieved principally by using methods such as low formaldehyde-emitting finishes, optimizing the finishing conditions at textile plants, or diminishing the use of sensitized fabrics that require post-curing following apparel assembly.

B. Other Worker Exposure

In making its section 4(f) determination concerning formaldehyde, EPA reviewed all available data on known human exposures to the chemical. Over 30 occupationally-exposed populations were identified. Detailed discussion of these populations

can be found in the **Federal Register** of May 23, 1984 (49 FR 21870).

III. Conclusion

On December 10, 1985, OSHA published in the **Federal Register** a proposed standard that addresses formaldehyde exposure risks to workers in all occupational settings, including workers engaged in apparel manufacturing (50 FR 50412). The proposed standard limits permissible exposure to 1 ppm or 1.5 ppm, as an 8-hour, time-weighted average, and would regulate formaldehyde as an irritant or carcinogen.

This action by OSHA demonstrates that its statutory authority may prevent or reduce to a sufficient extent the risks connected with formaldehyde exposure to workers in apparel manufacturing. EPA has therefore terminated its regulatory investigation of formaldehyde exposure in apparel manufacturing. By this action, EPA will avoid engaging in duplicative Federal rulemaking activities and will be able to redirect some of its regulatory resources.

In order to assist OSHA in its deliberations, and in accordance with section 9(d) of TSCA, 15 U.S.C. 2608(d), EPA has transmitted to OSHA copies of all studies and documents in EPA's docket that may pertain to their rulemaking, including data collected prior to the 4(f) determination on occupational categories other than apparel exposure, and is prepared to provide technical support to OSHA, if requested.

EPA will continue to investigate for possible regulatory action formaldehyde exposure arising from the use of pressed wood products; this activity will involve close coordination with OSHA and other appropriate Federal regulatory agencies.

Dated: March 11, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-5972 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 83-525; FCC 86-29]

Inquiry Into Policies To Be Followed in the Authorization of Common Carrier Facilities

AGENCY: Federal Communications Commission.

ACTION: Summary of notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is necessary to develop policies and guidelines for the construction and use of common carrier transmission facilities in the Caribbean region during the 1985–1995 period. This notice of proposed rulemaking sets forth the Commission's tentative conclusions regarding the guidelines the Commission will follow in considering applications for the construction and use of common carrier facilities in the Caribbean region during the 1985–1995 period and requests comments on those tentative conclusions.

The Commission tentatively concludes that the range of alternative facilities plans submitted in response to the Notice of Inquiry which should receive further consideration can be narrowed. The Commission further tentatively concludes that circuits used by all carriers to provide all services, other than circuits used by the American Telephone and Telegraph Company (AT&T) for the provision of international message telephone service (IMTS) and 800 Service-Overseas should be exempted from specific circuit distribution guidelines.

DATES: Entities made parties to this proceeding shall, and other interested parties may submit:

A. The additional information requested by February 25, 1986

B. Comments by March 27, 1986

C. Reply Comments by April 11, 1986.

ADDRESS: Responses to this notice should be submitted to: The Secretary Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Gosse, Jacqueline Spindler, International Policy Division, Common Carrier Bureau, Federal Communications Division, Washington, DC 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

In the matter of Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Caribbean Region Telecommunications Needs During the 1985–1995 Period; CC Docket No. 83-525.

This is a summary of the Commission's notice of proposed rulemaking adopted January 14, 1986 and released February 5, 1986. Commissioner Dawson concurring and issuing a statement at a later date.

The full text of this Commission Decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking (Notice), the Commission is seeking comments and additional information to aid it in developing United States policies and guidelines governing the participation of the United States International Service Carriers (USISCs) and the Communications Satellite Corporation (Comsat) in the construction and use of common carrier transmission facilities in the Caribbean region during the 1985–1995 period. The Commission examines the facilities planning information alternative facilities plans and the analyses of those plans submitted by the USISC's and Comsat reaches certain tentative conclusions and requests additional information of the USISCs and Comsat.

2. The Commission tentatively concludes that the range of alternative facilities construction and use plans which should receive further consideration can be narrowed. Specificaly, the Commission tentatively concludes that the USISC's Plans 1, 2 and 2A can be excluded from further consideration. The Commission notes that the analog cables proposed by these plans had higher per circuit and total system costs than the digital, optical fiber submarine cables being proposed in another USISC plan. Moreover, recent updates of the American Telephone and Telegraph Company's (AT&T) traffic forecast appears to confirm the USISC's conclusion that existing cable and satellite facilities in the Caribbean region are adequate to satisfy demand for service for the near term. In addition, it appears that the development of digital, optical fiber submarine cables operating at 45 and 90 megabits per second (mb/s) as proposed in these three USISC plans has been abandoned, at least at this time, in favor of using digital, optical fiber submarine cables operating at 140 and 280 mb/s.

3. Because the Commission does not have before it cost, demand flexibility or service reliability analyses for any of the USISC or Comsat alternative plans based on AT&T's most recent traffic forecast update or information on all INTELSAT options for replacement of INTELSAT V-A satellites, the Commission is unable to reach firm tentative preferences for all aspects of any of the alternative plans before it. It therefore requests the USISCs and

Comsat to provide updated traffic forecasts, a full range of analyses and other information. The information requested is set forth in Attachment 1 of the Notice and is available with the complete text of the Notice.

4. The Commission also describes a number of its previous decisions in which factors such a fostering the development of technological innovations; the introduction of new, more cost effective technologies and the maintenance of adequate service reliability through media and route diversity and redundancy had been considered in reaching those decisions. The Commission requests interested persons to comment on the applicability of these prior decisions to its decision in this proceeding. The Commission also notes that its observations pertaining to these prior decisions will also have to be considered in light of its examination of the cost and demand flexibility analyses for the USISCs' Plan 2A Modified and the Comsat's No New Cable plans based on the USISCs' most recent traffic forecast and the other information it is requesting be submitted.

5. The Commission also tentatively concludes that the general approach to circuit distribution guidelines it has recently adopted in the North Atlantic and Pacific regions is applicable as well to the Caribbean region. Therefore, the Commission tentatively concludes that circuits used by any carrier for the provision of any service, with the exception of circuits used by AT&T for the provision of international message telephone service (IMTS) and 800 Service-Overseas, should not be subjected to circuit distribution guidelines. The Commission does not reach tentative conclusions regarding circuit distribution guidelines for AT&T's IMTS and 800 Service-Overseas circuits but, rather, requests comments on AT&T's modified economic loading proposal and on any additional circuit distribution proposals the parties may wish to submit. The Commission also requests comments on its tentative conclusion that the general approach it took in the North Atlantic and Pacific regions with respect to circuit distribution is equally applicable to the Caribbean region. The Commission notes that there also have been a number of other recent developments affecting the international telecommunications environment and requests the parties to provide it with their views on what effect these developments should have on its development of circuit distribution guidelines.

6. The Commission also tentatively concludes that the question of whether AT&T should be required to continue to make capacity available on an indefeasible right of user basis in its domestic satellite system used by the other USISCs to provide services between the United States mainland and the Virgin Islands and Puerto Rico is a domestic communications matter which is not germane to this proceeding.

Ordering Clauses

7. Accordingly, pursuant to sections 4(i), 4(j), 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 214 and 403 (1976) and section 201(c) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c) (1976), IT IS ORDERED that a rulemaking looking toward development of the policy we shall apply in acting upon applications by the United States international service carriers and the Communications Satellite Corporation for authorization to construct and operate new cable and satellite transmission facilities to meet traffic demands in the Caribbean region during the 1985–1995 period is hereby instituted.

8. It is further ordered, that All America Cables and Radio, Inc., the American Telephone and Telegraph Company, the Communications Satellite Corporation, ITT Communications Inc.–Virgin Islands, ITT World Communications Inc., MCI International, Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, and the Western Union Telegraph Company are made parties respondent to the rulemaking initiated herein.

9. It is further ordered, that the parties named herein shall file the additional planning information requested in ATTACHMENT 1 on or before the dates there indicated.

10. It is further ordered, pursuant to applicable procedures set forth in §§ 1.410 and 1.415 of the Commission's Rules and Regulations, 47 CFR 1.410 and 1.415 (1983), that, on or before March 27, 1986, all parties to this proceeding must file, and other interested persons may file, comments, on the issues in this proceeding and that, on or before April 11, 1986, interested persons may file reply comments. Before final action is taken in this proceeding we shall consider all relevant and timely comments filed. In reaching decision on this matter, we may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of our reliance upon such information is noted in our Report and Order. Participants must file an original and five copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Those filing comments in this proceeding should serve copies thereof upon the persons named as parties in the preceding paragraph supra. They should serve reply comments upon all those who file comments in this rulemaking. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

11. It is further ordered, that for purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time it issues a public notice stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation: on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* § 1.1231 of the Commission's rules, 47 CFR 1.1231 (1983).

12. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), it is certified, that sections 603 and

604 of that Act do not apply because these rule changes will not, if promulgated, have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603, 604, 605(b) (1976). In addition, the Regulatory Flexibility Act does not apply to this proceeding because that Act excludes from its application all proceedings such as this that involve "a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting practices relating to such rates, wages, structures, prices, appliances, services, or allowances." 5 U.S.C. 601(2).

13. It is further ordered, that the Secretary shall provide a copy of the above certification and statement to the Chief Counsel for Advocacy of the Small Business Administration and shall cause said certification and statement to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-5991 Filed 3-18-86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 53
Wednesday, March 19, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 14, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Office, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Agricultural Cooperative Service
Agricultural Exports by Cooperatives, 1985
Five year intervals
Businesses or other for-profit; Small businesses or organization; 113 responses; 57 hours; not applicable under 3504(h)
Tracey L. Kennedy, (202) 382-1759.

• Economic Research Service
Natural Resource and Manufactured Input Use Survey
Annually
Farms; 600 responses; 300 hours; not applicable under 3504(h)
Dr. John Schaub, (202) 786-1469.

• Food and Nutrition Service
Deficit Reduction Act
Recordkeeping; Annually
State of local governments; 53 responses; 1,120,298 hours; not applicable under 3504(h)
John S. Hitchcock, (703) 756-3385.

Reinstatement

• Agricultural Stabilization and Conservation Service
7 CFR Part 1435—Price Support Loan Program for Sugar Beets and Sugarcane
CCC-278; SU-2 SU-3
Annually
Businesses or other for-profit; 3,130 responses; 900 hours; not applicable under 3504(h)
Ross Ballard, (202) 447-8480.

• Farmers Home Administration
7 CFR 1945-D, Emergency Loan Policies, Procedures and Authorizations
FmHA 1940-38, 1945-22
On occasion
State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 126,705 responses; 68,435 hours; not applicable under 3504(h)
Jim Chrysler, (202) 382-1657.

• Farmers Home Administration
7 CFR 1924-F, Complaints and Compensation for Construction Defects
FmHA 424-4
On occasion
Individuals or households; 6,600 responses; 3,250 hours; not applicable under 3504(h)
Dave Villano, (202) 382-1452.

Revision

• Agriculture Marketing Service
Reporting and Recordkeeping Requirements Under 7 CFR 29
Form TB-87, TB-88
Recordkeeping: On occasion
Businesses or other for-profit; Small businesses or organizations; 14,208 responses; 2,769 hours; not applicable under 3504(h)
Larry Crabteee, (202) 447-2337.

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 86-5998 Filed 3-18-86; 8:45 am]
BILLING CODE 3410-01-M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rule and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 6:00 p.m., on April 3, 1986, at the Biscayne Bay Marriott Hotel, Palm Island Room, 1633 North Bayshire Drive, Miami, Florida. The purpose of the meeting is to discuss and approve the briefing memorandum *Impact of Immigration Laws and Practices in Southern Florida* and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committe Chairperson, Paul Porter or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391 (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 7, 1986.

Ann E. Goode,
Program Specialist for Regional Programs.

[FR Doc. 86-6001 Filed 3-18-86; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and the CAC on Population Statistics. The joint meeting will convene on April 10, 1986, at the Westpark Hotel, 1990 North Fort Myer Drive, Arlington, Virginia 22209.

The CAC of the AEA is composed of nine members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Census Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members designated by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the April 10 combined meeting that will begin at 8:45 a.m. and end at 10:15 a.m. is introductory remarks by the Director, Bureau of the Census, including staff changes and Census Bureau organization, budget and program developments, and other topices of current interest.

The agendas for the four committees in their separate and jointly held meetings that will begin at 10:30 a.m. and adjourn at 5:15 p.m. on April 10 are as follows:

The CAC of the AEA: (1) Report of the Nonsampling Error Task Force (joint with CAC of the ASA), (2) Census Bureau response to recommendations and activities of special interest to the CAC of the AEA, (3) improving the response rates for economic surveys (joint with CAC and ASA), (4) coverage and publication of data for nonemployer businesses in the 1982 and 1987 Economic Censuses (joint with CAC of the AMA), (5) longitudinal establishment data file, and (6) Census Bureau responses—Part 2.

The CAC of the AMA: (1) Secondary services—what are they and how do you measure them? (2) Census Bureau response to recommendations and activities of special interest to the CAC of the AMA, (3) report of the nonsampling Error Task Force (joint with CAC on Population Statistics), (4) coverage and publication of data for nonemployer businesses in the 1982 and 1987 Economic Censuses, (joint with CAC of the AEA), (5) marketing of economic census products, and (6) Census Bureau responses—Part 2.

The CAC of the ASA: (1) Report of the Nonsampling Error Task Force (joint with CAC of the AEA); (2) Census Bureau response to recommendations and activities of special interest to the CAC of the ASA; (3) improving the response rates for economic surveys (joint with CAC of the AEA); and (4) four aspects of the Survey of Income and Program Participation (SIPP) including: (a) Planned data collection methodology, (b) analysis of the data, (c) planned evaluation procedures, and (d) nonsampling error (joint with CAC on Population Statistics).

The CAC on Population Statistics: (1) Plans for 1990 census data products; (2) Census Bureau response to recommendations and activities of special interest to the CAC on Population Statistics; (3) report of the Nonsampling Error Task Force (joint with CAC of the AMA); (4) four aspects of SIPP including: (a) Planned data collection methodology, (b) analysis of the data, (c) planned evaluation proecedures, and (d) nonsampling error (joint with CAC of the ASA); and (5) Census Bureau responses—Part 2.

The agendas for the April 11 meetings that will begin at 8:45 a.m. and adjour at 3 p.m. are:

The CAC of the AEA: (1) Alternative ways of classifying economic activities (joint with CAC of the AMA); (2) release of economic and agricultural census data by ZIP Code (joint with CAC of the AMA); (3) development and discussion of recommedations; and (4) closing session including: (a) Continued Committee and staff discussion, (b) comments by outside observers, and (c) plans and suggested agenda for the next meeting.

The CAC of the AMA: (1) Alternative ways of classifying economic activities (joint with CAC of the AEA); (2) release of economic and agricultural census data by ZIP Code (joint with CAC of the AEA); (3) development and discussion of recommendations; and (4) closing session including: (a) Continued Committee and staff discussions, (b) comments by outside observers, and (c) plans and suggested agenda for the next meeting.

The CAC of the ASA: (1) Panel on Decennial Census Methodology of the Committee on National Statistics (joint with CAC on Population Statistics); (2) test census results; (3) development and discussion of recommendations; and (4) closing session including: (a) Continued Committee and staff discussions, (b) comments by outside observers, and (c) plans and suggested agenda for the next meeting.

The CAC on Population Statistics: (1) Panel on Decennial Cenus Methodology of the Committee on National Statistics (joint with CAC of the ASA); (2) postcensal estimates of households for states and counties; (3) development and discussion of recommendations; and (4) closing session including: (a) Continued Committee and staff discussion, (b) comments by outside observers, and (c) plans and suggested agenda for the next meeting.

All meetings are open to the public, and a brief period is set aside on April 11 for public comment and questions. Those persons with extentive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact Mr. Alfred J. Tella, Office of the Director, Bureau of the Census, Room 3061, Federal Building 3, Suitland, Maryland, (Mailing address; Washington, D.C. 20233). Telephone (301) 763-7914.

Dated: March 13, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86-5956 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-588-505]

Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above From Japan: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration/Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that dynamic random access memory semiconductors of 256 kilobits and above from Japan are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of dynamic random access memory semiconductors of 256 kilobits and above from Japan whether in the form of processed wafers, unmounted die, mounted die, or assembled devices that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by May 27, 1986.

EFFECTIVE DATE: March 19, 1986.

FOR INFORMATION CONTACT: Stephen Munroe, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2923.

Preliminary Determination

We have preliminarily determined that dynamic random access memory semiconductors of 256 kilobits and above (256K and above DRAMs) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930 ("the Act"). Except for Mitsubishi, we made fair value comparisons on all sales of the class or kind of merchandise to the United States by the respondents during the period of investigation. Because we received an untimely response to our questionnaire from Mitsubishi, we used the best information available to determine its margin. The margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On December 6, 1985, the Department of Commerce ("the Department") initiated an antidumping duty investigation under section 732(a) of the Act, to determine whether 256K and above DRAMs are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and whether these imports are materially injuring, or are threatening material injury to a United States industry, or are materially retarding the etablishment of a United States industry (50 FR 51450, December 17, 1985). The notice also indicated that the Department is examining whether sales of the subject merchandise are being made at less than the cost of production. On December 9, 1985 we notified the International Trade Commission ("ITC") of our action. On January 22, 1986, the ITC preliminarily determined that there is a reasonable indication that imports of Japanese 256K and above DRAMs are materially injuring or threatening to materially injure a U.S. industry (51 FR 4661, February 6, 1986).

On December 24, 1985, we presented antidumping duty questionnaires to Fujitsu Limited, Hitachi Ltds., Mitsubishi Electric Corporation, NEC Corporation, and Toshiba Corporation. Those respondents were requested to answer the questionnaires within 30 days. However, at the request of the companies, we granted a two-week extension for responses to our questionnaires. On February 6, 1986, we received responses from all companies except Mitsubishi. We received Mitsubishi's response on February 13, 1986. After analysis of the resposes, the Department requested supplemental information from each of the respondents. The Department received additional information from Fujitsu, Hitachi, NEC and Toshiba on February 25 and 26, 1986. Mitsubishi submitted additional information on March 6, 1986.

Products Under Investigation

The merchandise covered by this investigation is Japanese DRAMs having a memory capacity of 256 kilobits and above, of both the N-channel and the complementary metal oxide semiconductor type, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices. Finished DRAMs of 256 kilobits and above are currently classifiable under items 687.7443 and 687.7444 of the *Tariff Schedules of the United States, Annotated* ("TSUSA"). Unassembled DRAMs, including processed wafers and mounted and unmounted die, are currently classifiable under item 687.7405 of the *TSUSA.*

In the notice of initiation in this case, we tentatively included in the scope of this investigation processed wafers and dice produced in Japan and assembled into finished DRAMs in another country prior to importation into the United States from the other country. On January 3, 1986, we notified the ITC that we had determined not to investigate such third-country imports. We subsequently notified interested parties of this determination. Specifically, 256K DRAMs assembled by mounting, bonding, and encapsulating wafers and dice in a third country are not within the scope of this investigation. The basis for this decision was that, upon review, we concluded that these third-country imports were not a part of the concern which gave rise to this investigation.

We investigated sales of 256K and above DRAMs during the period July 1, 1985 through December 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value for Fujitsu, Hitachi, NEC, and Toshiba using data provided in their responses, as explained in the "Foreign Market Value" section of this notice except where otherwise noted. For purposes of this preliminary determination, we used the date of shipment as the date of sale in both the U.S. and home markets. We will continue to evaluate at verification and for the final determination whether these are the appropriate dates for determining when a sale occurs.

For Mitsubishi, we made our fair value comparison using the best information available for both United States price and foreign market value. We were unable to include Mitsubishi's untimely response in our analysis.

United States Price

As provided in section 772(b) of the Act, for certain Hitachi and Fujitsu sales we used the purchase price of the subject merchandise to represent United States price where the merchandise was sold to unrelated purchasers prior to its importation into the United States. For other Hitachi and Fujitsu sales and sales

of all other respondents, in accordance with section 772(c) of the Act, we used exporter's sales price (ESP) to represent United States price, since the merchandise was sold to unrelated purchasers after the date of importation.

We calculated purchase price and ESP based on the packed, c.i.f. or f.o.b. prices to unrelated purchasers in the United States. For purchase price, we made deductions for foreign inland freight and insurance, brokerage charges, air freight and international air insurance. For ESP, where appropriate, we made deductions for discounts, rebates, where appropriate, we made deductions for discounts, rebates, brokerage charges in Japan and the U.S., foreign inland freight and insurance, air freight and international air insurance, U.S. freight and insurance, commissions to unrelated parties, U.S. selling expenses incurred in Japan and in the U.S., including credit expenses, warranties, technical services, royalties, and advertising. We also deducted any increased value resulting from further processing in the U.S.

Foreign Market Value

In accordance with section 773(a) of the Act, for certain Hitachi and Fujitsu sales we calculated foreign market value based on home market prices since there were sufficient home market sales at or above the cost of production, as defined in section 773(b) of the Act to determine foreign market value. We used constructed value as the basis for calculating foreign market value for the remaining Hitachi and Fujitsu sales and for the other respondents because there were insufficient sales above the cost of production.

Where foreign market value was based on home market prices, we calculated a foreign market value for each product group for each month of the period of investigation due to sharp declines in monthly prices. Where foreign market value was based on constructed value we used a monthly constructed value for each product group due to significant monthly cost fluctuations.

Cost of Production

The Department analyzed the as yet unverified cost submissions, where submitted in a timely manner, of the respondents to determine the sufficiency of such data for the purpose of calculating the cost of production for the preliminary determination. Where the Department determined that a submission was subsequently complete and sufficient, it used the submission for the preliminary determination. However, adjustments to respondents' data were made when it appeared from the explanation provided in the response that certain costs necessary for the production of 256K DRAMs were not included or were not appropriately quantified or valued. Some adjustments were made to the cost of production of all the respondents. These were:

(1) Matching the sales to cost of production incurred two months prior to the sales;

(2) Including the expense of sales credit for the home market sales; and

(3) Including interest expense equal to the percentage of interest expense to the cost of sales, based on the consolidated operations of the company.

For Fujitsu Limited, the product-specific R&D was revised because the cost of production did not include historic R&D costs. The U.S. fabrication expenses were determined by dividing total U.S. cost by production.

For Toshiba, the depreciation expense was revised because Toshiba based such expenses on a useful life of three years for some of its equipment; the product-specific R&D was revised because a clear explanation of the allocation method was not presented.

For Hitachi Ltd., general, administrative and selling expenses were revised because of the apparent omission of certain general costs.

For NEC Corporation, product-specific R&D was included since the company did not include this in its submission and certain depreciation expenses were adjusted because the company did not apply the depreciation method used for its financial statements.

Price to Price Comparisons

For Hitachi and Fujitsu we found sufficient sales above the cost of production for certain product groups to allow use of home market prices in accordance with section 773(a) of the Act to determine foreign market value. Where we used home market prices as the basis for foreign market value, we calculated the home market price on the basis of the f.o.b. or c.i.f. price to unrelated purchasers. We made deductions, where appropriate, for foreign inland freight and insurance, discounts, rebates and commissions to unrelated parties. We made adjustments for differences in circumstances of sale for credit terms, technical services, and warranty, in accordance with § 353.15 of the Commerce Regulations. We deducted home market packing costs and added U.S. packing costs. We offset commissions to unrelated parties paid in one market with indirect selling expenses in the other market, when there were no commissions in that market, in accordance with § 353.15(c) of our regulations.

Constructed Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value when there were insufficient home market sales of such or similar merchandise above the cost of production for comparison. For constructed value, the Department used the materials, fabrication, and general expenses, based on the respondents' submissions revised as detailed under the "Foreign Market Value—Cost of Production" section of this notice. The actual general expenses were used, since in all cases, such expenses exceeded the statutory minimum of 10 percent of materials and fabrication. Since all the respondents' submissions indicated that the actual profit for merchandise of the same general class or kind was less than eight percent, the Department used the eight percent statutory minimum for profit. We made adustments under § 353.15 of the Regulations for differences in circumstances of sale between the two markets.

Best Information Available

Since we are unable to fully analyze the sales and the cost of production data submitted by Mitsubishi, we used the highest rate for a responding firm, as the best information available, in accordance with section 776(b) of the Act.

Currency Conversion

In calculating foreign market value, we made currency conversions from Japanese yen to United States dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates for comparisons involving purchase price. For comparisons involving ESP, we used the certified daily exchange rate for the date of purchase since the use of that exchange rate is consistent with section 615 of the Tariff and Trade Act of 1984 ("the 1984 Act"). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

Verification

We will verify all the information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of 256K and above DRAMs from Japan whether in the form of processed wafers, unmounted die, mounted die, or assembled devices that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin/ percentage
NEC Corporation	108.72
Hitachi Ltd	19.80
Fujitsu Ltd	74.35
Toshiba Corporation	49.50
Mitsubishi Electric Corporation	108.72
All others	39.68

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m., on April 18, 1986, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC, 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) The number of participants; (3) The reason for attending; and (4) A list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 11, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with § 353.46 of our regulations, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: March 13, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-5982 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-503]

Certain Iron Construction Castings From Brazil; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that certain iron construction castings from Brazil are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or threatened with material injury, by imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice and to require a cash deposit or posting of a bond for each such entry in amounts equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination:

Based upon our investigation, we determine that certain iron construction castings from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). We have found margins on sales of iron construction castings for all of the firms investigated. The weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 13, 1985, we received a petition filed in proper form from the Municipal Castings Fair Trade Council, a trade association representing domestic producers of certain iron construction castings and fifteen individually-named members of the association. Those members are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Works, Inc.; E.L. LeBaron Foundry Co.; Municipal Castings, Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry, Inc.; Tyler Pipe Corp.; U.S. Foundry & Manufacturing Co. and Vulcan Foundry, Inc., filing on behalf of the U.S. producers of certain iron construction castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on June 7, 1985 (50 FR 24008), and notified the ITC of our action. On June 27, 1985, the ITC found that there was a reasonable indication that imports of certain iron construction castings from Brazil are materially injuring, or threatening material injury to, a U.S. industry (50 FR 27498).

We investigated Fundicao Aldebara Ltda. (Aldebara), Sociedade de Metalurgia E Processos Ltda. (Somep), and Usina Siderurgica Paraensa S.A. (Usipa), three manufacturers who account for at least 60 percent of the

exports of the subject merchandise to the United States. We examined all of the sales made by Somep of the subject merchandise during the period of investigation. For Aldebara, we examined 98 percent of its sales to the United States. For Usipa, we examined 73 percent of its sales to the United States. For Aldebara and Usipa, we disregarded those sales for which we had insufficient information.

On July 29, 1985, questionnaires were presented to Aldebara, Somep, and Usipa. Responses to the questionnaires were received between September 4 and September 24, 1985. Supplemental submissions were received between October, 1985 and January, 1986.

On October 21, 1985 we made an affirmative prelimiary determination that certain iron construction castings from Brazil were being, or were likely to be, sold in the United States at less than fair value (50 FR 43591).

We verified the respondents' questionnaire responses in Brazil from January 13 to January 24, 1986. Verification was also conducted at Philipp Brothers, Usipa's parent company, in New York on February 6, 1986.

On October 25 and 26, 1985, we received requests from respondents to extend the date for our final determination to not more than 135 days after the date of publication of the preliminary determination. This request was granted and we postponed our final determination until not later than March 12, 1986 (50 FR 48826).

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments and on February 10, 1986, a public hearing was held to allow parties to address the issues arising in this investigation.

Scope of Investigation

The merchandise covered by this investigation consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems (heavy castings); and valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters (light castings). These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States* (TSUS). The period of investigation is December 1, 1984 through May 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value based on home market prices or, where appropriate, constructed value as explained below.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price for all respondents because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the F.O.B., C. & F. or C.I.F. packed price to unrelated purchasers in the United States. We deducted, where appropriate, foreign inland freight, handling, brokerage, ocean freight, marine insurance, wharfage, loading and unloading charges and U.S. inland freight. We also made an adjustment for the amount of taxes imposed on such sales in Brazil which were not collected by reason of the exportation of the merchandise to the United States.

Foreign Market Value

Price to Price Comparisons

In accordance with section 773(a) of the Act, we calculated foreign market value for Aldebara based on ex-factory or C.&F., unpacked home market prices net of discounts, to unrelated purchasers since there were sufficient sales in the home market at or above the cost of production to determine foreign market value. From these prices we deducted inland freight and insurance. We made adjustments, were appropriate, for differences in credit costs in accordance with section 353.15 of our Regulations (19 CFR 353.15). We also added the packing cost incurred on sales to the United States since the merchandise was sold unpacked in the home market.

We made comparisons of "such or similar" merchandise based on a distinction between "heavy" and "light" castings since there were no significant cost differences on a per-kilogram basis between products within each of these two categories. For Aldebara, we made adjustments for physical differences in the merchandise in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the cost of materials, direct labor and directly related factory overhead. Pursuant to § 353.56 of our Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank of New York for the dates of the sales to the United States.

Constructed Value

in accordance with section 773(e) of the Act, we calculated foreign market value for Somep and Usipa based on constructed value. For Somep, there were no sales of such or similar merchandise in the home market or in third country markets. For Usipa, there were also no sales of such or similar merchandise in the home market. Usipa did, however, make three sales to a third country market during the period of investigation through its related parent company in the United States. However, insufficient information was provided by Usipa on price adjustments relating to these sales to use them as the basis for foreign market value in this final determination.

For constructed value, the Department used the cost of materials and fabrication, actual selling, general and administrative expenses (GS&A) and the statutory 8 percent minimum for profit.

Verification

In accordance with section 776(a) of the Act, we verified all information used in making this final determination using standard verification procedures including on-site examination of accounting records and selected original documentation containing relevant information.

Comments. This section addresses comments received from petitioners and respondents on or before March 6, 1986. Written comments submitted after this date were not received in time for inclusion in this final determination.

Petitioner's Comments

Comment 1. Petitioners argue that submitted cost data on Aldebara and Somep did not reflect increases which would be expected in a hyper-inflationary economy.

DOC Position. While initial submission data did not reflect increasing values for certain costs, actual costs for each month were obtained during the verification and these costs did reflect inflationary increases.

Comment 2. Petitioners contend that the Department should reject claims by respondents that they incurred no credit costs on U.S. sales and urge the Department to calculate a credit expense based on the period from the date of shipment to the date that the purchaser makes payment under the FINEX financing program. However, if the Department rejects this approach, credit should be calculated based upon

the date of shipment and the date of receipt of payment in cruzeiros, including any clearance period when funds are converted to cruzeiros.

DOC Position. We disagree. For Aldebara and Somep, we did not calculate a credit expense for financing under FINEX. We determined that these terms were actually arranged between the U.S. buyers and the Brazilian financing banks. Aldebara and Somep incurred no credit costs on these sales in relation to the FINEX financing. The Department does not consider any credit costs borne by an unrelated third party to be a circumstance of sale directly related to the sales under consideration since there are no costs to Aldebara or Somep. Regarding Usipa's FINEX financing, see our response to Comment 3 below.

Further, we determined the U.S. sales of Aldebara and Somep were made "at sight". Consistent with our findings in Carbon Steel Products from Brazil (49 FR 28298), we have not calculated a credit expense for "at sight" sales.

That there may be a clearance period which banks require to process payments by U.S. purchasers does not mean that Aldebara and Somep are extending credit during that period.

Comment 3. Petitioners contend that Philipp Brothers incurs two credit costs on its U.S. sales and that the Department's calculation of credit costs on a transactional basis must include the cost of financing the importation of the goods under the FINEX program and the implicit cost of providing credit to customers on resales.

DOC Position. For purposes of this final determination we have continued to use the methodology employed in numerous previous cases, and have included credit expenses incurred by the exporter between the date of sale to the unrelated U.S. customer and payment by that customer. Since Philipp Brothers did not provide the Department with information on its short-term borrowing history, we used as best information otherwise available quarterly Federal Reserve Board benchmark interest rates for short-term fixed-interest loans denominated in U.S. dollars.

Comment 4. Petitioners argue that when making a circumstance of sale adjustment for differences in credit expenses, the Department must include all bank handling charges to close exchange contracts and any discounting of letters of credit relating to those U.S. sales.

DOC Position. Discounting fees are considered a pre-shipment credit expense and are, therefore, not relevant here. As for bank handling charges on exchange contracts, the exchange contracts are not sale specific and, thus, are not circumstances of sale.

Comment 5. Petitioners claim that the Department should use constructed value to establish foreign market value for Usipa and Somep because they reported no home market sales of iron construction castings during the period of investigation.

DOC Position. We agree. See the "Constructed Value" section of this notice.

Comment 6. Petitioners contend that the Department should not allow Aldebara's claims for an offset for indirect selling expenses in the home market or a level of trade adjustment because the company alleged that a large percentage of the home market sales were made to end-users in small quantities.

DOC Position. We agree since Aldebara was not able to provide documentation substantiating these claims at verification.

Comment 7. Petitioners state the Department should publish a revised preliminary determination because of the inordinate amount of supplemental material submitted by respondents since the preliminary determination.

DOC Position. We disagree. Section 733 of the Act establishes a strict time frame for each stage of the proceeding, including the preliminary determination. At the same time, the law does not require us to stop accepting supplemental submissions after a preliminary determination. Consequently, the Department is not required to update the preliminary determination upon every receipt of new information, or after such new information has reached some significant accumulation. In addition, petitioners have enjoyed a continuing access and opportunity to comment with regard to every new submission.

Comment 8. Petitioners contend that the Department should determine foreign market value for Aldebara based on best information otherwise available because it failed to report complete and accurate data in a timely manner. Petitioners also state that, if best information otherwise available is not used, then home market prices may be appropriate to establish foreign market value if the statutory criteria are met to allow for their use.

DOC Position. We disagree with petitioners' claim that best information otherwise available should be used for Aldebara to determine foreign market value. Finding omissions or errors in responses is common during verification. Aldebara's omission or errors were not of a type or magnitude that would cause the Department to use the petitioners' information as best information otherwise available. We used Aldebara's home market sales since they were made over an extended period of time and in substantial quantities at prices which permitted recovery of all costs within a reasonable period of time.

Comment 9. Petitioners contend that there is no statutory authority to use date of shipment as date of sale if Aldebara's home market sales are used for comparison purposes.

DOC Position. We disagree. In order to compensate for Brazil's hyper-inflationary environment, we have compared home market sales on the date of shipment with U.S. sales at the submitted sales date. When price and terms are set for home market sales, they are made with the delivery date in mind and therefore inflationary expectations are built into those prices. U.S. sales prices, in dollars, similarly reflect home market inflation through depreciation of the cruzeiro. Since we apply conversion rates of the cruzeiro as of the date of the U.S. sale according to § 353.56 of our regulations, it does not reflect the inflationary effects on the cruzeiro from the date of sale to the date of shipment to offset the inflationary expectations built into the home market price for that period. Therefore, home market shipments that are contemporaneous with U.S. sales are a more accurate measure of fair value. See also the Department's response to respondents' comment 13.

Comment 10. Petitioners argue that an adjustment to U.S. price for countervailing duties must be denied because no such duties have actually been imposed on the subject merchandise. Petitioners also urge the Department not to deduct an estimated export subsidy from cash deposit or bonding requirements.

DOC Position. We disagree. The Departmental practice has been to deduct the amount of estimated countervailing duties which reflect the export subsidy from the dumping deposit or bonding requirement when there is a final countervailing duty rate in effect on the imported merchandise

Although no adjustment to the U.S. price is warranted under section 772(d)(1)(D) until the countervailing duty is actually assessed on the subject merchandise, there is no reason to require a duplicate cash deposit or bond for the portion of the antidumping duty which cannot be ultimately assessed.

Comment 11. Petitioners suggest that the Department treat sales by Somep to Aldebara as purchase price transactions if the Department determines that

Aldebara knew at the time of purchase that the merchandise was to be exported to the U.S. Petitioners also allege that Somep may have purchased castings from domestic suppliers during the period of investigation. Petitioners contend that, if the supplier knew that this merchandise was destined for the U.S. market, the price of the merchandise from Somep's suppliers to Somep should be used as the basis for determining United States price.

DOC Position. We verified that these sales by Somep to Aldebara involved unfinished castings. Since Aldebara had to further process these castings before exporting, they are correctly treated as sales by Aldebara. In our calculations of the cost of production for Aldebara, we included the cost of purchasing the unfinished castings. To the extent that Somep further processed manhold covers and rings purchased from domestic suppliers before selling to the U.S., they are included in Somep's cost of production and U.S. sales of finished castings.

Comment 12. To the extent that respondents incurred expenses on U.S. sales in cruzeiros, petitioners contend that the Department must convert these charges into U.S. dollars on the date of each U.S. sale using the certified exchange rates issued by the Federal Reserve Bank of New York.

DOC Response. We agree. For those expenses incurred in cruzeiros but reported in U.S. dollars, we converted these expenses back to cruzeiros on the date of shipment and then re-converted these charges into U.S. dollars on the date of sale, using the certified exchange rates of the Federal Reserve Board. In the case of Usipa where such expenses were reported in cruzeiros, we simply converted to dollars on the date of each U S. sale.

Comment 13. Petitioners claim that Aldebara submitted GS&A and financing expenses incurred in connection with its U.S. sales for purposes of the Department's constructed value calculations. Petitioners argue that the Department must reject these expenses and use home market expense in calculating the constructed value.

DOC Position. This issue is moot since the Department used Aldebara's home market prices to establish foreign market value.

Comment 14. Petitioners argue that Aldebara and Somep provided the Department, not with standard cost of production formation or actual cost of production information, but with estimates of cost of production created expressly for the purpose of this dumping investigation. Therefore, petitioners urge the Department to reject Aldebara's and Somep's cost of production information.

DOC Position. We disagree. We evaluated Aldebara's and Somep's methods for developing cost of production data, including allocation of costs to heavy and light castings and found that generally such allocation methods were reasonable for the costs which were being allocated. In situations where these methods were not accepted, appropriate adjustments were made.

Comment 15. To calculate properly Aldebara's constructed value, petitioners claim the Department must account for the acquisition of the electric furnace, with full monetary correction, in Aldebara's factory overhead.

DOC Position. See the Department's response to petitioners' comment 13.

Comment 16. Petitioners argue that the full cost of patterns should be included as part of raw material costs for Aldebara in the Department's cost of production calculations, or if the patterns were not sold, they should be treated as assets with depreciation costs allocated to factory overhead.

DOC Position. We agree. The submission accounted for pattern costs in the costs of production. No discrepancies were noted in their methodology.

Comment 17. Petitioners claim that Aldebara and Somep did not include ICM or IPI taxes paid on material purchases in their raw material costs. These taxes are not recoverable on foreign or U.S. sales.

DOC Position. ICM and IPI taxes paid by these companies on purchases on raw materials are credited to the company upon the sale of the finished goods. Therefore, these taxes have not been included in the cost of products or constructed value.

Comment 18. Petitioners contend that certain finished castings made by Aldebara were rejected at quality control and returned to inventory for remelting as scrap. The Department should transfer the rejected castings to inventory at scrap value and allocate the labor and overhead costs to finished castings.

DOC Position. We agree. The transferred castings were revalued as scrap and adjustments were made to finish castings costs.

Comment 19. Petitioners argue that the Department should allocate general factory overhead expenses for Aldebara on the basis of usable finished tonnage production.

DOC Position. We disagree. We evaluated Aldebara's methodology for allocating general overhead expenses and found them generally reasonable. Direct labor hours were used to segregate costs between castings of different types and values such as heavy and light.

Comment 20. Petitioners claim that Aldebara allocated GS&A expenses on the basis of production volume. The Department should follow its past practice and allocate GS&A on the basis of cost of goods sold.

DOC Position. We agree. GS&A expenses were reallocated on the basis of cost of goods sold.

Comment 21. Petitioners contend that interest income which did not result from production or sales of the products under investigation should not be applied to offset Aldebara's cost of production.

DOC Position. We agree. The nature of all financial expenses and revenues were evaluated to determine if these items were directly related to production or sales of castings. All financial revenues and expenses not directly related to castings were not included in cost of production calculations.

Comment 22. Petitioners argue that the Department must determine the full amount of packing costs associated with the U.S. sales and include these costs in its constructed value calculations.

DOC Position. We agree. All packing costs were examined and reallocated to products produced for the U.S. market. Also, for Aldebara we added the verified U.S. packing costs to foreign market value.

Comment 23. Petitioners claim that Somep and Aldebara failed to include 1984 and 1985 year-end monetary correction in its cost of production for the months covered by the period of investigation. These costs should be included.

DOC Position. We agree. Monetary correction is a cost incurred by the company and was included in the cost of production and constructed value for the period of investigation. It is allocated based on production volume.

Comment 24. Petitioners argue that Somep submitted an estimate for 1985 depreciation expenses instead of actual figures. Therefore, they urge the Department to reject the submitted figures.

DOC Position. Somep had not yet closed its books for 1985. Thus, end-of-year depreciation had not been finalized. We examined depreciation calculations and allocations and made adjustments were depreciation did not reflect the full actual costs.

Comment 25. Petitioners contend that all end-of-year or accrued costs of Somep, including the "13 month salary" must be indexed to inflation to insure an accurate constructed value analysis.

DOC Position. We agree. All costs of this nature were adjusted using ORTN to reflect accurately current costs and inflation effects.

Comment 26. Petitioners argue that the Department should include depreciation on idle iron ore grinding media equipment in its constructed value calculation for Somep.

DOC Position. We disagree. The idle equipment is not currently used and has never been used for the production of such or similar merchandise to that under investigation. The depreciation on these items reflects a cost associated with a different business and as such should not be included as a casting cost.

Comment 27. Petitioners claim that monetary correction was calculated by Somep based on all permanent assets but not on all depreciation, and that the Department should adjust costs to reflect this.

DOC Position. Monetary correction calculations were adjusted at verification to reflect all assets and all depreciation.

Comment 28. Petitioners contend that certain factory overhead expenses included in GS&A are directly related to the operation of Somep's factory and as such should be allocated to factory overhead in the Department's constructed value analyses.

DOC Position. We agree. These costs, such as equipment maintenance, were reclassified as factory overhead.

Comment 29. Petitioners claim that the Department should follow its past practice and allocate Somep's GS&A on the basis of cost of goods sold.

DOC Position. We agree. Somep's GS&A expenses were reallocated by cost of goods sold.

Comment 30. Petitioners urge the Department to allocate all of Somep's packing costs to the U.S. sales covered by the period of investigation.

DOC Position. We agree. In Somep's response, packing was distributed over sales of all its products in domestic and export markets. All packing costs were reallocated to only those products which were packed, which were those produced for the U.S. market.

Comment 31. Assuming that Usipa's cost of sales account is based on inventory valulations, petitioners are concerned that such valuations may not reflect the hyper-inflationary environment that exists in Brazil.

DOC Position. We agree. Pig iron used in the castings production was revalued using current actual costs from the foundries.

Comment 32. Petitioners claim that the Department should allocate Usipa's general factory overhead applicable to both pig iron and castings production on the basis of direct labor hours per ton.

DOC Position. The Department decided that Usipa's methodology for allocating overhead costs was the most reasonable basis available and used the costs developed by this methodology.

Comment 33. Because Usipa's plant fabricating expenses are directly related to production, petitioners argue that the Department should allocate them to factory overhead rather than GS&A is its final constructed value calculations.

DOC Position. We agree. Costs associated with plant administration and fabrication, as opposed to corporate GS&A, were reclassified as factory overhead.

Comment 34. Petitioners contend the Usipa' GS&A and financing expenses should be allocated on the basis of cost of goods sold.

DOC Position. We agree. Adjusted GS&A and financing expenses were reallocated using cost of goods sold.

Comment 35. Petitioners urge the Department of allocate Usipa's packing costs only to exports.

DOC Position. We agree. Packing costs were allocated to export products.

Comment 36. Petitioners state that it is unclear what the Department considers the date of sale for the U.S. sales reported by Usipa. Petitioner contends that if prices and terms are finalized with a contract, the Department should use the date of that contract as the U.S. sale date. This date of sale in relation to date of importation must govern the Department's determination of whether Usipa's U.S. sales are purchase price or exporter's sales price transactions.

DOC Position. Since Usipa's prices and terms are finalized with a sales contract, we have used this date as the U.S. sale date. We treated all of Usipa's sales used in our final calculations as purchase price transactions, since the date of each contract preceded the date of importation of the merchandise. We also based our calculations on contract quantities since the actual contracts were examined at verification. We found no evidence of warehousing of merchandise by Usipa to fulfill shipment schedules.

Comment 37. Petitioners argue that the Department must ensure that all U.S. sales by Usipa during the investigatory period are analyzed in its final determination. Furthermore, the U.S. sales included in the Department's final calculations on Usipa must be adjusted for actual ocean freight and U.S. movement expenses.

DOC Position. We have included all of USIPA's sales made during the period of investigation that corresponded with sales made by Philipp Brothers during this same period to unrelated U.S. customers, except for three sales for which we had insufficient information. with regard to ocean freight and other U.S. movement expenses, we used the actual verified charges incurred on each sale.

Comment 38. If the Department determined that Usipa purchased castings for export and determined that Usipa's suppliers knew at the time of sale that the merchandise was to be exported to the United States, petitioners contend that the Department should use the price of the merchandise from Usipa's supplier to Usipa, if at arms-length, for the purpose of establishing United States price.

DOC Position. At verification, the Department found that some finished castings were purchased from unrelated Brazilian suppliers. In accordance with DOC polices (see Dried Heavy Salted Codfish from Canada (50 FR 20819)), the cost of these castings was weight-averaged into Usipa's cost of production. We do not have information which indicates that Usipa's suppliers knew destination at the time of sale.

Comment 39. Petitioners contend that Philipp Brothers gave discounts to at least one third-country customer for "trimming", shortweight" and "broken pieces", and that similar discounts may have been offered on its U.S. sales. Furthermore, peititioner believe that Usipa and Philipp Brothers incurred direct selling expenses of its U.S. sales, and that these costs must be accounted for in the Department's final calculations.

DOC Position. We verified that there were no discounts given on U.S. sales. The other types of expenses allegedly incurred are not considered directly related to Usipa's or Philipp Brothers' sales and, hence, no adjustments have been made for these.

Comment 40. Petitioners contend that the verified adjustment for physical differences in Aldebara's home market and U.S. merchandise must be denied because Aldebara did not claim this adjustment in its questionnaire response.

DOC Position. We disagree for the same reasons as stated in the Department's response to petitioners' comment 8. In accordance with section 773(a)(4)(C) of the Act, we made an adjustment for the bolts and nuts

included in casting sold in the home market.

Respondents' Comments

Aldebara and Somep

Comment 1. Aldebara urges the Department to use constructed value and not home market sales to determine foreign market value because the quantities sold are negligible in Brazil in relation to U.S. sales and the home market sales involve different levels of trade. Additionally, Aldebara claims that home market sales cannot be used due to the hyper-inflationary economy, the parallel market for exchange currency, and the limited convertibility of the cruzeiro, which place the home market sales outside the ordinary course of trade.

DOC Position. We disagree that Aldebara's home market sales cannot be used. Aldebara has not produced any evidence to justify the claim that it has different costs associated with home market versus U.S. sales due to quantity size or customer category. Also, we are not persuaded that Aldebara's home market prices are an inappropriate basis for calculating foreign market value due to the hyper-inflationary economy, parallel markets for exchange currency, or the limited convertibility of the cruzeiro. These factors do not invalidate these prices for fair value comparisons.

Comment 2. If the Department decides to use Aldebara's home market sales in its final determination, then each U.S. sale should be compared to a Brazilian sale with a date of shipment on or near the date of each U.S. sale.

DOC Position. We agree. See the Department's response to petitioners' comment 9.

Comment 3. Respondents argue that the Department must grant an adjustment for the countervailing duties imposed on the subject merchandise by either subtracting the amount of export subsidies for deposit or bonding purposes from the dumping margins or adjusting the U.S. price for both heavy and light castings.

DOC Position. The Department is not authorized to make adjustments for subsidies, but only for countervailing duties imposed to offset such subsidies. Since no countervailing duty will be imposed on light castings due to the negative injury determination by the ITC, there can be no adjustment with regard to light castings. See our response to petitioners' comment 10 in regard to the adjustment for countervailing duties to be assessed on heavy castings.

Comment 4. Respondents argue that Aldebara and Somep do not incur credit expenses on their sales to the U.S. because customers are obligated to pay by irrevocable letter of credit in U.S. dollars at sight. Respondents futher argue that the clearance period between time of shipment and the closing of the exchange contract cannot be considered an extension of credit since the importer has already paid. Respondents also argue that if the Department does calculate a credit expense for the lag between shipment and payment, then that expense should be offset by the exchange gains that accompany the delay.

DOC Position. We agree with respect to the first two points raised by respondents. See the Department's response to petitioners' comment 2. As for respondents' argument that credit expenses be offset by exchange gains, this issue is moot since we did not calculate any credit expense on these U.S. sales.

Comment 5. Respondents argue that any bank charges associated with discounting letters of credit in advance of the shipment date should not be treated as a credit expense since finance charges on these advances are not directly related to specific U.S. sales.

DOC Position. We agree for the reasons stated in our response to petitioners' comment 4.

Comment 6. Respondents urge the Department to use the cost data submitted by Aldebara and Somep in calculating foreign market value since the data accurately reflect the replacement costs of the merchandise under investigation

DOC Position. We used the verified actual costs. See the Department's response to petitioners' comment 1.

Comment 7. Somep believes that the Department's sales verification report incorrectly states verified handling charges on certain U.S. sales. Somep states that the amounts used should be based on the charges appearing on the bills for each sale divided by net weight of each shipment.

DOC Position. The verification report shows the per ton charge found on each invoice. For purposes of our final calculations, we agree with Somep and have divided the total amount on each bill by the net weight of each shipment.

Comment 8. Somep argues that sales of unfinished castings to other Brazilian exporters are not subject to this invistigation and should, therefore, not be used to establish United States price, even if the Brazilian producer knew at the time of sale that the merchandise was destined for the U.S. Somep also claims that the price of manhole covers and rings purchased from domestic suppliers should not be used as the basis for determining United States price, even if the supplier knew that this merchandise was destined for the U.S. market.

DOC Position. We agree. See the Department's response to petitioners' comment 11.

Comment 9. Somep argues that the Department, in accordance with section 773(e)(1)(A) of the act, must not include ICM and IPI taxes as part of raw material costs in its constructed value calculations since ICM and IPI taxes on raw materials used in exported products are refunded.

DOC Position. See the Department's response to petitioners' comment 17.

Comment 10. Somep disputes petitioners' allegation that its selling, general and administrative data were incorrect. Somep claims that certain credit and financing costs were properly segregated between the United States and home markets.

DOC Position. Certain items of SG&A were misclassified and, therefore, were reallocated to factory overhead. With regard to Somep's second claim, separation of financial costs were evaluated for reasonableness and adjustments were made where allocations were incorrect.

Comment 11. Somep disputes petitioners' claim that depreciation on certain molding machines be included as a depreciation expense in constructed value calculations. Somep argues that since molding machines were not used to produce the products under investigation, or "such or similar merchandise" in the home market, they are not required to include this expense in its calculations, in accordance with section 773(e)(1)(A) of the Act.

DOC Position. Molding machines were neither installed nor operational during the period of investigation. Depreciation was, therefore, not included for this equipment in constructed value calculations.

Comment 12. Usipa states that the preliminary determination was unlawful and in violation of section 776(b) of the Act because information from the petition was used in lieu of information furnished directly by Usipa.

DOC Position. Section 776(b) requires the Department to use information from other sources if a party has refused or was unable to provide the relevant information as requested by the Department in a timely manner and in proper form. Because of the numerous deficiencies found in the respondents' submissions, the Department did not violate, but specifically complied with the requirement of this section by using

information other than that submitted by Usipa.

Comment 13. Respondents claim there is neither statutory nor judicial authority for any adjustments to reflect a hyper-inflationary economy and that actual costs should be used instead of replacement costs.

DOC Position. Section 773(b) of the Act does not specify the methodology to be used in calculating the cost of production for purposes of determining whether home market sales have been made at prices which are below cost. We recognize that, in dealing with costs and prices in hyper-inflationary economies, distortions arise when all factors included are not contemporaneous. Therefore, we use replacement costs of materials in order to reflect the true cost to the manufacturer. We feel that this adjusts for any possible revaluation of inventory to reflect the effects of inflation and the fact that materials will be replaced at current prices. Therefore, the practice of taking the effects of a hyper-inflationary economy into consideration is a proper exercise of administrative discretion.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of certain iron construction castings from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after October 28, 1985. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated final weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The security amounts established in our preliminary determination published in the **Federal Register** on October 28, 1985 will no longer be in effect. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin (percent)
Aldebara	58.74
Somep	16.61
Usipa	5.95
All other manufacturers/producers/exporters	26.16

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and courtervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the portion of estimated countervailing duties attributable to the level of export subsidies found on certain heavy iron construction castings from Brazil (as determined in the March 12, 1986, final affirmative countervailing duty determination on certain iron construction castings from Brazil) will be subtracted from the dumping margins for deposit or bonding purposes on imports of certain heavy iron construction castings.

Since the ITC determined in the concurrent countervailing duty investigation that there is no reasonable indication that imports of certain light iron construction castings cause or threaten material injury to a U.S. industry (50 FR 27498), the export subsidies apply only to heavy iron construction castings as defined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs officers to assess antidumping duties on the subject products entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This notice is published pursuant to section 735(d) of the Act.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 12, 1986.

[FR Doc. 86-5987 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-502]

Certain Iron Construction Castings From the People's Republic of China; Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Final Determination of Sales at Less than Fair Value.

SUMMARY: We have determined that certain iron construction castings (castings) from the People's Republic of China (PRC) are being sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine within 45 days of publication of this notice whether these imports are materially injuring, or threatening material injury to, a United States industry.

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur J. Simonetti or Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 377-4929 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we have determined that castings from the PRC are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margin is listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.;

Municipal Castings Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry Inc.; Tyler Pipe Corp.; U. S. Foundry and Manufacturing Co.; and Vulcan Foundry Inc.; filing on behalf of the U. S. producers of castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated this investigation on June 6, 1985 (50 FR 24014). On June 27, 1985, the ITC determined that there is a reasonable indication that imports of certain iron construction castings from the PRC are materially injuring a U.S. industry.

On July 3, 1985, questionnaires were presented to the Embassy of the PRC for transmission on China National Machinery and Equipment Import & Export Corp., China National Metals & Minerals Import & Export Corp., and China National Machinery Import & Export Corp.

On August 23, 1985, correspondence was received from the Embassy of the PRC; however, it was not responsive to the questionnaire. On September 3, 1985, the Embassy of the PRC was informed that we required responses to all elements of the questionnaire.

On September 26, 1985, we informed the Embassy of the PRC that we may have to use best information available for purposes of our preliminary determination.

On October 28, 1985, we made an affirmative preliminary determination (50 FR 43594).

On December 9, 1985, we postponed our final determination (50 FR 50188) until no later than March 12, 1986.

We stated in our preliminary determination that if questionnaire responses were received in time to be verified and evaluated, we would use them for purposes of our final determination. Responses were received from all three companies on December 16, 1985. Verification was conducted from January 27 through February 7, 1986.

Our notice of preliminary determination and our postponement notice provided interested parties an opportunity to submit views orally and in writing. We did not hold a public hearing because none of the interested parties requested a hearing.

As discussed under the "Foreign Market Value" section of this notice, we have determined that the PRC is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The merchandise covered by the investigation consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utililty, water and sanitary systems, and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item numbers 657.0950 and 657.0990 of the *Tariff Schedules of the United States Annotated* (TSUSA). The period of investigation is December 1, 1984 through May 31, 1985.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Prices

We used the purchae price of the subject merchandise to represent United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of the subject merchandise as provided in section 772 of the Act, on the basis of the C&F or CIF packed price with deductions, where applicable, for ocean freight and marine insurance.

Foreign Market Value

In accordance with section 773(c) of the Act, we used the weighted-average price of castings imported into the United States from a basket of countries as the basis for foreign market value.

Petitioner alleged that the PRC is a state-controlled-economy country and that sales of the subject merchandise in the country do not permit a determination of foreign market value under section 773(a). After an analysis of the PRC economy, and consideration of the briefs submitted by the parties, we have concluded that the PRC is a state-controlled-economy country for the purpose of this investigation.

As a result, section 773(c) of the Act requires us to use either the prices of, or the constructed value of, such or similar merchandise in a non-state-controlled-economy country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a non-state-controlled-economy country at a stage of economic development comparable to the state-controlled-economy country.

We determined that Egypt, India, Indonesia, Morocco, Pakistan, The Philippines, Sri Lanka, and Thailand were at levels of economic development most comparable to the PRC and it would, therefore, be appropriate to base foreign market value on their prices. We sent questionnaires to known manufacturers of castings in each of these countries. However none of the manufacturers, with the exception of an Indonesian manufacturer, has to date replied to our questionnaire. The response submitted by Indonesia was determined unsatisfactory for the purpose of our final determination.

We lacked home market prices from non-state-controlled-economy countries at a level of economic development comparable to that of the PRC. Therefore, we selected, from the basket of countries exporting the subject merchandise to the United States during the March 1, 1985, through August 31, 1985 period upon which we have based foreign market value, all countries not currently subject to antidumping duty or countervailing duty orders or investigations, involving the products under investigation. This yielded Belgium, France, Italy, Japan, Switzerland, Taiwan and the United Kingdom; none of which are considered to be at levels of economic development comparable to that of the PRC. Examining each on a dollars per metric ton basis, the Department determined both France's and Belgium's prices to be aberrations and, thus, has excluded them for purposes of determining foreign market value. Also, because the TSUSA category, 657.0990, contains imports of products other than those under investigation, the Department determined it to be inadequate for purposes of making fair value comparisons and, therefore, is basing its fair value comparisons on the TSUSA category 657.0950, which includes manhole covers, rings and frames.

Before using the basket of countries, we looked at South Korea and Hong Kong as countries from which we would gather IM-146 statistics for purposes of determining foreign market value. However, due to the fact that IM-146 tables showed no imports from South

Korea under TSUSA category 657.0950 during the March, 1985 to August, 1985 period, and because Hong Kong was merely transshipping the merchandise under investigation, we determined both countries to be inadequate for purposes of our investigation.

Therefore, we calculated foreign market value on the basis of the average f.o.b. values of castings imported into the United States from the aforementioned basket of countries during the six month period between March, 1985 and August, 1985, as provided in the IM-146, compiled by the Bureau of the Census. This time period was employed to account for a time lag on the order of 10 to 15 weeks between the date of sale and the month in which the Bureau of the Census actually records the importation of merchandise, for purposes of compiling IM-146 statistics.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the companies involved. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Petitioners' Comments

Comment #1: Petitioners feel that the basket TSUSA category, 657.0990, is the most appropriate category to use in comparison with Chinese light castings prices to the United States.

DOC Position: We disagree. Because this category contains such a small percentage of the merchandise under investigation, we feel that it does not constitute a basis for fair comparison to Chinese light castings prices to the United States. The basket category can contain a variety of imports which are not castings products. We, therefore, have decided to use only TSUSA category 657.0950 because we are certain that the merchandise included in this category is comparable to the merchandise under investigation.

Comment #2: Petitioners contend that, where expenses from the U.S. sales price are paid in local Chinese currency, free-market rates for these expenses should supplant Yuan denominated expenses for purposes of reaching a net U.S. purchase price.

DOC Position: We agree. Where expenses are incurred in Chinese Yuan, we have applied, as surrogate information, free-market rates for purposes of determining the net U.S. purchase price

Comment #3: Petitioners contend that gross price on CMEC sales to the United States should be determined by the sales price between CMEC and related purchaser, Wah Yuet (Hong Kong or U.S.A.).

DOC Position: We disagree. It is established Department policy to use the sales price in the first unrelated party transaction as the gross sales price. Because Wah Yuet is a related purchaser, DOC determines gross price to be the price between Wah Yuet and the unrelated purchaser in the United States.

Respondents' Comments

Comment #1: Respondents assert that Indian home market prices should be used as DOC's basis for determining foreign market value.

DOC Position: We disagree. Section 777(b)(1), 19 U.S.C. 1677f(b)(1), states "information submitted to the administering authority . . . which is designated as confidential by the person submitting it, shall not be disclosed to any person (other than an officer or employee of the administering authority . . . who is directly concerned with carrying out the investigation in connection with which the information is submitted) without the consent of the person submitting it." In conformity with this statute, it is established Department policy not to use confidential information gathered in concurrent investigations for purposes of another investigation involving the same merchandise, without the consent of the party submitting it. In this case, the Indian government, on behalf of its producers, has refused to allow the Indian information to be used in this investigation.

Comment #2: Respondents contend that another alternative for determining foreign market value would be for the DOC to use the Indian sales prices to the United States, adjusted upward by any dumping margin found in the concurrent Indian investigation, as the basis for determining foreign market value. Respondents also suggest that we use publicly available information from IM-146 statistics to determine Indian prices to the United States, and then adjust those prices to account for any dumping margin found in the concurrent Indian investigation involving the same merchandise.

DOC Position: We disagree. Because doing so would be contrary to the Indian government's request that the Department not use confidential Indian pricing data as its basis for determining foreign market value in this investigation, and for the reason stated in DOC's position to respondents' comment number one, this is not a viable alternative. We also decline to use publicly available IM-146 information from India for purposes of calculating foreign market value. The dumping margin in the Indian investigation has been determined on the basis of confidential information submitted by the Indian producers to the Department of Commerce, not from figures in the IM-146. Both section 773(c) and 19 CFR 353.8(a) provide that in determining foreign market value for a state-controlled-economy country, the preference is to utilize actual third country prices to the United States or third country costs. If the Department of Commerce were to adjust the Indian sales prices in the IM-146 by an estimated dumping margin, which was calculated on the basis of Indian confidential information, not IM-146 data, the resulting figure would be neither a price nor a cost, but a completely artificial number. [See Shop Towels from the People's Republic of China (50 FR 26023, June 24, 1985)].

Comment #3: Respondents contend that, in the case of CMEC sales to the United States, the gross price should be the price between Wah Yuet and the unrelated purchaser in the United States.

DOC Position: For reasoning set forth in comment #3 of *Petitioners' Comments* section, we agree.

Comment #4: Respondents assert that the basket TSUSA category, 657.0990, should not be used in determining foreign market value.

DOC Position: For reasoning set forth in comment #1 of *Petitioners' Comments* section, we agree.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of castings from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after October 28, 1985. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter and Weighted-Average Margin
All Producers, Manufacturers and Exporters—11.66%

ITC Notification

Pursuant to section 733(f) of the Act, we will notify the ITC and make available to it all non-privileged and nonconfidential information relating to this determination. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on certain iron construction castings from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d).

Dated: March 12, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-5984 Filed 3-18-86; 8:45 am]

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[A-533-501]

Certain Iron Construction Castings From India; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain iron construction castings (construction castings) from India are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise, exept that produced and exported by RSI India Pvt. Ltd. (RSI), Kejriwal Iron & Steel Works (Kejriwal) and Kajaria Castings Pvt. Ltd. (Kajaria) as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Terri A. Feldman or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0160 or (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Final determination

Based upon our investigation, we have determined that construction castings from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) (19 U.S.C. 1673d(a)) of the Tariff Act of 1930, as amended (the Act). Three of the four companies investigated, RSI, Kejriwal and Kajaria, have been excluded from this final affirmative determination since we have found Kejriwal and Kajaria's weighted-average margin to be *de minimis* and since we have found that RSI made no sales at less than fair value. The margins ranged from 0.033% to 35.13%. The weighted-average margin for each company is shown in the "Suspension of Liquidation" section of this notice.

Case History

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings, and fifteen individually-named members of the association. Those producers are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry, Inc.; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry Inc. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threatening material, injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon wich to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on June 7, 1985 (50 FR 24014). On June 27, 1985, the ITC determined that there is a reasonable indication that imports of iron construction castings are materially injuring, or threatening material injury to, a U.S. industry (50 FR 27498).

On June 21, 1985, a questionnaire was presented to respondents. On August 8 and 19, 1985, RSI India Pvt. Ltd. (RSI), Kejriwal Iron & steel works (Kejriwal), Serampore Industries Pvt. Ltd. (Serampore) and Kajaria Castings Pvt. Ltd. (Kajaria) responded to our questionnaire.

Because the above-named companies accounted for more than 60 percent of exports of the merchandise to the United States during the period of investigation, we limited our investigation to them. We investigated virtually all sales of standard pipe and tube by these companies for the period December 1, 1984, through May 31, 1985.

On October 28, 1985, we made an affirmative preliminary determination (50 FR 43595).

We verified the questionnaire responses in January. A hearing was held on February 21, 1986.

Scope of Investigation

The products covered by this investigation are certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States.*

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price based on purchase price with the foreign market value based on the constructed value of the imported merchandise.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the

purchase price based on the packed F.O.B. or C&F price to unrelated customers in the United States. Where appropriate, we made deductions for foreign inland freight, ocean freight, port charges, inspection charges, brokerage and handling, service charges, and insurance. We also added duty drawback.

Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value since there were not sufficient home market or third country sales of such or similar merchandise. Constructed value was based on the constructed value reponses of the respondents.

In determining constructed value for each company, we calculated the cost of materials, fabrication, general expenses, and profit. In addition, we added the packing costs for sales to the United States. The amounts added for general expenses were calculated from data provided in the responses. For the companies where general expenses were less than the statutory minimum, we used the statutory minimum of 10 percent of the sum of material and fabrication costs. Where general expenses were greater than this mimimum, we used the actual general expenses of the company. The amount added for profit was the statutory minimum of 8 percent since there were no home market sales. We added the packing costs for sales to the United States. We made an adjustment for difference in circumstances of sale based on credit cost.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

In accordance with section 776(a) of the Act, we verified all information provided by respondents by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents.

Petitioner's Comments

Comment 1: Petitioner argues that the Department should treat the sales between Kajaria and its suppliers as the appropriate transactions in order to determine United States price because Kajaria exports only to the United States and so its suppliers knew the merchandise was destined for the United States.

DOC Response: We disagree. We verified that Kajaria is related to its suppliers. Therefore, we used Kajaria's prices to its unrelated U.S. customers for purposes of comparison to constructed value to determine whether there were sales at less than fair value.

Comment 2: Petitioners argue that the Department should treat the sales between Kejriwal and its supplier as the appropriate transactions because there is nothing in the record which disposes of the issue of whether Kejriwal's supplier knew at the time of its sales to Kejriwal that the merchandise was destined for export to the United States.

DOC Response: We verified that Kejriwal is unrelated to its supplier, and that Kejriwal's supplier does not know the ultimate destination of its products. At verification, we were shown that Kejriwal closely supervised the production of the castings and exported to various countries. We found no indication that its suppliers knew the destination of the castings. Therefore, we used Kejriwal's prices to its unrelated U.S. customers for purposes of comparison to constructed value.

Comment 3: Petitioners argue that no adjustment should be made to United States price for rebated duties and taxes in the form of cash compensatory support payments (CCS) and duty drawback because, since there are no home market sales, there could be no tax added or included in home market sales. Furthermore, petitioners state that if an adjustment for CCS on heavy castings is made, then at least this adjustment should exclude an amount representing the overrebate of indirect taxes.

DOC Response: We agree in part. We have not made an adjustment to United States price for indirect taxes that are rebated under the CCS. Duty drawbacks have been added to United States price, in accordance with section 772(d)(1)(B).

Comment 4: Petitioners argue that no adjustment should be made to United States price for the 10 percent CCS payment of light castings because there is no link between the rebate amount and the amount of indirect taxes and therefore the rebate is not directly related to the sales being investigated.

DOC Response: We agree and have not made an adjustment to United States price. However, we note that since there has not been a countervailing duty investigation on light castings from India, we have not as yet determined whether there is a link between the amount of the rebate and the amount of indirect taxes.

Comment 5: Petitioners argue that an adjustment to United States price for estimated countervailing duties must be denied because countervailing duties have not yet been imposed on these entries of castings. Petitioners also urge the Department not to deduct an estimated export subsidy from any dumping cash deposit or bonding requirements.

DOC Response: We disagree. The Departmental practice has been to deduct the amount of the export subsidy from the dumping deposit or bonding requirement when there is a final countervailing duty order in effect on the imported merchandise.

Although no adjustment to the United States price is specifically prescribed under section 772(d)(1)(D) until the countervailing duty is actually assessed on the subject merchandise, there is no reason to require a duplicate cash deposit or bond for the portion of the antidumping duty which cannot be ultimately assessed.

In addition, the position advocated by the petitioners would defeat the purpose and effect of the 1984 amendment to section 751 of the Act which provides for assessments of antidumping duties at the rates of estimated deposits collected on the merchandise unless an administrative review has been requested. Respondents would be compelled to request an administrative review for all imports in order to prevent the situation of double-assessments due to the countervailing duty subsequently assessed.

Comment 6: Petitioners argue that bank charges are direct selling expenses for which the Department should make a circumstances of sale adjustment.

DOC Response: We agree. Section 353.15 of our regulations provides for reasonable allowances for bona fide differences in circumstances of sale which bear a direct relationship to the sales under investigation. Since bank charges would not be incurred absent a sale, we believe they are directly related to each U.S. sale and we have included them in the circumstances of sale adjustment for differences in credit terms.

Comment 7: Petitioners claim that the Department made a number of computational errors. Specifically, they argue that the Department should differentiate between sales of light and heavy castings, that inspection charges should be applied to appropriate U.S. sales of heavy castings, that U.S. sales of products outside the scope of the investigation should not be included, and that the "all other" category should be calculated accurately.

DOC Response: We agree and have corrected our calculations as necessary.

Comment 8: Petitioners claim that, because Serampore's response reported inaccurate and incomplete sales data, it lacks credibility. The Department should use the best information otherwise available to establish United States price, and should not rely on the respondent's submissions.

DOC Response: Because all information used by the Department in analyzing Serampore's U.S. sales was verified, we do not need to resort to the best information otherwise available.

Comment 9: Petitioners argue that the Department should use actual charges for ocean and inland freight and interest rates by which to adjust United States price.

DOC Response: We agree. All adjustments made by the Department are based on verified, actual amounts.

Comment 10: Petitioners argue that where the cost of interest in a particular transaction has been passed on to the customer and reported in the sales price, the Department should make a circumstances of sale adjustments to arrive at the gross unit price comparable to the constructed value.

DOC Response: We believe this issue is moot. We verified that the unit price reported by respondents did not include the cost of interest passed on the customer. We therefore made no adjustment

Comment 11: Petitioners claim that the IPRS rebate should be assumed to rebate a proportional amount of indirect taxes and the tax incidence of castings exporters should be adjusted proportionately.

DOC Response: The IPRS rebate is not related to the indirect taxes. The IPRS rebate is the difference between the price charged for the pig iron used to produce castings for the home market and that used to produce castings for the export market.

Comment 12: Petitioners argue that the Department should use actual, rather than theoretical (i.e., 8 percent), profit figures in its constructed value analyses.

DOC Response: Because the respondent companies do not have viable home market or third country market sales, the profit used in the constructed value for all four companies was the statutory minimum 8 percent of the total manufacturing cost plus sales, general, and administrative (SG&A) expenses.

Comment 13: Petitioners claim that the cost related to idle facilities should be included in constructed value.

DOC Response: The facilities of the respondents were not considered to be idle capacity by the Department since such facilities were permanently closed.

Comment 14: Petitioners argue that post-sale warehousing expenses incurred by all respondents should be a circumstances of sale adjustment if the Department determined that these expenses were directly related to the U.S. sales under consideration.

DOC Response: The warehouse facilities maintained by three of the four respondents were used for finishing, warehousing, painting and packing castings. The cost of these facilities is included in the constructed value. The fourth company does not maintain a separate warehouse facility.

Comment 15: Petitioners argue that, with regard to Serampore, actual production tonnage of finished castings less pattern tonnage obtained at verification should be used to determine unit production costs in the constructed value. Factory staff wages, benefits and factory security costs should be included in factory overhead rather than SG&A.

DOC Response: The actual production tonnage of finished castings obtained at verification was used to determine the unit production costs for the constructed value. Pattern tonnage is not considered to be production, since such tonnage is not produced for resale. Factory staff wages, benefits and factory security costs were included in factory overhead since such costs relate to the manufacturing process in the constructed value.

Comment 16: Petitioners argue that, with regard to Serampore, the cost of purchasing finished castings for resale should be included in the constructed value for in-house produced castings, if the Department is not going to calculate a separate constructed value for purchased and resold castings.

DOC Response: The Department uses the actual costs which were incurred by the company as its basis for determining the cost of production. If some of the company's production was purchased in a semi-finished state, or a completed state, these purchased costs are part of the overall costs to the company and are therefore included in the calculation.

Comment 17: Petitioners argue that, with regard to Serampore, if interest expenses included in SG&A were in connection with its production assets, these expenses should be included in the factory overhead calculation for constructed value purposes.

DOC Response: The Department views the funds obtained from debt as being fungible; therefore, interest expense is not identified with specific assets.

Comment 18: Petitioners argue that, if the Department determined that Serampore's cost of production response was not sufficiently supported by corporate cost accounting records, the Department should use best information available to establish constructed value.

DOC Response: In cases where primary source documentation was not available, the Department used alternative procedures to determine the reasonableness of the data. In any situation where alternative documentation may not have been available, the Department used a reasonable amount for the specific costs obtained from other company records as best information available.

Comment 19: Petitioners argue that, with regard to Kejriwal, direct stores and factory overhead should not be allocated between export and domestic sales because these costs are not associated with domestic sales. SG&A expenses should be allocated between export and domestic sales on the basis of cost-of-goods sold and not on the basis of sales value.

DOC Response: The Department identified certain costs included in direct stores and factory overhead with the export and domestic products. Corporate documentaton did not permit the allocation of SG&A on the basis of cost of sales. Therefore, the Department used sales value as the best alternative basis.

Comment 20: Petitioners argue that, with regard to Kejriwal, accrued year-end bonuses for the period of investigation, depreciation expenses for warehouse and office assets and patterns acquired during the fiscal year should be included in the constructed value.

DOC Response: We agree. Accrued year-end bonuses for the period of investigation, depreciation expenses for warehouse and office assets and patterns acquired during the fiscal year were included in the constructed value.

Comment 21: Petitioners argue that, with regard to RSI, pattern and mold box tonnage should be deducted from the total casting production tonnage for the purpose of calculating unit constructed values. The Department should include in the constructed value one-third of the mold box and pattern expense transferred from the closed foundry to RSI. Travel expenses, as all other expenses, should be calculated on an accrual basis. SG&A expenses should be allocated between the Import Division, the Applied Power and Engineering Division, and the Foundry and Export Division on the basis of cost-of-goods sold and not on the basis of office salaries exclusive to any one division.

DOC Response: Pattern and mold box production tonnage was deducted from the total castings production tonnage for the purpose of calculating the constructed value.

The Department calculated the depreciation for the patterns and mold boxes at an annual rate of 30%, the rate normally used by the company.

Travel expenses were included on an accrual basis in the constructed value.

General and administrative expenses were allocated among divisions on the basis of office salaries exclusive to any one division. Selling expenses were allocated on the basis of cost of goods sold.

Comment 22: Petitioners argue that, with regard to RSI, the cost of purchasing finished castings for resale should be included in the constructed value for in-house produced castings, if the Department is not going to calculate a separate constructed value for purchased and resold castings. Depreciation for factory assets acquired during the fiscal year and all other assets purchased through May 31, 1985, should be included in the constructed value.

DOC Response: The cost of purchasing finished castings for resale was included in the constructed value for in-house produced castings. Depreciation for factory assets acquired through the period ended May 31, 1985, was included in the constructed value.

Comment 23: Petitioners argue that, with regard to Kajaria, SG&A expenses should be allocated between Kajaria's various divisions on the basis of cost-of-goods sold and not on the basis of sales value. Warehouse maintenance, repairs, maintenance, and production asset depreciation expenses should be allocated to factory overhead in the constructed value and not SG&A. Pattern depreciation expenses should be calculated using the rate typically applied by Kajaria.

DOC Response: Since the respondent's records did not permit us to identify the cost of sales of the various products sold, we have allocated SG&A on the basis of relative sales as the best alternative method.

Warehouse maintenance, repairs, other maintenance, and production assets depreciation expenses were included in factory overhead.

The pattern depreciation was calculated at an annual rate of 30%, the rate normally used by the company.

Comment 24: Petitioners argue that, with regard to Kajaria, office staff welfare, donations, wealth tax and books and periodicals expenses should be included in SG&A in the constructed value. Purchases of finished castings, hard coke, direct stores and delivery transportation changes for raw materials should be included in the constructed value. Actual, not estimated, pattern and mold box tonnage should be excluded from the total production tonnage of finished castings in the constructed value. The Department should include the amount of accrued interest that was in dispute during the period of investigation in the constructed value in factory overhead if the funds were used to purchase or service productive assets, or in SG&A if the funds were used for working capital. The Department should deny the request to offset interest expense with interest income.

DOC Response: Expenses for office staff welfare, donations, wealth tax and books and periodicals were included in SG&A in the constructed value. The cost of purchasing finished castings for resale was included in the constructed value for in-house produced castings.

Purchases of hard coke, direct stores and delivery transportation charges for raw materials were included in the constructed value. The pattern production tonnage was removed from the total production tonnage of finished castings in the measurement of constructed value. The amount of accrued interest that was in dispute during the period of investigation was included in the constructed value as a SG&A expense. The Department determined that interest expense is offset only by interest income related to operations.

Comment 25: Petitioners argue that, with regard to Neenaa, depreciation, printing and stationery, salaries, factory office, factory office administration, miscellaneous, entertainment and audit expenses should be included in factory overhead in the constructed value. Interest expenses should be allocated over the length of the loan agreement and not over the fiscal year.

DOC Response: These expenses were included in factory overhead in the constructed value. Interest expenses were allocated over the length of the loan agreement.

Comment 26: Petitioners argue that, with regard to Neenaa, delivery transportation charges for raw materials, transportation of finished goods from factory to warehouse, accured year-end bonuses for the period of investigation, depreciation expenses, December 1984 interest expenses, machinery costs, and actual, rather than submitted, printing costs should be included in the constructed value.

DOC Response: These expenses are part of the cost of production and have been included in the constructed value.

Comments 27: Petitioners argue that, with regard to Overseas, factory office administration expenses should be allocated to factory overhead and not SG&A. Overseas should be allowed to expense the full value of patterns acquired during the fiscal year rather than depreciate them in the constructed value. Pattern and mold box tonnage shuld be deducted from total castings production tonnage for the purpose of calculating unit constructed values.

DOC Response: Factory office administration expenses were allocated to factory overhead in the constructed value. The Department calculated, for the period of investigation, the pattern depreciation at an annual rate of 30%, the rate normally used by Kajaria, a related company. The pattern production tonnage was removed from the total production tonnage of finished castings in the measure of constructed value.

Comment 28: Petitioners argue that, with regard to Overseas, delivery transportation charges for raw materials, factory salary bonuses, factory start-up costs and actual, rather than submitted, factor staff salary expenses should be inlcuded in the constructed value.

DOC Response: These expenses are part of the cost of production and have been inlcuded in the constructed value.

Respondent's Comments

Comment 1: Respondents argue that the Department should calculate weighted-average margins by reference to both positive and negative margins from individual sales transactions because the current practice is inequitable.

DOC Response: We disagree. Our methodology in calculating weighted-average margins for an individual company insures that sales at less than fair value on a portion of a company's product line to the United States market are not negated by more profitable sales in other portions of the company's product line, which would mask dumping.

Comment 2: Respondents argue that the Department should make currency conversions at the actual rates reflected in the companies' books and records, not on data furnished by the Federal Reserve Bank of New York. Respondents argue that, where conversions are already made in the companies' books, no conversion using Federal Reserve Bank data is necessary.

DOC Response: We disagree. Section 353.56 of our regulations mandates that the Department make currency conversions using the certified exchange

rates issued by the Federal Reserve Bank of New York. Our methodology complies with the regulations.

Comment 3: Respondents argue that bank charges should be included under the rubric of selling, general and administrative expenses and not as direct selling expenses because these charges are incurred on all documents irrespective of the terms of sale.

DOC Response: We disagree. See our repsonse to Petitioners' Comment 6.

Comment 4: Respondents argue that the Department should use actual credit costs in its calculations.

DOC Response: We agree. All credit costs used have been verified.

Comment 5: Respondents argue that U.S. profits are never an appropriate addition to constructed value.

DOC Response: Because the respondents do not have adequate home market or third country market sales, the profit used in the constructed value for all four companies was the statutory minimum 8 percent of the total manufacturing cost plus SG&A.

Comment 6: Respondents argue that the IPRS rebated does not include a rebate of indirect taxes.

DOC Response: We agree. The IPRS rebate was not offset by indirect taxes in our calculation of constructed value. See DOC response to petitioners' Comment 11.

Comment 7: Respondents argue that the constructed value for the preliminary determination incorrectly added indirect taxes back into the raw material cost which already included the indirect taxes.

DOC Response: Indirect taxes were not double counted in the Department's calculations.

Comment 8: Respondents argue that costs associated with idle or closed facilities should not be included in constructed value.

DOC Response: We agree. See DOC response to petitioners' Comment 13.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of iron construction castings from India that are entered, or withdrawn from warehouse, for consumption, on or after October 28, 1985, the date of publication of the Department's preliminary determination in the **Federal Register** (50 FR 43595). The Customs Service shall require a cash deposit or a bond equal to the weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. RSI, Kejriwal and Kajaria have been excluded from this determination since we have found they have made no or *de minimis* sales at less than fair value. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/sellers/exporters	Weighted-average margin percentage
RSI (excluded)	0
Kejriwal (*de minimis*) (*excluded*)	0.39
Serampore	0.90
Kajaria (*de minimis*) (*excluded*)	0.03
All others	0.90

For all entries of castings from RSI, Kejriwal and Kajaria, the Customs Service is directed to terminate the suspension of liquidation, release any bond, refund any cash deposit and liquidate all entries or withdrawals from warehouse for consumption.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies (as determined in the October 18, 1984 final affirmative countervailing duty determination on certain heavy iron construction castings from India) will be subtracted from the dumping margins for deposit or bonding purposes only on imports of certain heavy iron construction castings, as defined in the "Scope of Investigations" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or threatening material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an anitdumping duty on iron construction castings from India entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: March 12, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-5985 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-504]

Postponement of Final Antidumping Duty Determination; Petroleum Wax Candles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On March 5, 1986, we received a request from counsel for the respondent China National Native Produce & Animal By-Products Import & Export Corporation in the antidumping duty investigation of petroleum wax candles from the People's Republic of China that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d (a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of petroleum wax candles from the People's Republic of China have been made at less than fair value until not later than July 7, 1986.

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2613 or 377-1769.

SUPPLEMENTARY INFORMATION: On September 30, 1985, we published a notice in the **Federal Register** that we

were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of petroleum wax candles from the People's Republic of China are being, or are likely to be sold at less than fair value (50 FR 39743). We published our preliminary affirmative determination on February 19, 1986 (51 FR 6016). This notice stated that we would issue a final determination on or before April 28, 1986. On March 5, 1986, counsel for the respondent requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than July 7, 1986.

This notice is published pursuant to section 735(d) of the Act.

Dated: March 13, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-5983 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-504]

Final Affirmative Countervailing Duty Determination; Certain Heavy Iron Construction Castings From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain heavy iron construction castings. The estimated net subsidy is 5.77 percent *ad valorem* during the review period. However, consistent with our stated policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the cash deposit rate to reflect changes in the Preferential Working Capital Financing for Exports program. We have notified the U.S. International Trade Commission ((ITC) of our determination. Therefore, if the ITC determines that imports of certain heavy iron construction castings materially injure, or threaten material injury to, a U.S. industry, we will direct the U.S. Customs Service to resume the suspension of liquidation of certain heavy iron construction castings from Brazil and to require a cash deposit on entries or withdrawals from warehouse for consumption in an amunt equal to 3.40 percent *ad valorem*.

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 377-3174, or (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of certain heavy iron construction castings. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Working Capital Financing for Exports—Resolutions 674 and 950;
- Income Tax Exemption for Export Earnings; and
- Export Financing Under Resolution 509 (FINEX).

We determine the estimated net subsidy to be 5.77 percent *ad valorem* for all manufacturers, producers, or exporters of certain heavy iron construction castings from Brazil.

Case History

On May 13, 1985, we received a petition in proper form from the Municipal Castings Fair Trade Council, a trade association representing domestic producers of certain iron construction castings and 15 individually-named members of the association. Those members are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundary Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings, Inc.; Neenah Foundary Co.; Opelika Foundary Co., Inc.; Pinkerton Foundary, Inc.; Tyler Pipe Corp.; U.S. Foundary & Manufacturing Co.; and Vulcan Foundary, Inc., filing on behalf of the U.S. producers of certain iron construction castings. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of certain iron construction castings received, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 3, 1985, we initiated such an investigation (50 FR 24269). We stated that we expected to issue a preliminary determination by August 6, 1985.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On June 27, 1985, the ITC preliminarily determined that there is a reasonable indication that imports of certain heavy iron construction castings materially injure, or threaten material injury to, a U.S. industry (50 FR 27498).

The ITC also determined that there is no reasonable indication that imports of certain light iron construction castings cause or threaten material injury to a U.S. industry. For the purpose of this investigation, the term "certain light iron construction castings" is limited to valve, service and meter boxes. Such castings are placed below ground to encase water, gas or other valves, or water or gas meters. Therefore, our investigation is limited to certain heavy iron construction castings as defined in the "Scope of Investigation" section of this notice, and we have changed the title of the investigation accordingly.

On June 12, 1985, Phillip Brothers, Inc., a U.S. importer of the subject merchandise, filed a notice of appearance as an interested party in this proceeding.

We presented a questionnaire concerning petitioners' allegations to the government of Brazil in Washington, D.C. on June 11, 1985. On July 22, 1985, we received a response to the questionnaire. There are four known producers and exporters in Brazil of certain heavy iron construction castings that exported to the United States during the review period. We have received information on three of the companies, which, based on information obtained at verification, account for

substantially all exports to the United States. These are Fundicao Aldebara, Ltda. (Aldebara), Usina Siderurgica Paraense—Usipa Ltda. (Usipa) and Sociedade de Metalurgica e Processos Ltda. (Somep).

On the basis of information supplied in the July 22, 1985 responses, we made a preliminary determination on August 6, 1985 (50 FR 32462). We verified the responses of the government of Brazil and the producers of heavy iron construction castings, from August 27 to September 17, 1985. Subsequent to the verification, we received an amended response from the government of Brazil and the producers under investigation on September 23, 1985.

On August 8, 1986, we received a request from petitioners that the deadline for the final determation in this investigation be extended to correspond to the date of the final determination in the antidumping investigation of the same products from Brazil. This request was made pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984. On August 23, 1985, we extended the date of this final determination to January 6, 1986, the originally scheduled date of the final antidumping duty determination (50 FR 35280). On October 25 and October 29, 1985, we received requests from respondents in the antidumping duty investigation of certain iron construction castings from Brazil that the final determination be postponed as provided for in section 735(a)(2)(A) of the Act, as amended. Pursuant to this request, and in accordance with petitioners' request that the date of the final countervailing duty determination correspond to the date of the final antidumping duty determination, we extended the date fo this final determination to March 12, 1986 (November 21, 1985, 50 FR 48826).

Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), prohibits provisional measures (*i.e.*, suspension of liquidation) for more than 120 days in the absence of a final determination. Therefore, on December 11, 1985, we terminated the suspension of liquidation ordered in our preliminary determination.

During verification in Brazil, we discovered that Philipp Brothers, Inc., a U.S. importer of the subject merchandise, financed the importation of these goods by loans made available to foreign importers through Resolution 509 (FINEX) of the government of Brazil. Because of the extra time in which to issue a final determination afforded by the extensions in this case, we obtained specific loan utilization information from Philipp Brothers after our return to Washington. On December 26, 1985, we mailed a questionnaire requesting Resolution 509 loan data from Philipp Brothers. On January 21 and February 12, 1986 we received responses to our questionnaire. Because the responses included, as confidential exhibits, complete documentation of the type normally gathered at verification, we did not travel to Philipp Brothers headquarters in New York City as part of our verification of the responses.

Petitioners, respondents and an interested party submitted briefs addressing the issues arising in this investigation on February 3, 12, and 18, 1986.

Scope of the Investigation

The products covered by this investigation are certain heavy iron construction castings, which are defined for purposes of this proceeding as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames. Such castings are used for drainage or access purposes for public utility, water and sanitary systems. Manhole covers, rings and frames are currently provided for in item 657.0950 of the *Tariff Schedules of the United States, Annotated* (TSUSA). All other certain heavy iron construction castings are subsumed in item 657.0999 of the *TSUSA*.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is the calendar year 1984. In its response, the government of Brazil provided data for the applicable period, including financial statements for Somep, Usipa and Aldebara.

Based upon our analysis of the petition, the responses submitted by the government of Brazil and by Somep, Usipa, Aldebara, and Philipp Brothers to our questionnaires, our verification, and the comments filed by the petitioners, respondents and the interested party, we determine the following:

Programs Determined To Confer Subsidies

I. We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of certain heavy iron construction castings under the following programs:

A. Preferential Working-Capital Financing for Exports

The Cartèria do Comercio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. During the review period, these loans were authorized under Resolution 674. On January 1, 1984, Resolution 674 was superceded by Resolution 882, which was itself substantially amended by Resolution 950 on August 21, 1984.

Eligibility for this type of financing is determined on the basis of past export performance or of an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the maximum level of eligibility for such financing was 30 percent of the value of exports; at present, financing is capped at 20 percent of the value of exports.

Following approval by CACEX of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates, which must be used within one year of their issue, may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation.

Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue, and loans incurred as a result of their use must be repaid within 18 months of that date.

The interest rate ceiling was raised from 40 to 60 percent on loans obtained under Resolution 674 on June 11, 1983. This interest rate is below our commercial benchmark rate for short-term loans in Brazil, which is the short-term discount rate for accounts receivable in Brazil, published in *Business Trends* magazine. On January 1, 1984, Resolution 882 changed the payment date for both interest and principal to the expiration date of the loan. On August 21, 1984, Resolution 950 made this working-capital financing available from commercial banks at prevailing market rates, with interest calculated at time of repayment.

Under Resolution 950, the Banco do Brasil paid the lending institution an equalization fee of up to 10 percent of the interest (after monetary correction). In May 1985, the equalization fee was increased up to 15 percent of the interest. Therefore, if the interest rate charged to the borrower is less than full monetary correction plus 15 percent, the Banco do Brasil pays the lending bank the difference, up to 15 percent. In our "Final Affirmative Countervailing Duty Determination: Certain Agricultural Tillage Tools from Brazil" (50 FR 34525), we verified that the lending bank, in turn, passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due or a credit to the borrower's account. Receipt of the equalization fee by the borrower reduces the interest rate of these working capital loans below the commercial rate of interest. In addition, Resolution 950 working capital loans are exempted from the Imposto Sobre Opercoes Fianancieros, (IOF), which is charged on all Brazilian financial transactions.

Since receipt of working-capital financing under both Resolution 674 and Resolution 950 is contingent on export performance, and since the loans are provided at interest rates lower than those available from commercial sources, we determine that this program confers an export subsidy.

During the review period, exporters of castings received loans based on the criteria set forth in Resolution 674. Therefore, to determine the *ad valorem* subsidy bestowed by this program during the review period, we compared the actual interest rates charged on the loans received under Resolution 674 by the respondents and on which interest was paid during the review period, to the benchmark and multiplied the difference by the loan principal. We then allocated the benefit over total exports of the three castings producers, which resulted in an estimated net subsidy of 2.85 percent *ad valorem*.

Consistent with our stated policy of taking into account program-wide changes that go into effect after the review period but before our preliminary determination, we calculated a subsidy rate for duty deposit purposes based on the interest rate rebate provided for under Resolution 950. To do this, we first determined the three companies' historical utilization rate of this program by dividing the total value of loans, on which interest payments were made during the review period, by the total value of the three companies' 1984 exports. We then multiplied this figure by the equalization fee (15 percent), plus the Imposto Sobre Opercoes Financieros (IOF), which is charged on all financial transactions in Brazil. We thus calculated a rate of 0.48 percent *ad valorem* for duty deposit purposes.

B. Income Tax Exemption for Export Earnings

Under Decree–Laws 1158 and 1721, exporters of certain heavy iron construction castings are eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy. One producer of certain heavy iron construction castings took an exemption from income tax payable in 1984 on the portion of taxable income earned from export sales in 1983.

According to information developed and verified in past investigations in Brazil [e.g., "Final Affirmative Countervailing Duty Determination: Certain Agricultural Tillage Tools from Brazil" (50 FR 34525), and "Final Affirmative Copuntervailing Duty Determination: Fuel Ethanol from Brazil" (51 FR 3361)], companies in Brazil may opt to invest up to 26 percent of their tax liability, as stated on their federal tax return, in specified companies and funds, thereby lowering their effective corporate tax rate. In the two cases cited above, we accepted this investment in calculating an effective corporate tax rate, because the respondents furnished all requested documentation demonstrating that investments made under this program can yield returns and are not merely a means by which the government of Brazil targets a firm's taxes.

In this investigation, we asked the one respondent company which claimed the income tax exemption on export earnings on its 1983 tax form, filed in 1984, for documentation regarding the investments made through this program. We requested this information as further evidence of the appropriateness of calculating an effective tax rate when measuring the benefit from the income tax exemption on export earnings. The respondent did not furnish the requested documents regarding these investments either during the September 1985 verification or following the verification. Because the company did not respond to our request, we are not accepting, for purposes of this final determination, respondents' arguments that the benefit from the income tax exemption on export earnings should be measured on the basis of the company's effective tax rate. Therefore, to determine the benefit from this program, we indexed the exempted profit from exports, as required by Brazilian tax laws, and multiplied it by the nominal corporate tax rate, and allocated the benefit over the total value of respondents' 1984 exports to calculate an estimated net subsidy of 1.86 percent *ad valorem*.

C. FINEX Export Financing.

Resolution 509 of the Conselho Nacional do Comércio Exterior (CONCEX) provides that CACEX may draw upon the resources of the Fundo de Financiamento à Exportaxão (FINEX) to subsidize short- and long-term loans to foreign importers of Brazilian goods. The loans are extended to the importer by a bank in the importer's country at interest rates set by FINEX. These interest rates are based on LIBOR plus a spread. CACEX will in turn provide the lending bank, via a correspondent bank in Brazil with an "equalization fee" which makes up the difference to the bank between the subsidized interest rate and the prevailing commercial rate. CACEX also provides the lending bank with a "handling fee" equal to two percent of the loan principal to encourage foreign bank participation in the program.

During verification, we discovered that Usipa's U.S. importer had used short-term Resolution 509 loans to finance 100 percent of its imports of heavy iron construction castings from Brazil to the United States during the review period. We verified that neither Somep's nor Aldebara" U.S. importers applied for or used Resolution 509 financing during the review period.

Because use of Resolution 509 FINEX financing is contingent upon exports, we determine that it is contervailable to the extent that it is offered on preferential terms. We learned from the government officials in Brazil who administer the FINEX program, for examination of company documents, and from the information published in the *Jornal do Brasil* and the *Gazeta Mercantil* that the interest rates on Resolution 509 loans for financing the products under investigation during the review period ranged from eight to nine percent per annum. Since these are short-term loans which are given in U.S. dollars to U.S. importers, we chose as a benchmark interest rate for comparble loans in the United States, the mean average interest rate for commercial and industrial short-term loans as published by the U.S. Federal Reserve Board. Comparison of the FINEX interest rate to this domestic U.S. rate published by the Federal Reserve indicates that FINEX financing is made at preferential interest rates.

In order to measure the benefit conferred by Resolution 509 financing on exports of heavy iron construction castings from Brazil, we multiplied the value of financing on which interest was paid during the review period by the difference between the U.S. benchmark rate and the actual interest rate paid by Usipa's U.S. importer. We then divided the resulting benefit over total exports of certain heavy iron construction castings to the United States, and calculated an estimated net subsidy of 1.06 percent *ad valorem.*

II. Programs determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters of certain heavy iron construction castings in Brazil under the following programs:

A. Resolution 695—Financing to Small- and Medium-Size Firms

At verification, we discovered the use by one company of a line of credit, classified under Resolution 695, that is available to small- and medium-size firms through commercial banks in Brazil. The text of Resolution 695 indicates that there are no conditions which would limit or target the distribution of these loans to any particular type or group of companies. We held extensive discussions with company and government officials, and, independently, with commercial bankers regarding the statutory definition and operation of Resolution 695. According to this information, there is no regional preference, either in the distribution of, or in the purpose for these loans. Furthermore, Resolution 695 loans are made with commercial banks' own funds, to all types of companies. We have consistently held that a line of credit extended only to small-and medium-size firms, without any further limitation, is not contervailable. Accordingly, we determine that Resolution 695 loans are not limited to a specific enterprise or industry or group of enterprises or industries.

B. Regional Bank Financing

Petitioners alleged that regional development banks in Brazil make loans to foundries on terms inconsistent with commercial considerations. During verification, we discovered that one of the companies under investigation had loans outstanding during the review period from the government-owned Development Bank of Minas Gerais (BDMG), through the Fund for Development of Mining and Metallurgy (FDM). According to information gathered during the verification, the FDM is a program administered by the BDMG and funded entirely by its own resources. The purpose of the FDM is to provide working capital to mining and metallurgy companies in the state of Minas Gerais, the center of Brazil's mining and metallurgical activities. In Minas Gerais, mining and metallurgy activities encompass extracting, processing and refining gold, bauxite, tin, columbium, nickel, coal, phosphate, sulfur, zinc, zirconium, graphite, tungsten, iron ore, gems, and many other minerals and metals. According to government of Brazil documents submitted after the verification, mining and metallurgy together contributed over 51 percent to the Gross Domestic Product of the state, while receiving 33 percent of the credit extended by the BDMG in 1984. There is no evidence of targeting of these or other BDMG funds to the industry under investigation. Accordingly, we determine that loans under the FDM program are not limited to a specific enterprise or industry or group of enterprises or industries. [See also, "Certain Carbon Steel Products from France: Final Affirmative Countervailing Duty Determination" (49 FR 39332), where we held that benefits extended to the extractive sector of the economy are not limited to a specific enterprise or industry or group of enterprises or industries.]

III. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Brazil of certain heavy iron construction castings did not use the following programs.

A. Resolution 330 of the Banco Central do Brasil

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in specified bonded warehouses and destined for export. Exporters of iron construction castings would be eligible for financing under this program. We verified that none of the producers of construction castings under investigation participated in this program during the review period.

B. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 circular, the Banco do Brasil provides 180- and 360-day cruzerio loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan.

We verified that none of the companies under investigation received loans under this program which were outstanding during the review period.

C. Exemption of IPI and Customs Duties on Imported Equipment (CDI)

Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

We verified that none of the construction castings producers subject to the investigation received incentives under this program during the review period.

D. The BEFIEX Program

The Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years; and
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

We verified that the construction castings producers under investigation did not participate in this program.

E. The CIEX Program

Decree-Law 1428 authorized the Comissao para Incentivos a Exportacao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain

equipment for use in export production. We verified that none of the construction castings producers under investigation participated in this program.

F. Accelerated Depreciation for Brazilian-Made Capital Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that none of the respondents used this program during the review period.

G. Incentives for Trading Companies

Under Resolution 883 of the Banco Central do Brasil, trading companies can obtain export financing simailar to that obtained by manufacturers under Resolution 882. We verified that the construction casting producers under investigation did not use trading companies for exports of the subject merchandise during the review period.

H. The PROEX Prigram

Short-term credits for exports are available under the Programa de Finaciamento a Producao para a Exportacao (PROEX), a loan program operated by Banco Nacional do Desenvolvimento Economico e Social (National Bank of Economic and Social Development, or BNDES). We vertified that none of the companies under investigation participated in this program during the review preriod.

I. Resolution 68 (FINEX) Financing

Resolution 68 of the Conselho Nacional de Comercio Exterior (CONCEX) provides that CONCEX may draw upon the resources of the Fundo de Financiamento a Exportcao (FINEX) to extend short-term loans to exporters of Brazilian goods. Financing is granted on a transaction-by-transaction basis. We verified that none of the respondents received Resolution 68 financing during the review period.

J. Government Loan Guarantees on Foreign-Denominated Debt

Petitioners allege that the government of Brazil provides guarantees on long-term, foreign-denominated loans in order to help enterprises service such loans. We verified that none of the companies under investigation received government loan quarantees on foreign-denominated debt during the review period. In the time since the initiation of this investigation, we determined that this program does not constitute a subsidy because it is not limited to a specific enterprise or industry or group or enterprise or industries. [See, "Final Affirmative Countervailing Duty Determination: Certain Agricultural Tillage Tools from Brazil," (50 FR 34525).]

K. FINEP/ADTEN Long Term Loans

Petitioners allege that the government of Brazil maintains, through the Financiadora de Estudos Projectos (FINEP), a loan program, ADTEN, that provides long-term loans on preferential terms to encourage the growth of industries and development of technology. We verified that none through this program outstanding during the review period.

L. IPI Rebates for Capital Investment

Decree law 1547, enacted in April 1977, provides funding for approved expansion projects in the Brazilian steel industry through a rebate of IPI, a value-added tax imposed on domestic sales. We verified that iron construction castings producers are not eligible to participate in this program.

M. Loans Through the National Bank of Economic and Social Development

The National Bank of Economic and Social Development (Banco Nacional do Desenvolvimento Economico e Social, or BNDES) is the sole source of long-term cruzeiro loans in Brazil. Petitioners allege that BNDES loans are allocated in accordance with government development plans to finance the needs of designated priority sectors, and that they are granted on terms inconsistent with commercial considerations.

In support of their allegation, petitioners argue that the iron and steel industry, in which foundries are included, received a disproportionate amount of BNDES lending in 1982.

We verified that none of the companies under investigation had BNDES loans outstanding during the review period.

N. Loan From the Secretariat for Technology and Industry

At verification, we discovered that one of the companies under investigation, Somep, had a long-term loan from the Secretariat of Technology and Industry (STI). This loan was given to Somep for the purpose of developing a new process for the manufacture of "clinkers." Clinkers are used in the processing of iron ore which is used to manufacture pig iron which in turn is used in the manufacture of castings. A review of all the loan contracts and associated documents regarding this loan substantiated that the loan was given solely for this specific purpose. Information in the public record of the antidumping duty investigation of the same products from Brazil indicates that Somep does not fabricate pig iron, but rather purchases the pig iron used in the production of castings from unrelated suppliers. Because the STI loan is tied specifically to the development of a "clinker" machine, and because "clinkers" are used in the fabrication of pig iron, which Somep does not produce, we determine that this loan was not used by SOMEP in the production of the product under investigation.

O. Loan Through the Caixa Economica Federal

At verification, we learned that Aldebara had a loan borrowed during the review period, from the BDMG. The funds for this loan, however, originated with the Caixa Economica Federal (CEF), a government-controlled bank in Brazil. According to information gathered at verification, this loan represents a pass-through of CEF's funds through the BDMG. Examination of the loan contract and bank repayment receipts indicates that no interest or principal payments on this loan were due during the review period. Thus, we determine that no benefits were provided during the review period. This loan will be examined again in any section 751 administrative review that is requested.

IV. Program Determined To Have Been Terminated

IPI Export Credit Premium

Until very recently, Brazilian exporters of manufactured products were eligible for a tax credit on the Imposto sobre Produtos Industrializados (Tas on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, has been found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the IPI credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement of Tariffs and Trade ("the Subsidies Code"). Under the terms of "Portaria" (Notice) of the Ministry of Finance No. 176 of September 12, 1984, the credit premium was eliminated effective May

1, 1985. We verified that the companies under investigation received no IPI export credit premiums after that date.

Accordingly, consistent with our stated policy of taking into account program-wide changes that occur subsequent to the review period but prior to our preliminary determination, we determine that this program has been terminated, and no benefits under the program are accruing to current exports of heavy iron construction castings to the United States.

Petitioners' Comments

Comment 1: Petitioners argue that, given the substantial use of Resolution 674 financing by Brazilian respondents, the Department is correct to assume maximum utilization of preferential export financing. They assert that in the "Final Affirmative Countervailing Duty Determination: Certain Agricultural Tillage Tools from Brazil," (50 FR 34525), the burden to demonstrate under-utilization of Resolution 674 loans is on the respondent. Verification has shown two of the respondents have used their maximum eligibility while a third had several unreported loans.

DOC Position: Prior to the enactment of Resolution 950 on Augst 1, 1984, the Department, in prior cases, calculated the deposit rate for the working captial financing program by multiplying the historical utilization of the program by the current interest differential. [See, *e.g.*, "Final Results of Administrative Review of Certain Castor Oil Products," (49 FR 9921); "Final Results of Administrative Review of Cotton Yarn from Brazil," (48 FR 34999); and, "Final Results of Administrative Review of Pig Iron from Brazil" (48 FR 9923).] Rsolution 950 completely changed the program, unlike earlier resoltuions which had usually just changed the interest rate. Therefore, we were reluctant to use historical utilization until we understood the changes. We have no seen several Resolution 950 loans and conclude that historical utilization is the most accurate calculation method for deposit puroses.

Comment 2: Petitioners assert that the Department should continue to include the IOF tax exemption in any calcuation of the benefit from preferential working capital export loans. The Department, in "Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Brazil," (49 FR 46570), denied respondent's contention that the IOF tax exemption was not countervailable. Commerce should also use a compounded interest rate, which includes compensating balances when determining a benchmark rate against which to measure the benefit from these loans.

DOC Position: Consistent with our past practice, we have included the value of the IOF tax exemption on preferential working capital export loans as part of the subsidy in order to measure the benefit provided under this program. We disagree that we should use a compounded rate that includes compensating balances. We have found that in Brazil, there is no uniform requirement for such balances. In prior Brazilian determinations, compensating balances have only been included in a benchmark rate for uncreditworthy companies in order to calculate the highest commercial rate plus a risk premium.

Comment 3: Petitioners argue that while Resolution 695 loans may appear to be *de jure* generally available, the terms are so preferential that it is unlikely that they are *de facto* generally available, and therefore, these loans should be countervailed. The benchmark rate against which to measure the benefit should include compensating balances.

DOC Position: We disagree. We have consistently held that a line of credit extended to small- and medium-sized firms is not limited to a specific enterprise or industry or group of enterprises or industries. The regulations provide no indication of any limitation other than the small- and medium-sized criteria.

Comment 4: Petitioners argue that the government of Brazil's request that the nominal tax rate be adjusted for investments into specified companies or funds before the income tax exemption benefit is calculated creates an unauthorized offset to a subsidy. Even if permissible, respondents have not provided sufficient information on the "investments" to demonstrate their eligibility. Petitioners also maintain that since the income tax exemption program is tied to exports, the benefit must be allocated over total export sales.

DOC Position: For purposes of this final determination, because the respondent did not respond to our request for further documentation on these investments, we have not valued the income tax exemption on export earnings on the basis of the effective tax rate. We also agree that the benefit should be calculated over total export sales. See our determination in section I.B. of this notice.

Comment 5: Petitioners content that BNDES loans passed-through to the Development Bank of Minas Gerais (BDMG), a regional bank, provide a subsidy. Development banks, like BDMG, make credit available to industrial sectors on the basis of the State Planning Secretariat's annual development plan. The benefits from the FDM and CEF loans provided by BDMG are *de facto* not generally available because they are limited to a specific enterprise or industry or group of enterprises or industries. Because one of the respondents had two loans that were paid off by the issuance of new loans, the benefit from these loans should be calculated using the Department's long-term loan methodology using a compounded rate which includes compensating balances as a benchmark.

DOC Position: We disagree that loans given by regional banks are *de facto* limited to a specific enterprise or industry or group of enterprises or industries simply because such activities are confined to the geographical area defined by a regional bank's charter. The BDMG is a regional bank which provides funds throughout the state of Minas Gerais. Where a loan program, such as FDM, is completely funded by a regional or state organization, and is not a pass-through of funds from the federal government, then we must only examine whether it is limited to a specific enterprise or industry or group of enterprises or industries within the political jurisdiction specified by its charter (*i.e.*, the state of Minas Gerais). We have found that FDM is not limited (see section II.B above).

With respect to CEF, no interest or principal payments were due during the review period. Thus, it is not necessary to determine at this time, whether CEF loans are countervailable. Since there are no countervailable benefits under these two programs, and since respondents had no BNDES loans outstanding during the review period, petitioners' remaining comments are moot.

Comment 6: Petitioners argue that the STI loan to Somep should be regarded as a long-term preferential loan which provides a countervailable benefit because such research and development financing is targeted to specific sectors of the economy and is provided on terms inconsistent with commercial considerations. Furthermore, since the Department did not verify that there is a direct link between Somep's expenditures on the "clinker" project and the amount of the loan disbursements, Somep's ability to produce castings was enhanced because of a lower weighted cost of capital from the STI loan.

DOC Position: We verified that the loan in question was tied to the

development of the "clinker" project and, therefore, provided no benefit to the products under investigations during the review period. See Section III. N. of this notice for our determination.

Comment 7: Petitioners argue that because FINEX Resolutions 68 and 509 financing is contigent upon exports, and is at preferencial rates, the programs provide countervailable benefits.

DOC Position: We verified that exporters did not use Resolution 68 or Resolution 509 export financing. However, one U.S. importer did take advantage of Resolution 509 financing for imports. We have determined that this financing is countervailable. See our determination in Section I.C. of this notice.

Comment 8: Petitioners contend that the Department should use as its benchmark rate for Resolution 509 loans either the Brazilian exporter's cost for borrowing non-guaranteed dollars or the national average rate for non-government controlled short-term dollar financing. This benchmark should then be compared to the FINEX rate. The interest differential should be multiplied by the principal for each transaction. These values should be summed and divided by the net FOB value of the exporters' total net proceeds from their export castings sales. In addition, the two percent inducement commission paid to the foreign bank should be countervailed separately by dividing the value of the commission by the portion of the year that the imports are financed. This amount should be added to the weighted-average rate of subsidy. If the Department cannot determine the above suggested benchmark rate, it should use the Brazilian government's cost of borrowing dollars plus a risk premium or, lastly, use a benchmark based on U.S. interest rates. Finally, the conflicting nature of the information provided by the three parties in the transaction may necessitate the use of best information available.

DOC Position: The Department does have information on the actual terms of the FINEX financing used. We used this information to calculate the benefit rather than the best information otherwise available.

This program benefits the exportation of a product by reducing the potential importer's financing costs if he purchases the Brazilian made product. Thus, it is appropriate to use, as a benchmark, what the importer would otherwise have to pay to finance the import. Since these loans were dollar-denominated loans obtained through a banking facility in the United States even if ultimately financed by the Brazilian government, a rate for short-term dollar denominated loans in the United States is appropriate, and captures completely the benefit from these loans.

Comment 9: Petitioners contend that exports of Somep and Aldebara have benefitted from Resolution 509 FINEX financing in 1985. Thus, petitioners request that the Department include this Resolution 509 financing for cash deposit purposes and apply a country-wide rate that reflects the subsidy bestowed by Resolution 509.

DOC Position: We verified that neither Somep's or Aldebara's importers used this program during the review period. Public information in the record of the companion antidumping duty investigation indicates that Somep's and Aldebara's importers may have used this program subsequent to the review period. Therefore, we will reexamine FINEX financing in any section 751 administrative review that is requested.

Comment 10: Petitioners contend that a two-week interest-free loan given to USIPA by Banco Sudameris, discovered at verification, is a subsidy to the extent it is provided on terms inconsistent with commerical considerations.

DOC Position: Documents provided after the verification by the government of Brazil indicate that Banco Sudameris is a private bank. Since Banco Sudameris is a private bank and we have no evidence that this loan was given under government direction , we find that this loan is not inconsistent with commerical considerations.

Comment 11: Petitioners request that the Department investigate all entries in USIPA's interest ledger which record interest payments to Banco do Brasil because they may relate to countervailable loan programs.

DOC Position: During verification, we throughly examined USIPA's financial records and found no countervailable or non-countervailable loans other than those discussed in this notice.

Respondents' Comments

Comment 1: Respondents claim that the Department erred in assuming maximum utilization and maximum interest differential in its calculation of the benefit of Resolution 950 financing. Commerce should have calculated the benefit by reviewing loans with payments during the review period to estimate future loan utilization. The "Final Results of Administration Review of Cotton Yarn from Brazil" (47 FR 15392), provides that using verified historical utilization rates is preferable to assuming full utilization in calculating the deposit rates.

DOC Position: We agree that historic utilization is appropriate in calculating the deposit rate. See our response to petitioners' *Comment 1.*

Comment 2: The government of Brazil contends that the Imposto sobre Operacoes Fianceiras (IOF) is an indirect tax on the production of goods for export, that the exemption of loans under Resolutions 674/950 from this tax is not a subsidy, and that if we determine that Resolution 674 financing provides a subsidy, we should not consider this exemption as part of the benefit. Respondents further argue we should reject petitioners' argument that compensating balances be included in the calculation of the benchmark against which any benefit is measured.

DOC Position: We disagree that the value of the IOF tax exemption should not be included in our benefit calculation. Since all domestic financing transactions are subject to the IOF tax, it is appropriate that we reflect the exemption of Resolution 950 loans from the IOF as part of the subsidy in order to measure the full benefit provided under this program. Moreover, we do not view the IOF as a tax on the production or distribution of the product. We agree that compensating balances should not be included in the calculation of the benchmark. See our response to petitioners' *Comment 2.*

Comment 3: Respondents argue that Resolution 674/950 export financing is tied to particular products because such financing requires an export commitment based on projected or past exports of eligible products. At the end of each year, the company must show that it has satisifed its obligation through the export of specific products. In this investigation, one company satisfied its commitment through export of a product other than heavy iron construction castings, therefore, the benefit from this financing must be considered to have been conferred only on that product. If the Department rejects this argument, then the benefit must be apportioned over total sales, not export sales.

DOC Position: We disagree. At verification we learned that a company may qualify for the loans in question based on past export performance or projected export performance. We also verified that the export of heavy iron construction castings qualifies a company to receive such loans and that two of the firms under investigation did use heavy construction castings to qualify for these loans. Therefore, because castings are eligible to benefit from such financing, it is irrelevant if a company qualifies for these export loans on the basis of past exports of another product. With respect to the argument

that we should value the subsidy by allocating the benefit over total sales, we have consistently held in prior Brazilian determinations that, when a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 4: Respondents argue that the Department should have considered effective rather than nominal tax rates in calculating the value of the income tax exemption for export earnings. Brazilian tax law allows corporations to invest 26 percent of tax liability into specified companies or funds, effectively lowering a company's tax rate and lessening the benefit from the income tax exemption from export earnings.

DOC Position: We disagree with respondents' argument that the nominal tax rate should not be used in this determination. See our response to petitioners' *Comment 4*, and our determination under Section I.B. of this notice.

Comment 5: The government of Brazil argues that the Department erred in valuing the subsidy arising from the income tax exemption for export earnings by allocating the benefit over export sales rather than total sales. Because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefits accrue to the entire operations of the firm and not just to exports. Further an income tax exemption calculated on this basis does not affect the price of the exported product only; rather, it has a general effect on all prices, both domestic and export.

DOC Position: We disagree. As we have stated in prior Brazilian determinations, when a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitable to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 6: Respondents claim that the IPI export credit premium is not countervailable because it no longer exists. The response to the questionnaire contained the legislation phasing out this program. Verification reports and previous Commerce rulings have consistently held that this program has been eliminated and is not countervailable.

DOC Position: We agree and have determined this program to be terminated. See Section IV. of this notice.

Comment 7: Respondents argue that none of the companies had outstanding BNDES or FINAME loans during the review period. Furthermore, BNDES financing is generally available and has been recognized by Commerce previously as non-countervailable. [See, "Final Affirmative Countervailing Duty Determination: Tool Steel from Brazil" (48 FR 25252).]

DOC Position: We verified that none of the companies under investigation had BNDES or FINAME loans outstanding during the review period.

Comment 8: Respondents request that the Department review the standing of petitioners to file a petition. The original petition, in which petitioners claimed to account for over 85 percent of total domestic production of construction castings, included both heavy and light castings. The ITC eliminated hight iron construction castings from its investigations based on a preliminary negative injury determination after concluding that these are two separate industries, and that producers of light castings do not produce heavy castings. Because of this change, respondents argue that the Department must consider petitioners' standing by obtaining information verifying that the petitioners constitute the majority of domestic production of heavy iron construction castings

DOC Position: In the petition filed in this investigation, petitioners filed "on behalf of" the domestic heavy and light iron construction castings industry in accordance with 19 U.S.C. 1671a(b)(1). Thereafter, in response to respondents' assertion that petitioners might lack standing in light of the fact that the investigation currently only covers heavy iron construction castings, petitioners filed a letter asserting and supporting their continued representation of a majority of the industry under investigation.

The petition was filed on behalf of the castings industry by the Municipal Castings Fair Trade Council and its 15 individually-named members, and no opposition to the petition has been expressed from the domestic heavy iron construction castings industry. Therefore, the Department finds that there is insufficient evidence to warrant a conclusion that petitioners have not filed "on behalf of an industry" pursuant to 19 U.S.C. 1671a(b)(1). [See also, "Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Malaysia" (50 FR 9852, March 12, 1985).]

Comment 9: Respondents contend that Resolution 695 loans are not industry, region, product, or export related. Resolution 695 authorizes commercial banks to make loans available to small- and medium-sized businesses. The Department has previously determined that similar loan programs to small- and medium-sized firms are not countervailable.

DOC Position: We agree and have determined this program not to confer a subsidy. See Section II.A. of this notice for our determination.

Comment 10: Respondents argue that FDM financing from BDMG is not countervailable. If all credit lines available through the bank are generally available, no countervailable benefit exists. [See, "Fuel Ethanol from Brazil," (51 FR 3361).]

DOC Position: For the reasons set out in Section II.A of this notice, we found FDM loans do not constitute a subsidy because they are not limited to a specific enterprise or industry or group of enterprises or industries.

Comment 11: Respondents argue that if FDM provide preferential financing, the proper benchmark is the generally available rate in the region.

DOC Position: Since we have determined that FDM loans are not countervailable, this issue is moot.

Comment 12: Respondents argue that regional development loans through the BDMG are not countervailable. Regional development banks in Brazil obtain their funds through foreign sources, BNDES, or their own operations. Generally available loans from a regional or state authority are not countervailable.

DOC Position: We agree the loans from the BDMG found in this investigation do not confer a countervailable benefit. See our response to petitioner' *Comment 5*.

Comment 13: Respondents contend the STI loan to one respondent was not used in the production of castings. Loans which are not linked specifically to the product under investigation are not countervailable. [See, "Lime from Mexico" (49 FR 35672).] Futhermore, these loans are made to diverse sectors of the Brazilian economy and all information developed from STI-financed projects must be publicly disseminated.

DOC Position: We agree that this loan did not benefit the production of castings. Therefore, we are not determining whether the STI program itself is countervailable. See our

determination under Section III.N. of this notice.

Comment 14: Respondents argue that a short-term loan to USIPA from Banco Sudameris is not countervailable. It was verified that there was no government involvement and no countervailable benefit.

DOC Position: We agree that the short-term loan to Usipa is not countervailable. See our response to petitioners' *Comment 10.*

Comment 15: Respondents argue that the Department should disregard amendments to the original petition which have not been filed concurrently with the ITC as they are in violation of 19 CFR 355.26(e). Also, the Department should adhere to the spirit of its proposed countervailing duty regulations and not consider any new allegations submitted beyond the 20 day period after the notice of initiation was published in the **Federal Register.**

DOC Position: Petitioners' submissions were related to programs discovered during the course of verification. Section 775 of the Tariff Act of 1930, as amended, states that if, in the course of an investigation, the Department discovers a practice which appears to be a subsidy, but was not included in the matters alleged in the countervailing duty petition, it shall include the practice in the investigation if it appears to be a subsidy with respect to the merchandise under investigation. Therefore, we do not consider petitioners' submissions to be amendments to the original petition.

Interested Party Comments

Comment 1: Interested party submits that the historical utilization rate of Preferential Working Capital for Export Financing should be used to quantify any benefits from this program.

DOC Position: We agree. See our response to petitioners' *Comment 1.*

Comment 2: Interested party asserts that the one company which benefitted from the income tax exemption for export earnings on its 1983 tax form, filed in 1984, did not export the subject merchandise in 1983. Therefore, no countervailable benefit has been conferred on exports of heavy iron construction castings.

DOC Position: We disagree. When a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received depends directly or indirectly on the firm's level of exports, that program confers an export subsidy. The fact that a firm earned an export subsidy from one product in one year, and shifted or diversified its export output to other products the next year, is irrelevant to the calculation of the export subsidy.

Comment 3: Interested party contends the appropriate benchmark against which to compare the FINEX interest rate is the short-term interest rates actually paid by Philipp Brothers on its other domestic borrowing.

DOC Position: We disagree. The "Subsidies Appendix" states that the appropriate benchmark for short-term borrowing is a national average commercial method of short-term financing, rather than a rate derived from company-specific financing.

Comment 4: Interested party argues that should there be a final affirmative determination in this case, the CVD deposit rate should not include an amount related to FINEX financing. The sale of Usipa by Philipp Brothers, the uncertainty of continued sales to the U.S., and the question of whether future sales of iron construction castings will be eligible for this program represent significant changes from those circumstances or programs during the investigatory period. ITA should recognize those changes and exclude FINEX from the CVD deposit rate.

DOC Position: The above situation does not constitute a "program-wide change" because the Department has no evidence of a "program-wide change" in the benefits conferred by FINEX financing prior to the preliminary determination. Therefore, we will not change the CVD deposit rate in an attempt to approximate future events.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published August 12, 1985, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require a cash deposit or bond equal to the estimated net subsidy. This final countervailing duty determination was extended to coincide with the final antidumping determination on the same product from Brazil, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). However, we cannot impose a suspension of liquidation on the subject merchandise for more than 120 days without the issuance of final affirmative determinations of subsidization and injury. Therefore, on December 10, 1985, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after December 11, 1985. If the ITC determines that imports of certain heavy iron construction castings materially injure, or threaten material injury to, a U.S. industry, we will order the U.S. Customs Service to resume the suspension of liquidation of the products which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit in an amount equal to 3.40 percent *ad valorem.*

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the date of this determination. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury exists, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on all entries of certain heavy iron construction castings from Brazil entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 12, 1986.

[FR Doc. 86-5986 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DS-M

For Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 86-133. Applicant: The University of the District of Columbia, 4200 Connecticut Avenue, Washington, DC 20008. Instrument: Electron Microscope, Model JEM-100CX-SEG with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument is intended to be used for studies of the following:

1. Morphology and cyto- and histochemistry of cercariae and early schistosomules of Schistoma mansoni, a parasitic trematode.
2. Kidney and liver of mice fed plants grown in sludge amended soil that contains heavy metals (e.g. cadmium, iron and zinc).
3. Induced changes at the beta cell membrane and other subcellular sites following the administration of alloxan or steptozotocin.
4. SV40 infectious process and a structural analysis of the characteristics of conformationally altered SV40 DNA and SV40 minichromosomes.
5. Localization of lead in contaminated plants grown in an urban garden.

In addition, the instrument will be used for teaching purposes in a course in electron microscopy techniques. Application received by Commissioner of Customs: February 14, 1986.

Docket number: 86-134. Applicant: The University of Iowa, Department of Dental Research, N419 Dental Science Building, Iowa City, IA 52242. Instrument: Reflected Light Microscope with Accessories. Manufacturer: Department of Biophysics, Charles University, Czechoslovakia. Intended use: The instrument is intended to be used to conduct experiments on intact living cells and tissues of the oro-facial regions in order to increase knowledge of normal structure function and disease processes of oral and dental tissues. Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86-135. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: GC/Mass Spectrometer/Data System, Model 8230C. Manufacturer: Finnigan Corporation, West Germany. Intended use: The instrument is intended to be used for analysis of food chemicals to identify important food peptides, oligosaccharides, glycopeptides, peroxides, triglycerides and browning products. In addition, the instrument will be used in the identification and quantitation of naturally occurring toxins and environmental toxins in various foods. Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86-136. Applicant: Research Foundation of State of New York, Upstate Medical Center, 155 Elizabeth Blackwell Street, Syracuse, NY 13210. Instrument: Electron Microscope, Model JEM-100SX. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument will be used for various research projects including but not limited to the following:

1. Intrinsic defects in the neurogenic bladder.
2. Neuromuscular ultrastructure of the obstructed rabbit bladder.
3. Correlative anatomical and physiopharmacologic studies of the normal and denervated feline rhabdosphincter.
4. Neuromuscular ultrastructure of the bladder.
5. Effects of lower urinary tract obstruction on the bladder, upper urinary tract and kidney parenchyma.
6. Studies in nephrotoxicity of gentamicin and cyclosporine A.
7. Ultrastructural axonal regrowth following cold injury of rat spinal cord.
8. Electron microscopy study of the ocular zonules and the elastic fiber system of the eye.
9. Immuno-electron microscopic makers of lymphoid and histiocytic disorders.

Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86-137. Applicant: SUNY, Optometric Center of New York, State College of Optometry, 100 East 24th Street, New York, NY 10010. Instrument: CRT Display Unit and GRSYS-2 Microprocessor Grating Generator with special interface hardware. Manufacturer: Joyce Electronics Ltd., United Kingdom. Intended use: The instrument is intended to be used to study human ability to detect, discriminate and match visual pattern composed of sinusoidal grating which can be rotated in orientation, spatially localized to a small patch or ring and repositioned at different locations of the scope. Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86-138. Applicant: Veterans Administration, Hines Hospital, Hines, IL 60141. Instrument: Electron Microscope, Model JEM-100CXII with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument will be used to identify and study the effects of diseases on various human tissues at the ultrastructural level. The instrument will also be used in the training of pathology residents. Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86-139. Applicant: Rutgers-The State University of New Jersey, Neurotoxicology Laboratory, Biological Science Building, Room 001C, New Brunswick, NJ 08903. Instrument: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used to study the ultrastructure of the neurons and supportive cells comprising the spinal cords and peripheral nerves in animals intoxicated with a variety of neurotoxic agents. The numbers of neurofilaments comprising the axons and the length of the myelin sheath will be quantitated to determine how these structural changes play a role in the development of the neuropathy produced by these agents. In addition, the instrument will be used for teaching electron microscopy techniques to graduate students and post-doctoral fellows. Application received by Commissioner of Customs: February 19, 1986.

Docket number: 86-140. Applicant: Medical Research Foundation of Oregon, 505 NW 185th Avenue, Beaverton, OR 97006. Instrument: Schleimpflug Camera with ultraviolet attachments. Manufacturer: Topcon Deutschland GmbH, West Germany. Intended use: The instrument is intended to be used to document the changes in the human lens secondary to drugs, diseases and normal aging changes. Specifically the study of the normal aging changes of the lens in patients with hereditary hypercholesterolemia; and to see if a drug, mevinolin, has any effect on this, either in causing cataracts or impeding lens changes. Application received by Commissioner of Customs: February 19, 1986.

Docket number: 86-141; Applicant: Fred Hutchinson Cancer Research Center, 1124 Columbia Street, Seattle, WA 98104. Instrument: Mass Spectrometer, Model JMS-HX110. Manufacturer: JEOL, Japan. Intended use: The instrument is intended to be used for studies of the chemical structures of biologically-active molecules or molecules composing biolological structures, such as proteins (polypeptides), polysaccharides, lipids,

glycolipids and glycoproteins. Application received by Commissioner of Customs: February 19, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-5997 Filed 3-18-86; 8:45 am]

BILLING CODE 3310-DS-M

Minority Business Development Agency

Financial Assistance Application Announcements North Dakota Indian Business Development Center

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three (3) year period, subject to available funds and satisfactory performance. The cost of performance for the first twelve (12) months is estimated at *$100,000* for the budget period *July 1, 1986 to June 30, 1987.* The IBDC will operate in the *State of North Dakota.*

The funding instrument for the IBDC will be cooperative agreement and competition is open to American Indian Non-Profit Organizations and For-Profit Firms (those entities which are owned or controlled by one or more American Indian persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business development.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian business individuals, and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

Project specifications

Program Number and Title: *11,800 Minority Business Development Centers.*

Project Name: *State of North Dakota Indian Business Development Center.*

Project I.D. No.: *06-10-86012-01.*

Project Duration: *12 months.*

Project Start and End Dates: *July 1, 1986 thru June 30, 1987.*

Project Funding Level: *Total Federal $100,000.*

Geographic Specification: The Indian Business Development Center (IBDC) shall offer assistance in the *State of North Dakota.*

Eligibility Criteria: Competition is open to American Indian For-Profit Firms and Non-Profit Organizations (those entities which are owned or controlled by one or more American Indian persons).

Project Period: The competitive award period will be approximately three (3) years, consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA, based upon availability of funds, the IBDC's performance, and Agency priorities.

MBDA's Minimum Level of Effort: *Financial Packages Secured—$628.480.*

M&TA Hours: 815. Procurements Secured: $920.960. No. Clients: 36.

Closing Date: The closing date for applications is *April 17, 1986.* Applications must be postmarked *ON or BEFORE April 17, 1986.*

ADDRESS: Dallas Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 1100 Commerce Street, Room 7819, Dallas, Texas 75242-0790, (214) 767-8001. ATTN. Marie Hearne.

FOR FURTHER INFORMATION, CONTACT: Dennis Drayson, Business Development Specialist, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 13, 1986.

Melda Cabrera,

Acting Regional Director, Dallas Regional Office.

[FR Doc. 86-6048 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcements; Oklamoma Indian Business Development Center

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three (3) year period, subject to available funds and satisfactory performance. The cost of performance for the first twelve (12) months is estimated at *$157,500* for the budget period *July 1, 1986 to June 30, 1987.* The IBDC will operate in the *State of Oklahoma.*

The funding instrument for the IBDC will be a cooperative agreement and competition is open to American Indian Non-Profit organizations and For-Profit firms (those entities which are owned or controlled by one or more American Indian persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of informnation and assistance regarding minority business development.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian business indiviudals, and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on

such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

Project Specifications

Program Number and Title: 11.800 Minority Business Development Centers.

Project Name: *State of Oklahoma Indian Business Development Center.*

Project I.D. No.: *06-10-86009-01.*

Project Duration: *12 months.*

Project Start and End Dates: *July 1, 1986 thru June 30, 1987.*

Project Funding Level: *Total Federal—$157,500.*

Geographic Specification: The Indian Business Development Center (IBDC) shall offer assistance in the *State of Oklahoma.*

Eligibility Criteria: Competition is open to American Indian For-Profit Firms and Non-Profit Organizations (those entities which are owned or controlled by one or more American Indian persons.)

Project Period: The competitive award period will be approximately three (3) years, consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA, based upon availability of funds, the IBDC's performance, and Agency priorities.

MBDA's Minimum Level of Effort: *Financial Packages Secured—$982,000.*

M&TA Hours: 1,274. Procurements Secured: $1,439,000. No. Clients: 56.

Closing Date: The closing date for applications is April 17, 1986. Applications must be postmarked *ON or BEFORE April 17, 1986.*

ADDRESS: Dallas Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 1100 Commerce Street, Room 7B19, Dallas, Texas 75242-0790, (214) 767-8001, ATTN: Marie Hearne.

FOR FURTHER INFORMATION, CONTACT: Dennis Drayson, Business Development Specialist, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicale regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 13, 1986.

Melda Cabrera,

Acting Regional Director.

[FR Doc. 86-6047 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Charges for Certain Cotton Textile Products Produced or Manufactured in Brazil

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 20, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202 377-4212.

Background

On October 18, 1985 a notice was published in the **Federal Register** (50 FR 42200) announcing that the Governments of the United States and the Federative Republic of Brazil had exchanged notes on a new Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement dating from April 1, 1985 and extending through March 31, 1988. The new agreement established a limit of 450,000 numbers for cotton sheets in Category 361, among other categories, produced or manufactured in Brazi and exported during the twelve-month period which began on April 1, 1985 and extends through March 31, 1986. That limit was increased to 504,000 numbers by a directive of January 30, 1986 (51 FR 4409). That limit is now filled.

We have determined in reviewing import charges made to the adjusted limit that 18,240 numbers were charged incorrectly by Customs. Accordingly, the letter which follows this notice, directs the Commissioner of Customs to deduct that quantity from the current charges. This will reopen the category.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397) June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 14, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Coton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and Brazil, I request that, effective on March 20, 1985, you deduct 18,240 numbers from the restraint limit established in the directive of October 15, 1985, as amended, for cotton textile products in Category 361, produced or manufactured in Brazil and exported through March 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5950 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

March 14, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 20, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 31, 1985 a notice was published in the **Federal Register** (50 FR 53373) announcing import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986.

During consultations held under the terms of the Bilateral Cotton Textile Agreement, effected by an exchange of notes dated March 9, 1982 and March 11, 1982, as amended, the Governments of

the United States and Pakistan have agreed to further amend the bilateral agreement to increase to 45,000 dozen the limit for women's, girls', and infants' cotton coats in Category 335, produced and manufactured in Pakistan and exported during the period which began on January 1, 1986 and extends through December 31, 1986.

In the letter published below, the Chairman of the Committee for the implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to amend the directive of December 26, 1985 to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 335, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986 in excess of the adjusted restraint limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 26, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan.

Effective on March 20, 1986, the directive of December 26, 1985 is hereby amended to establish an adjusted limit of 45,000 dozen for women's, girls' and infants' cotton coats in category 335.[1]

The Committee for the Implemention of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for Implementation of the Textile Agreements.

[FR Doc. 86-5951 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

Request for Public Comment on Bilateral Textile Consultations With the Government of the Federative Republic of Brazil on Category 341

On February 28, 1986, the Government of the United States requested consultations with the Government of the Federative Republic of Brazil with respect to Category 341 (woven cotton blouses). This request was made on the basis of the agreement between the Governments of the United States and Brazil relating to trade in cotton, wool, and man-made fiber textile products, effected by exchange of notes dated August 7 and 29, 1985. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to markets disruption, or the threat thereof.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning this category, the Government of the United States has decided to control imports during the ninety-day consultation period which began on February 28, 1986 and extends through May 28, 1986 at a level of 48,088 dozen. If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 138,637 dozen for Category 341 for the entry and withdrawal from warehouse for consumption of textile products, produced or manufactured in Brazil and exported during the period beginning on May 29, 1986 and extending through March 31, 1987.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit imports of cotton textile products in Category 341, produced or manufactured in Brazil and exported during the ninety-day period which began on February 28, 1986 and extends through May 28, 1987 in excess of the established limit. In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the level established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 341 under the agreement with Brazil, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Comittee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consulatations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Ave, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public with the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

MARKET STATEMENT

Category 341—WGI Cotton Woven Blouses

(Brazil, February 1986)

Summary and Conclusion

U.S. imports of Category 341 from Brazil were 142,000 dozens in 1985, a threefold increase from the 47,000 dozens imported in 1984.

The sharp and substantial increase of low-valued Category 341 imports is disrupting the U.S. market for WGI cotton woven blouses. Category 341 imports from Brazil must be controlled before further injury is sustained.

U.S. Production and Market Share

After rising in 1982 and 1983, U.S. production leveled off in 1984 at 7,050,000 dozens, only 2 percent above the 1983 level. Between 1982 and 1984, the market for WGI cotton blouses grew by 3,986,000 dozens; however, the U.S. producers' share of this

market dropped from 46 percent to 42 percent as imports grew faster.

U.S. Cutting Data

Production data for 1985 are not currently available; however, government cuttings data are reported. These data show cuttings of women's blouses [1] down 16 percent in 1985 compared to the previous year.

Employment Data

Government sources report that, in 1985, total employment in the women's and misses' blouse and waist industries (SIC 2331) fell 2.6 percent. The decline in production worker employment was more severe with 4.3 percent and the average manhours worked fell 4.0 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 341 increased 41 percent between 1982 and 1984, rising from 6,852,000 dozens to 9,628,000 dozens. This upward trend continued into 1985 as imports reached 11,234,000 dozens, a 17 percent increase over the 1984 level. The import to production ratio increased from 117 percent in 1982 to 137 percent in 1984.

Duty-Paid Value and U.S. Producer Price

Approximately 85 percent of Category 341 imports from Brazil during 1985 entered under TSUSA Nos. 384.0505 (previously 383.0505)—women's cotton woven blouses, or ornamented, and 384.4609 (previously 383.4709)—women's other cotton woven blouses, not ornamented. These garments entered at landed, duty-paid values below U.S. producers' prices for comparable blouses.

Committee for the Implementation of Textile Agreements

March 14, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and 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, effected by exchange of notes dated August 7 and 29, 1985, between the Governments of the United States and Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 21, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 341 produced or manufactured in Brazil and exported during the ninety-day period which began on February 28, 1986 and extends through May 28, 1986, in excess of 48,088 dozen.[1]

Textile products in Category 341 which have been exported to the United States prior to February 28, 1986 shall not be subject to this directive.

Textile products in Category 341 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5996 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] Cuttings of data are for cotton, wool and man-made fiber blouses and include both wovens and knits, excluding knit tops.

[1] The limit has not been adjusted to account for any imports exported after February 27, 1986.

DELAWARE RIVER BASIN COMMISSION

Commission Metting and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 26, 1986 beginning at 1:30 p.m. in the Benjamin West Room of the Holiday Inn Center City, 1800 Market Street, Philadelphia, Pennsylvania. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:30 a.m. at the same location.

The subjecs of the hearing will be as follows:

Current Expenses and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1986, in the aggregate amount of $2,209,000 and a capital budget for the same period in the amount of $837,500 in revenue and $716,800 in expenditures. Copies of the current expense and capital budget are available from the Commission on request.

Revised Proposed Amendments to the Comprehensive Plan, Water Code of the Delaware River Basin, and the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania Relating to Source Metering, Recording and Reporting. Notice was given in the February 13, 1986 **Federal Register**, Vol. 51, No. 30, that the Commission would hold a public hearing on March 26, 1986 to receive comments on proposed amendments to the Comprehensive Plan, Water Code and Ground Water Protected Area Regulations for Southeastern Pennsylvania in relation to source metering, recording, and reporting of waters withdrawn from the Basin. The proposed amendments to the Comprehensive Plan and Water Code would require source metering and recording of both new and existing surface and ground water withdrawals that exceed 100,000 gpd during any 30-day period. The Commission is also proposing a similar amendment to the Ground Water Protected Area Regulations for Southeastern Pennsylvania which would require metering, recording, and reporting of ground water withdrawals in excess of 10,000 gpd.

Applications for Approval of the Following Projects Pursuant to Article 10.3 Article 11 and/or Section 3.8 of the Compact

1. *Palmer Water Company D-81-24 CP Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 10.5 million gallons (mg)-30 days of water to the applicant's distribution system from Well A. Commission approval on May 27, 1981 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 35 mg/30 days. The project is located in Palmerton Borough, Carbon County, Pennsylvania.

2. *Hatfield Packing Company D-83-24.* A ground water withdrawal project to supply approximately 0.1585 million gallons per day (mgd) of water to the applicant's meat packing facility in Hatfield Township, Montgomery County, Pennsylvania. Well Nos. 1, 2, 3 and 4, located in Hatfield Township, were previously placed in service and have collectively withdrawn in excess of 100,000 gallons per day (gpd) without approval of the Delaware River Basin Commission. Ground water from the wells is used in conjunction with water purchased from the North Penn Water Authority.

3. *Hoffmann-La Roche D-85-14.* A ground water decontamination project at the applicant's manufacturing facility in White Township, Warren County, New Jersey. Contaminated ground water will be recovered through two new wells, designated as Abatement Well Nos. 8 and 9, located northwest of the intersection of Route 46 and Manunkachunk Road and will be pumped at rates of 4.3 mg/30 days and 17.3 mg/30 days, respectively. The recovered pumpage will be treated at the applicant's existing wastewater treatment facility and discharged to the Delaware River.

4. *Richland Meadows Mobile Home Park D-85-43.* Approval is sought by the applicant to enlarge and modify its existing domestic sewage treatment plant located on Yankee Road in Richland Township, Bucks County, Pennsylvania. The existing NPDES permit No. 0045187 limits the effluent discharge to 0.045 mgd. The Mobile home park is at capacity with 406 mobile homes and a population of approximately 1,000 people. Monthly average sewage flow between June 1984 and September 1984 ranged from 0.060 mgd to 0.071 mgd. The clarifier, sand filter and chlorine contact tank will be increased in size and treatment steps altered to treat an average wastewater flow of 0.080 mgd to required levels. Treated effluent will continue to be discharged to Morgan Creek, a tributary of Tohickon Creek.

5. *Schering Corporation D-86-4.* An application for expansion of an existing 0.022 mgd wastewater treatment plant to a new design flow of 0.040 mgd at the applicant's Lafayette Safety Evaluation Center, in Lafayette Township, Sussex County, New Jersey. The facility will provide advanced secondary treatment of the wastewater generated from the raising and care of laboratory test animals. Treated effluent will continue to discharge to a small tributary of the Paulins' Kill at River Mile 207.0-33.8-0.3.

6. *Water and Supply Company, Inc. D-86-6 CP.* An application to replace the withdrawal of water from Well No. 2 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 2R be limited to 8.1 mg/30 days, and that the total withdrawal from all wells remain limited to 8.1 mg/30 days. The project is located in the Town of Georgetown, Sussex County, Delaware.

7. *Delaware Water Gap Borough Council D-86-8 CP.* An application for the construction of a new 176,000 gpd wastewater treatment plant to serve the Borough of Delaware Water Gap in Monroe County, Pennsylvania. Approval of the proposed plant requires deletion of the regional plant currently in the Comprehensive Plan for eastern Monroe County. The Borough is presently served by individual on-lot septic tanks, many of which are malfunctioning. Untreated sewage has been found in Delaware River monitoring near the mouth of Cherry Creek. Treated wastewater will be discharged into Cherry Creek through the outfall line at the existing Howard Johnson Restaurant treatment facility which will be abandoned upon completion of the proposed treatment plant.

8. A resolution to extend Commission approval of Docket Decisions until March 31, 1987 for: D-78-84 CP RENEWAL for Well No. 8, Borough of Hatfield; D-77-90 CP RENEWAL for Well No. 23, North Wales Water Authority; and D-78-94 CP RENEWAL for Well No. 25, North Wales Water Authority.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

* * * * *

The Commission will hold a public hearing on Tuesday, April 15, 1986, beginning at 1:30 p.m. in the Banquet Room of the Holiday Inn at Route 100 and West King Street, Pottstown, Pennsylvania to consider the following application.

1. *Philadelphia Electric Company (PECO); Reading Anthracite Company (RAC); Tamaqua Borough Authority (TBA); and Borough of Tamaqua (BOT) D-69-210 CP (Final) Revision No. 6.* A joint application by PECO, RAC, TBA, and BOT to temporarily, during 1986, revise portions of the Limerick Generating Station project as included in the Comprehensive Plan and to approve the temporary changes under Section 3.8 of the Compact. The proposed revision requests that the consumptive use of Schuylkill River water be permitted to continue when applicable flow or temperature/dissolved oxygen limits would otherwise restrict such use. The application proposes that whenever applicable restrictions would otherwise restrict the consumptive use at Limerick, the applicants would release water from upstream storage facilities at such times and in such quantities to be available to meet consumptive water needs at the Limerick Station. The upstream storage facilities proposed to be used consist of Still Creek and Owl Creek Reservoirs which are operated by TBA to supply water to the BOT and a water-filled abandoned strip mine known as Beechwood Pool.

Since Beechwood Pool water contains high levels of TDS (1700 mg/1), the applicant proposes to discharge water from Beechwood Pool in proportion to releases from Still Creek and/or Owl Creek (TDS 32 mg/1) such that specific quality objectives can be met downstream. Release rates are proposed to vary from 0 to 28 cfs from Still and/or Owl Creek Reservoirs and from 0 to 7 cfs from Beachwood Pool.

The applicants have proposed a plan of operation of this reservoir release project to be coordinated with the pending application D-69-210 CP (Final) Revision No. 5 requesting approval to substitute specific dissolved oxygen limits for the original temperature limitation and to have the option of substituting consumptive use at Limerick Unit No. 1 for reduced consumptive use at the Titus and/or Cromby generating stations.

A public hearing was held on Docket No. D-69-210 CP (Final) Revision No. 5 on January 22, 1986 for which the hearing record was held open for additional testimony through February 14, 1986. The record compiled in connection with the Commission's January 22 public hearing shall be incorporated into and considered by the Commission as a part of a joint hearing record on these applications. It will not be necessary to resubmit comments previously provided in order to be considered in connection with these applications. Documents relating to these applications may be examined at the Commission's offices and at the Pottstown Public Library. Persons wishing to testify at the April 15, 1986 public hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

March 11, 1986.

[FR Doc. 86-5937 Filed 3-18-86; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 86-14-NG]

Yankee International Co.; Application To Amend Authorization To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to export natural gas to Canada on a short-term basis.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 28, 1986, of an application filed by Yankee International Company (Yankee) requesting an amendment to its natural gas export authorization granted by the ERA in Opinion and Order No. 99 in Docket No. 85-38-NG on December 30, 1985. Under its existing authorization, Yankee may export up to 50 MMcf per day for a total of up to 2 Bcf of natural gas to Canada from the date of approval through April 30, 1986, at a price of $2.45 per MMBtu. In the instant application, Yankee proposes to amend its authorization by increasing the maximum export levels to 86 MMcf per day for a total of up to 10 Bcf for a term ending February 4, 1988. The natural gas will be purchased by Yankee from various suppliers principally located in the states of Oklahoma and Kansas and resold to Union Gas, Ltd. (Union) at the U.S./Canadian border. Union is a local distribution company located in the province of Ontario, Canada, serving the cities of Hamilton and Windsor. Yankee has asked for expedited treatment of its application in order that the ERA can make a determination on its request prior to April 30, 1986, this avoiding any lapse in time between its existing authorization and its current request.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on April 18, 1986.

FOR FURTHER INFORMATION CONTACT:

John Glynn, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9482

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with Section 3 of the Natural Gas Act, and DOE Delegation Order No. 0204-111, under which domestic need for the gas to be exported is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should address in their comments whether there is a national or regional domestic need for the gas supply proposed to be exported.

In making its request for expedited treatment of its application to amend its existing export authorization, Yankee states that prompt ERA action will serve both the national and regional public interest. Yankee cites three reasons why prompt ERA action is necessary in its request: (1) The amendment would allow the continuation of the existing export authorization beyond the presently effective April 30, 1986 termination date; (2) the export would work to alleviate a severe surplus of gas in the states supplying this gas; and (3) the project will reduce the U.S. foreign trade deficit. The ERA has determined that the reasons cited by Yankee in requesting expedited treatment of its application are insufficient to warrant a reduction in the public comment period, particularly in light of the fact that our normal administrative procedures will most likely result in a determination on this application prior to the April 30, 1986, termination date of Yankee's as yet to be used export authorization.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076A, RC-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., April 18, 1986

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Yankee's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 11, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-5963 Filed 3-18-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-339-000, et al.]

Arizona Public Service Company et al.; Electric Rate and Corporate Regulation Filings

March 14, 1986.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER86-339-000]

Take notice that Arizona Public Service Company (APS), on March 6, 1986 tendered for filing the Memorandum of Understanding between Arizona Public Service Company (APS) and Electrical District No. 3 executed February 11, 1986.

The District wishes to begin implementation of time-of-use (TOU) metering on some of its loads or energy conservation purposes, and it's anticipated that this will affect the coincident demand of the District's load. The Company, in accordance with the provisions in the current agreement, has agreed to a change in the factor used in establishing the District's monthly coincident billing demand. An effective date of February 24, 1986 is requested pursuant to the terms of this Memorandum of Understanding.

Copies of this filing have been served upon Electrical District No. 3 and the Arizona Corporation Commission.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER86-340-000]

Take notice that Arizona Public Service Company (APS), on March 6, 1986 tendered for filing the Memorandum of Understanding between Arizona Public Service Company (APS) and Electrical District No. 1 executed February 11, 1986.

The District wishes to begin implementation of time-of-use (TOU) metering on some of its loads for energy conservation purposes, and it's anticipated that this will affect the coincident demand of the District's load. The Company, in accordance with the provisions in the current agreement, has agreed to a change in the factor used in establishing the District's monthly coincident billing demand. An effective date of February 21, 1986 is requested pursuant to the terms of this Memorandum of Understanding.

Copies of this filing have been served upon Electrical District No. 1 and the Arizona Corporation Commission.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Company

[Docket No. ER86-335-000]

Take notice that on March 10, 1986 Central Illinois Public Service Company ("CIPS") tendered for filing amended Rate Schedule W-2 (Metropolis) for Wholesale Electric Service to the City of Metropolis for Distribution and Retail Sale to Its Customers ("Rate Schedule W-2 (Metropolis)"). CIPS also tendered for filing an amendment to the supply contract between CIPS and the City of Metropolis ("City").

The tendered rate schedule and amendment to supply contract comprise integral parts of a comprehensive agreement between CIPS and the City, reached after negotiations, to continue and extend their long-term customer-supplier relationship. Among other things, the amendment to the supply contract provides for an extension of the primary term of that contract to July 1, 1996.

CIPS requests an effective date of January 1, 1986, and therefore requests a waiver of the Commission's notice requirements.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER86-344-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on Marrch 10, 1986, tendered for filing as an initial rate schedule, an agreement between Niagara Mohawk and the Power Authority of the State of New York (PASNY) dated February 5, 1986.

Niagara Mohawk states that this agreement establishes the rate for transmitting power and energy from PASNY to PASNY's "Out-of-State" customers utilizing Niagara Mohawk's existing transmission facilities. Niagara Mohawk presently has on file an agreement with PASNY, designated Rate Schedule FERC 135 for, among other services, supplying and transmitting power and energy from PASNY's Niagara Project over Niagara Mohawk's transmission facilities to PASNY's municipal and cooperative customers and certain industrial customers for Niagara Mohawk. The rate for the transmission service under the proposed initial rate schedule would be set at the rate for transmission service provided under Niagara Mohawk's Rate Schedule FERC 135.

Copies of this filing were served upon the following:

Power Authority of the State of New York, 10 Columbus Circle, New York. NY 10019.

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223

Niagara Mohawk requests waiver of the Commission's notice requirements to as to allow the proposed initial rate schedule to become effective on July 1, 1985.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER86-348-000]

Take notice that Niagara Mohawk Power Corporation (Nigara), on March 10, 1986, tendered for filing as a rate schedule, an agreement between Niagara and Rochester Gas & Electric Corporation (Rochester) dated January 29, 1986.

This contingency agreement between both parties is to cover, during the maintenance outage (if required), the supplemental delivery of short-term power by Niagara Mohawk to Rochester Gas & Electric Corporation.

Copies of this filing were served upon the following:

Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, New York 14649

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, New York 12223

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER86-349-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on March 10, 1986, tendered for filing as an initial rate schedule, an agreement between Niagara Mohawk and the Power Authority of the State of New York (PASNY) dated November 27, 1985.

Niagara Mohawk states that this agreement establishes the rate for transmitting power and energy from PASNY to the City of Niagara Falls utilizing Niagara Mohawk's existing transmission facilities. Niagara Mohawk presently has on file an agreement with PASNY, designated Rate Schedule FERC 136 for, among other services, supplying and transmitting power and energy from PASNY's Niagara Project over Niagara Mohawk's transmission facilities to PASNY's municipal and cooperative customers and certain industrial customers for Niagara Mohawk. The rate for the transmission service under the proposed initial rate schedule would be set at the rate for transmission service provided under Niagara Mohawk's Rate Schedule FERC 136.

Copies of this filing were served upon the following:

Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223

Niagara Mohawk requests waiver of the Commission's notice requirements to as to allow the proposed initial rate schedule to become effective on November 1, 1985.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5994 Filed 3-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-533-000, et al.]

Chevron U.S.A. Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status Certificate Applications, Etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 14, 1986.

Take notice that the following filings have been made with the Commission.

1. Chevron U.S.A. Inc.

[Docket No. QF86-533-000]

On March 5, 1986, Chevron U.S.A. Inc. (Applicant), of P.O. Box 1392, Bakersfield, California 93302 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located three miles north of McKittrick, California. The facility will consist of two gas turbine generators and two waste heat recovery steam generators. The electric power production capacity of the facility is 5400 kW. The primary source of energy will be natural gas. The thermal energy will be used for tertiary petroleum production.

2. Miller Hydro Group

[Docket No. QF6-548-000]

On March 3, 1986, Miller Hydro Group (Applicant), of P.O Box 97, Lisbon Falls, Maine 04252 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 14 MW hydroelectric facility (P. 3428) will be located in Androscoggin County, Maine.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Tenneco Oil Company

[Docket No. QF86-549-000]

On February 28, 1986, Tenneco Oil Company (Applicant), of 10000 Ming Avenue, Bakersfield, California 93311, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of one combustion turbine generating unit with a waste heat recovery steam boiler. Steam produced by the facility will be used for enhanced oil production. The electric power production capacity of the facility will be 3,725 KW. The primary energy source will be natural gas. The installation of the facility will begin in the first quarter of 1986.

4. Tenneco Oil Company

[Docket No. QF86-550-000]

On February 28, 1986, Tenneco Oil Company (Applicant), of 10000 Ming Avenue, Bakersfield, California 93311, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of two combustion turbine generating units with two waste heat recovery steam boilers. Steam produced by the facility will be used for enhanced oil production. The electric power production capacity of the facility will be 7.45 MW. The primary energy source will be natural gas. The installation of the facility will begin in the first quarter of 1986.

5. University Cogeneration Partners, Ltd.

[Docket No. QF86-529-000]

On February 26, 1986, University Cogeneration Partners, Ltd. (Applicant), of 3430 Camino Del Rio North, Suite 200, San Diego, California 92108, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined-cycle cogeneration facility will be located in San Diego, California. The facility will consist of two combustion turbine generating units with two waste heat recovery steam boilers, and one extraction system turbine generating unit. Steam produced by the facility will be used in Rohr's manufacturing plant. The electric power production capacity of the facility will be 8.9 MW. The primary energy source will be natural gas. The installation of the facility will begin in October 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5995 Filed 3-18-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 17 Through February 21, 1986

During the week of February 17 through February 21 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Committee to Bridge the Gap, 2/21/86, KFA-0013

The Committee to Bridge the Gap filed an Appeal from a partial denial by the Deputy Assistant Secretary for Reactor Systems, Development and Technology, office of Nuclear Energy of a request for information which the organization had submitted under the Freedom of Information Act. The Committee had requested a copy of a report concerning safety assessments for space nuclear reactors. In considering the Appeal, the DOE determined that the report was properly withheld pursuant to 5 U.S.C. 552(b)(5) (Exemption 5) as a pre-decisional, deliberative document. The DOE further determined that the agency did not waive its Exemption 5 privilege merely because the report was cited in published articles. Accordingly, the Appeal was denied.

Plumbers & Steamfitters Local 106, 2/18/86, KFA-0011

Plumbers and Steamfitters Local 106 (the Union) filed an Appeal from a partial denial by the Authorizing Official of the Louisiana Strategic Petroleum Reserve project (SPRP) of a request for information which the Union sought under the Freedom of Information Act (FOIA). In its request, the Union sought certified payroll records allegedly filed with the SPRP by PDQ Contractors, Inc. (PDQ), a DOE subcontractor, as well as copies of the applicable prevailing wage determination established by the Department of Labor for the pipefitter craft and the surety bond for the project filed by the general contractor, Boeing Petroleum Services, Inc. (Boeing). The Authorizing Official released the wage determination and surety bond information, but indicated that the payroll records were in the possession of Boeing, not the SPRP. In its Appeal, the Union contended that because PDQ allegedly must file its payroll records with the SPRP as a matter of federal law, those records are necessarily "agency records." In considering the Appeal, the DOE determined that the payroll records do not qualify as "agency records" under the FOIA because Boeing is not an "agency." In addition, the payroll records do not qualify as "agency records" because the SPRP did not create them or obtain them from Boeing. In this regard, the DOE found that under the Service Contract Act, 41 U.S.C. 351 *et seq.*, as implemented by the Department of Labor in 29 CFR Part 4, PDQ is not legally obligated to file its payroll records. Accordingly, the DOE denied the Union's Appeal.

Request for Exception

Ed Flood Oil Company, Inc., 2/18/86, KEE-0006

Ed Flood Oil Company, Inc. filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering the applicant's request, the DOE found that the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file Form EIA-782B. Accordingly, exception relief was denied to the firm.

Request for Modification and/or Rescission

Economic Regulatory Administration, 2/18/86, KRR-0005

The Economic Regulatory Adminstration (ERA) filed a Request for a Supplemental Order following the issuance of a Remedial Order (RO) to Oil-Tex Petroleum, Inc. and David E. Myres. *Oil-Tex Petroleum Inc.*, 13 DOE ¶ 83,055 (1985) (*Oil-Tex*). In its Request, the ERA asked the Office of Hearings and Appeals (OHA) to (i) clarify the factual findings of the *Oil-Tex* Decision, and (ii) find permissible average markup (PAM) violations for certain crude oil resale transactions for which there were no allegations of layering violations in the PRO. OHA provided the clarification. In addition, OHA determined that no further PAM violations should be found, but that Oil-Tex should be granted credit for general and administrative expenses with regard to those PAM violations which had been found in the Remedial Order. Accordingly, the PRO was modified to credit Oil-Tex with such expenses.

Refund Applications

Conoco, Inc./Zephyr, Inc., 2/20/86, FR220-0008

The Department of Energy issued a Decision and Order concerning the Application for Refund filed by Zephyr, Inc., a reseller of Conoco petroleum products. The firm's claim fell below the $5,000 threshold for small claims set forth in *Conoco, Inc.*, 13 DOE ¶ 85,316 (1985). In considering this application, the DOE concluded that Zephyr should receive a refund of $5,060, including accrued interest.

Consumers Power Company, 2/19/86, RF171-30

Consumer Power Company obtained a mandatory court order requiring the DOE to disburse $23,688,509.80 in "entitlements receive order" funds to the firm. Those funds were being held in escrow by the DOE on behalf of the firm after approval of its claim in *Amber Refining Inc.*, 13 DOE ¶ 85,217, 50 FR 41572 (1985). The present order directs immediate payment of those funds.

Gulf Oil Corporation, Agway Petroleum Company et al., 2/20/86, RF40-00275 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed by retailers and resellers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $42,527, consisting of $36,030 in principal and $6,497 in interest, based on a total purchase volume of 29,531,773 gallons of Gulf petroleum products.

Gulf Oil Corp./E.I. du Pont de Nemours and Company, 2/18/86, FR40-808

The DOE issued a Decision and Order concerning an Application for Refund filed by E.I. du Pont de Nemours and Company in the Gulf Oil Corporation special refund proceeding. The firm filed a claim as an end-user of various petroleum products purchased from Gulf during the consent order period (August 19, 1973 through January 31, 1976). In its application, Du Pont based its claim in part on purchases of an NGL mixture consisting of ethane and propane. However, after determining the ethane was not price-regulated after March 31, 1974, OHA excluded gallons of ethane purchased after this date from the firm's refund claim. The resulting award granted to Du Pont was $612,365, consisting of $518,809 in principal and $93,556 in interest.

Gulf Oil Corporation/S&H Gulf Service Center et al., 2/21/86, RF40-129 et al.

The DOE issued a Decision granting refunds from the Gulf Oil Corporation consent order escrow fund to 29 purchasers of Gulf refined petroleum products. Each refund applicant had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. The total amount of refunds granted was $29,456, consisting of $24,954 in principal and $4,502 in interest.

Little America Refining Company/Metro Oil Products, Inc. et al., 2/20/86, RF112-12 et al.

The Doe issued a Decision and Order concerning six Applications for Refund filed by purchasers of products covered by a consent order the agency entered into with

Little America Refining Company (Larco). Based on cost bank evidence submitted by each of the firms, and the finding by the DOE in an earlier Decision that direct purchasers from Larco were generally charged higher than market prices, the DOE concluded that the applicants were injured. Therefore, the DOE granted each firm a refund comprising its full volumetric share plus its share of interest accrued on the Larco deposit fund escrow account. The refunds granted in this proceeding total $80,945 in principal and $39,319 in interest.

Mobil Oil Corporation/County of Burlington, 2/18/86, FR225-0040

The Doe issued a Decision and Order concerning an Application for Refund filed by the County of Burlington, New Jersey, an end-user of Mobil motor gasoline who purchased the product directly from Mobil. The claimant applied for a refund based on the productures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). After examining the evidence and supporting documentation submitted by the applicant, the DOE concluded that the county should receive a total of $498 ($420 principal plus $78 interest) based upon a total volume of 1,081,440 gallons of Mobil gasoline purchases.

Pennzoil Co./Puerto Rico, Pennzoil Co./Louisiana, 2/20/86, RQ10-245; *RQ10-266*

The DOE issued a Decision and Order approving the second-stage refund plan of Puerto Rico and rejecting Louisiana's plan, both intended for use of funds from the Pennzoil Co. escrow account. Puerto Rico plans to use $3,717 for the publication and distribution of residential energy conservation brochures. Because of pending litigation, however, the OHA cannot currently disburse second-stage Pennzoil funds, and approval of the plan is contingent upon the DOE's success in this litigation. The DOE found that the State of Louisiana's plan provided insufficient restitution to injured consumers of Pennzoil products, and will permit Louisiana to submit a revised plan for use of these funds.

Texas Oil and Gas Corporation/Mobil Oil Corporation, 2/18/86, RF 29-3

Mobil Oil Corporation (Mobil) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Texas Oil and Gas Corporation (TOGCO). The DOE found that Mobil paid above-market average prices for the propane, isobutane, normal butane and natural gasoline it purchased from TOGCO during most of the quarters of the TOGCO consent order period. Using a three-step competitive disadvantage methodology, the DOE calculated a range of Mobil's competitive disadvantage. A refund of $1,504,688 was found to equitably compensate Mobil for the harm experienced as a result of TOGCO's alleged overcharges. In addition, the firm received accrued interest of $1,166,730 for a total refund of $2,671,418.

Vickers Energy Corp./Illinois, Arkansas, Oklahoma, Coline, Gasoline Corp./Connecticut, National Helium Corp./Connecticut, Rhode Island, Palo Pinto Oil and Gas/Connecticut, Belridge Oil Co./Connecticut, Perry Gas Processors/Connecticut, 2/20/86, RQ1-194; RQ1-200; RQ3-209; RQ2-239; RQ3-240; RQ5-241; RQ8-242; RQ183-243; RQ1-256

The States of Illinois, Arkansas, Rhode Island, Connecticut and Oklahoma filed second-stage refund plans for funds remitted to the DOE under consent orders with Vickers Energy Corp., National Helium Corp., Coline Gasoline Corp., Palo Pinto Oil and Gas, Perry Gas Processors and Belridge Oil Co. The OHA approved Illinois' proposed refund plan to use $2,954 allotted to it from the Vickers' escrow account to supplement funds for the Illinois Alternative Transportation Fuel Program. The disbursement of $1,180, also from the Vickers escrow account, was approved for Arkansas to promote the state's energy conservation programs. Rhode Island's proposed refund plan to use $72,342 from the National Helium escrow account for detection of leaking underground fuel storage tanks and other environment-related programs was denied. The OHA approved a disbursement of $170,471 to Connecticut from the Coline, National Helium, Perry Gas, Palo Pinto, and Belridge escrow accounts. Connecticut's approved plans include a ridesharing marketing and promotional program and an improved transportation for the handicapped program. Finally, the OHA partially approved Oklahoma's proposed refund plans to expand the state's low income weatherization program as well as its low income home energy assistance program. Oklahoma's plan to provide transportation for the mentally retarded, implement a public building energy conservation demonstration project and to implement a technical assistance program for each of the poorest one-third of the Oklahoma school districts were denied.

Dismissals

The following submissions were dismissed:

Name and Case No.

C. N. Brown Company—RF40-550
Eastern Oil Company—HEA-0013

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room IE-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-5964 Filed 3-18-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2987-5]

Extension of the Public Comment Periods on the Notices of Intent To List Trichloroethylene and Perchloroethylene as Potentially Toxic Air Pollutants

AGENCY: Environmental Protection Agency.

ACTION: Extension of the public comment period.

SUMMARY: This notice extends the public comment periods provided in EPA's Notice of Intent to List Trichloroethylene (TCE) and Notice of Intent to List Perchloroethylene (PERC) under section 112 of the Clean Air Act published on December 23, 1985 (50 FR 52422) and December 26, 1985 (50 FR 52880) for TCE and PERC, respectively. Clarification notices for each of these chemicals were published in the Federal Register March 5, 1986 (51 FR 7714 and 7718). These notices described the results of EPA's preliminary assessment of TCE and PERC as potentially toxic air pollutants and announced EPA's intent to add TCE and PERC to the section 12(b)(1)(A) list based on the health and risk assessments. In response to the 60-day public comment period provided in the notices, requests were submitted for extensions of the public comment periods. For this reason the public comment periods have been extended for 30 days from today's date and will not close on [April 18, 1986] for both chemicals.

FOR FURTHER INFORMATION CONTACT: John Vandenberg, (919) 541-5519.

Dated: March 13, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-5974 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-439, FRL-2985-5]

Withdrawal of Pesticide Tolerance Petitions; American Cyanamid Co.

AGENCY: Environmental Protection Agency (WPA).

ACTION: Notice.

SUMMARY: This notice announces the withdrawal by American Cyanamid Co., of pesticide tolerance petitions for residues of the insecticide flucythrinate in on certain commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-439] and the petition

number, attention Product Manager (PM-15), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm 236 CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT:

By mail: George T. LaRocca, (PM-15), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (702-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued notice cited below, which announced filing of petitions by the American Cyanamid Co., P.O. Box 400 Princeton, NJ 08540 proposing tolerances for flucythrinate ((±) cyano(-phenoxphenyl) methyl(±)-4-(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate) in or on certain commodities as follows:

Petition ID	Pub. date (FR citation)	CFR affected	Commodities	Parts per million
PP 4F3077	June 27, 1984 (49 FR 28287).	40 CFR 180.400	Tomatoes	0.2
FAP 4H5431	do	21 CFR 561.435	Tomato pomace (dry)	10.5
			Tomato pomace (wet)	1.5
PP 4F3099	August 1, 1984 (49 FR 30789).	40 CFR 180.400	Potato tubers	0.05
PP 4F3102	do	do	Soybean seed	0.05
FAP 4H5435	do	21 CFR 561.435	Soybean oil, refined	0.10

American Cyanamid Co. has withdrawn these petitions without prejudice to future filing in accordance with 40 CFR 180.8.

Authority: 21 U.S.C. 346a and 348.

Dated: February 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR. Doc. 85-5757 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-442, FRL-2985-6]

Pesticide Tolerance Petitions; Ciba Giegy Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for cyromazine in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-442] and the petition number, attention Product Manager (PM-17), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy A. Gardner, (PM-17), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP), from Ciba Giegy Corp., Agricultural Divison, P.O. Box 18300, Greensboro, NC 27419, proposing to amend 40 CFR 180.414 by establishing tolerances for the combined residues of the insecticide cyromazine, *N*-cyclo-propyl-1,3,5-triazine-2,4,6-triamine plus its major metabolite, melamine, 1,3,5-triazine-2,4-6-triamine, calculated as cyromazine in or on the commodities as follows:

Petition identity	Commodities	Parts per million (ppm)
PP 6F3329	Carrots	3.0
PP 6F3332	Sweet corn, fodder and forage	0.50
	Meat, fat, and meat byproducts, kidney and liver.	0.05
	Milk	0.01
	Radishes	0.50
PP 6F3333	Tomatoes	1.0
PP 6F3342	Peppers	2.0

The proposed analytical method for determining residues is identified as AC-408, using high pressure liquid chromatography and an ultra violet detector.

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

Dated: February 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-5758 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-440, FRL-2982-5]

Pesticide Tolerance Petitions; Dow Chemical, U.S.A.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for chlorpyrifos in or on certain agricultural commodities.

ADDRESS: By mail, submit commnents identified by the document control number [PE-440] and the petition number, attention Product Manager

(PM-12), at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, (PM-12), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460 Office location and telephone number: Room 202, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP), from Dow Chemical U.S.A. P.O. Box 1706, Midland, MI 48640, proposing to amend 40 CFR 180.342 by establishing tolerances for the combined residues of the insecticide chlorprifos [*O,O*-diethyly *O*-(3,5,6-trichloro-2-pyridylphosphorothioate] and its metabolite 3,5,6,-trichloro-2-pyridinol in or on the commodities as follows:

Petition Identity	Commodities	Parts per million (ppm)
PP 6F3356	Apricots	0.05 ppm (of which no more than 0.01 ppm is chlorpyrifos)
PP 6F3357	Nectarines	0.5.
	Plums (including fresh prunes).	0.2.
PP 6F3358	Pears	1.0 ppm (of which no more than 0.5 ppm is chlorpyrifos).

The proposed analytical method for determining residues is gas liquid chromatography using the Cowson conductivity detector specific for nitrogen.

Authority: 21 U.S.C. 346a.
Dated: March 5, 1986.

Douglas D. Campt,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-5495 Filed 3-15-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-431, FRL-2985-4]

Pesticide Tolerance Petitions; Methyl Bromide Industry Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and food additive petitions relating to the establishment of tolerances for methyl bromide in or on certain commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-431] and the petition number, attention Product Manager (PM-32), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail: Arturo Castillo, (PM-32), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 303, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-3964).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and food additive petitions (FAP), from the Methyl Bromide Industry Panel, P.O. Box 2200, Highway 52 N.W., West Lafayette, IN 47906, relating to the establishment of tolerances for residues of the insecticide methyl bromide in or on certain agricultural commodities.

Initial Filings

1. *PP 5F3300.* The Methyl Bromide Industry Panel proposes amending 40 CFR Part 180 by establishing tolerances for residues of the insecticide methyl bromide as follows:

Crop group commodities	Parts per million (ppm)
Brassica (cole) leafy vegetables	0.1
Bulb vegetables	0.1
Cereal grains (except corn)	0.3
Citrus fruits	1.0
Curcubit vegetables (except melons)	0.1
Fruiting vegetables (except curcubits)	0.1
Herbs and spices	0.2
Legume vegetables (succulent or dried)	0.5
Pome fruits	0.2
Root and tuber vegetables	0.1
Small fruits and berries	0.1
Stone fruits	0.1
Tree nuts	2.0

Individual commodities	Parts per million (ppm)
Corn	2.0
Green cocoa beans	5.0
Green coffee beans	1.0
Melons	0.5

The proposed analytical method for determining residues is rapid head space assay for methyl bromide.

2. *FAP 6H5485.* The Methyl Bromide Industry Panel proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the insecticide methyl bromide in or on the commodities as follows:

Commodities	Parts per million (ppm)
Apricots	0.4
Candy bars	1.0
Cheese	2.0
Ham	2.0
Raisins	0.4
Sugar	0.1

Authority: 21 U.S.C. 346a and 348.
Dated: February 28, 1986.

James W. Akerman,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-5759 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-441, FRL-2986-9]

Pesticide Tolerance Petitions; Mobay Chemical Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESSES: By mail, submit comments identified by the document control number [PF-441] and the petition number, attention Product Manager (PM-16), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT:

By mail: William Miller (PM-16), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 211, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) and feed and food additive petitions (FAP) relating to the establishment of tolerance for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 6F3373.* Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120. Proposes amending 40 CFR 180.330 by establishing tolerances for the combined residues of the insecticide *S*-[2-(ethylsulfinyl)-ethyl] *O,O*-dimethyl phosphorothioate and its cholinesterase-inhibiting metabolites in or on poultry fat, meat, and meat byproducts (mbyp) at 0.01 part per million (ppm); and increasing the established tolerance in or on grapes from 0.1 ppm to 1.0 ppm. The proposed analytical method for determining residues is a gas chromatographic procedure utilizing a phosphorous sensitive detector.

2. *FAP 6H5498.* Mobay Chemical Corp. Proposes amending 21 CFR Part 193 (food) and § 561.234 (feed) by establishing regulations permitting residues of the insecticide designated in PP 6F3373 above in or on the commodities as follows:

CFR affected	Commodity	PPM
21 CFR Part 193	Raisins	2.5
21 CFR 561.234	Raisin waste	10.0

3. *PP 6F3364.* FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180.173 by increasing the established tolerance for residues of the insecticide ethion (*O,O,O,O'*-tetraethyl *S,'*-methylene bisphosphorodithioate) including its oxygen analog (*S,S'*-[[(diethoxyphosphinothioyl)thio]methyl] *O,O*-diethyl phosphorothioate) in or on the commodities as follows:

Commodities	PPM	
	From	To
Apples	2.0	4.0
Citrus fruits	2.0	5.0
Grapes	2.0	6.0
Pears	2.0	4.0

The proposed analytical method for determining residues is a gas chromatographic method utilizing a nitrogen-phosphorous detector.

5. *FAP 6H5494.* FMC Corp. Proposes amending 21 CFR 193.190 and 561.230 by establishing and/or increasing regulations permitting residues of the insecticide designated in PP 6F3364 above in or on the commodities as follows:

CFR affected	Commodity	PPM	
		From	To
21 CFR 193.190.	Citrus oil		55.0
	Raisins	4.0	18.0
21 CFR 561.234.	Apple pomace (dry)		55.0
	Citrus pulp (dehydrated)	10.0	25.0
	Raisin waste		65.0

Authority: 21 U.S.C. 346a and 348.

Dated: March 11, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-5882 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-437, (FRL-2982-7)]

Pesticide Tolerance Petitions; Pennwalt Corp., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-437] and the petition number, attention Product Manager (PM-21), at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, (PM-21), Registration Division (TS-767C),

Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), feed, and food additive petitions (FAP), relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filings

1. *PP 6F3343.* Pennwalt Corp., Agchem Division, 3 Partway, Philadelphia, PA 19102. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the fungicide thiophanate-methyl(dimethy[(1,2-phenylene)-bis (iminocarbonothioyl)] bis[carbamate]), its oxygen analogue, dimethy1-4,4-0-phenylene bis (allophanate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on the agricultural commodities grapes at 10.0 parts per million (ppm), rice at 5.0 ppm, and rice straw at 15.0 ppm. The proposed analytical method for determining residues is ultraviolet spectrophotometry for thiophanate-methyl-high pressure liquid chromatography-allophanate.

2. *FAP 6H5486.* Pennwalt Corp. Proposes amending 21 CFR Part 561 by establishing regulations permitting residues of the above mentioned fungicide in or on the commodities as follows:

Commodities	PPM
Grape pomace, dried	125.0
Raisins	50.0
Raisin waste	125.0
Rice hulls	20.0

3. *PP 6F3355.* Merck & Co. Inc., P.O. Box 2000–WBD–360, Rahway, NJ 07065. Proposes amending 40 CFR 180.242(a) by establishing tolerances for the residues of the fungicide thiabenazole (2-(4-thiazolyl) benzimidazole in or on the commodities peanuts at 0.1 ppm, and peanut hulls at 2.0 ppm.

The proposed analytical method for determining residues is spectrophotoflurometry.

4. *PP 6F3362.* Ciba Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. Proposes amending 40 CFR 180.408 by establishing a tolerance for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) ananine methyl ester], and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine methyl ester each expressed as metalaxyl in or on the commodity grapes at 2.0 ppm. The proposed analytical method for determining residues is gas chromatography using a nitrogen/phosphorus detector.

5. *FAP 6H5493.* Ciba Geigy Corp. Proposes amending 21 CFR 193.277 (food) and 561.273 (feed) by establishing regulations permitting residues of the above fungicide (I. 4) in or on the commodities as follows:

CFR affected	Commodities	PPM
21 CFR 193.277	Grape juice	2.0
	Grape wine	2.0
	Raisins	6.0
21 CFR 561.273	Grape pomace dry	6.0
21 CFR 561.273	Grape pomace wet	3.0
	Raisin waste	9.0

6. *PP 6F3372.* Uniroyal Chemical Co., Inc., 76 Amity Rd., Bethany, CT 06525. Proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of the fungicide triflumizole 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole and its aniline containing metabolites 4-chloro-2-trifluoromethylaniline and *N*-(4-chloro-2-trifluoromethylphenyl)-propoxyacetamide in or on the agricultural commodities as follows:

Commodities	PPM
Apples	0.1
Cattle, fat, meat and meat byproducts (mbyp)	0.05
Grapes	0.3
Hogs, fat, meat and mbyp	0.05
Milk	0.05
Pears	0.1
Poultry, eggs, fat, meat and mbyp	0.05

The proposed analytical method for determining residues is chromatography and mass spectroscopy.

7. *FAP 6H5497.* Uniroyal Chemical Co., Inc. Proposes amending 21 CFR Part 193 by establishing a regulation permitting the combined residues of the above fungicide (I. 6) in or on the agricultural commodities as follows:

Commodities	PPM
Apples, dried	3.0
Apple pomace, dry	1.0
Apple pomace, wet	3.0
Grape juice	1.0
Grape pomace, dry	1.0
Grape pomace, wet	4.0
Raisins	1.0
Raisin waste	2.0

II. Amended Petition

FAP 5H5449. EPA issued a notice, published in the **Federal Register** of December 12, 1984 (49 FR 48374), which announced that E.I. Du Pont De Nemours & Co., Inc., Walker's Mill, Barley Mill Plaza, Wilmington, DE 19898 proposed amending 21 CFR part 561 by establishing a regulation permitting residues of the fungicide bis(4-fluorophenyl)methyl(1*H*-1,2,4-triazol-1-ylmethyl)silane in or on apple pomace at 1.5 ppm.

E.I. Du Pont De Nemours & Co., Inc., has amended the petition by revising the chemical name to read "1=[[Bis(4-fluorophenyl)methylsilyl] methyl]-1*H*-1,2,4-triazole" in or on apple pomace at 1.5 ppm.

Authority: 21 U.S.C. 346a and 348.

Dated: March 5, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–5496 Filed 3–18–86; 8:45 am]

BILLING CODE 6560–50–M

[PF–443, FRL–2987–1]

Pesticide Tolerance Petitions; Rhone-Poulenc Inc. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–443] and the petition number, attention Product Manager (PM–21), at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this

notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Henry Jacoby (PM-21), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP), feed and food additive petitions (FAP), relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 6F3366.* Rhone-Poulenc Inc., P O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.399 by establishing a tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the raw agricultural commodity potatoes at 0.5 part per million (ppm). The proposed analytical method for determining residues is gas chromatography with an Ni^{63} electron capture detector.

2. *FAP 6H5496.* Rhone-Poulenc Inc. Proposes amending 21 CFR 193.253 by establishing regulations permitting residues of the fungicide iprodione in or on the commodity potato chips and dried flakes at 2.5 ppm.

3. *FAP 6H5495.* Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL 60611. Proposes amending 21 CFR Parts 193 and 561 by establishing regulations permitting the combined residues of the fungicide *O,O*-dimethyl *O*-(2,6-dichloro-4-methylphenyl) phosphorothioate and its metabolites *O,O*-dimethyl *O*-(2,6-dichloro-4-methylphenyl)phosphate and 2,6-dichloro-4-methylphenol in or on the following commodities:

CFR Part affected	Commodities	PPM
21CFR Part 193	Cottonseed crude oil	0.04
	Cottonseed refined oil	0.04
	Peanut crude oil	0.03
	Peanut refined oil	0.03
21 CFR Part 561	Cottonseed hulls	0.01
	Cottonseed soapstock	0.04
	Peanut meal	0.01
	Peanut soapstock	0.03

Authority: 21 U.S.C. 346a and 348.
Dated: March 11, 1986.

Douglas D. Campt,
Director, Registration Division, Office of Pesticide Programs.

[FR. Doc. 85-5883 Filed 3-18-86; 8:45 am]
BILLING CODE 6560-50-M

[OPP-36105; FRL-2987-7]

M-44 Sodium Cyanide Capsules; Hearing and Proposed Modification of Order

AGENCY: Environmental Protection Agency.

ACTION: Notice of Hearing and Notice of Intent to Modify Order.

SUMMARY: In 1972, EPA prohibited the use of sodium cyanide to control predators, in part, because of the adverse effects of this pesticide on nontarget species. In 1975, EPA modified that decision to permit use of sodium cyanide in a spring-loaded ejector device known as the "M-44" to control certain wild canid predators, subject to a number of restrictions. These restrictions include one which prohibits the use of M-44's in wildlife refuges, national wilderness, State and Federal parks, and similar areas. M-44's were subsequently registered for use in accordance with the 1975 decision.

The U.S. Department of the Interior (USDI) has requested that EPA amend the registration of M-44's to permit control of wild predators on Federally designated threatened or endangered species at sites where the use of M-44's is currently prohibited by the 1975 order. Under EPA regulations, this application may be approved only if EPA finds that there may be "substantial new evidence" to warrant the change and then holds an adjudicatory hearing to consider the evidence. EPA finds that USDI's request, which includes information showing that wild canids kill endangered whooping cranes and Mississippi sandhill cranes in National Wildlife Refuges, contain "substantial new evidence." Accordingly, this notice announces that EPA will hold a hearing to determine whether this proposed change may be approved.

Additionally, USDI has requested modification of 10 other restrictions contained in the 1975 order to allow for more efficient use of sodium cyanide in predator control. EPA has determined that USDI has presented a persuasive justification for making these changes. These proposed changes range from eliminating the limits on the density of M-44's in the field to reducing the frequency of checking M-44's from weekly to once every 4 weeks. Although EPA rules do not require a hearing on these proposed changes, EPA will hold a hearing if any person who may be adversely affected by the proposed action requests a hearing. Interested persons may also submit comments on the proposed changes. If no hearing is requested on any of the 10 proposed changes, EPA will review any public comments and issue a final order with respect to those proposed changes.

DATES: Notices indicating an intention to participate in the hearing on whether to allow use of the M-44 to protect endangered/threatened species in areas where such use is currently prohibited must be filed by April 18, 1986. In addition, persons who may be adversely affected by the proposal to modify the 10 additional restrictions may, by April 18, 1986, (1) submit written comments and/or (2) request that one or more of the 10 proposed modified restrictions be considered in the adjudicatory hearing. Procedures for submitting comments and requesting a hearing are explained below in unit IV of this notice. If no adversely affected person requests a hearing by April 18, 1986, that any of these 10 proposed changes be considered in the Subpart D hearing, the Agency will schedule a hearing limited to consideration only of the proposed restriction on the sites where M-44 sodium cyanide capsules are permitted to be used. As for the other 10 modifications, EPA will issue a Final Order which reflects the Agency's conclusions on these proposed changes after taking into account any comments received. The Agency will subsequently publish a notice in the **Federal Register** announcing the hearing data and the effective date for any of the modifications for which a hearing was not requested. Any request to expand the adjudicatory hearing to include one or more of the proposed modifications must specify which modification(s) is to be included.

ADDRESS: Addresses given below are for where to send requests to participate in the hearing, requests to include one or more of the proposed modifications in the adjudicatory hearing, and comments on the proposed modifications. Specific procedures are described in detail in Unit IV of this notice.

A. Requests to participate in the hearing or to include one or more of the 10 proposed modified restrictions in the adjudicatory hearing will be addressed to: Ms. Bessie Hammiel, Hearing Clerk

(A-110), Rm. 3708, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

B. Address written comments, identified by the document control number [OPP-36105], to:

Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, Cm #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

All written comments, as well as published reports, letters, and other documents cited in this notice, will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Agency recommends that persons wishing to review comments or documents contact Ms. Frances Mann (703-557-3262), in advance, to schedule a time to view the available material.

FOR FURTHER INFORMATION CONTACT:

By mail: Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: This notice is arranged in four units. Unit I discusses the regulatory history of sodium cyanide and provides a chronology of past actions.

Unit II lists the modifications proposed by the Fish and Wildlife Service (FWS) of the United States Department of the Interior (USDI) and provides the rationale for proposed changes.

Unit III provides the Agency's determinations regarding the 11 modifications proposed by USDI. Briefly, EPA has determined that one of the 11 changes is subject to the requirements in Subpart D of 40 CFR Part 164 (§§ 164.130-164.133, herein after called Subpart D). These rules generally prohibit the Agency from authorizing the use of a previously cancelled pesticide, such as sodium cyanide, at a site where such use has been prohibited, unless the Agency finds there is "substantial new evidence" which may warrant holding a hearing to reconsider the previous cancellation. EPA has determined, with respect to the proposed change covered by Subpart D, that such evidence exists and accordingly will hold a hearing to consider this proposal. EPA has further determined that the other 10 changes proposed by USDI are not subject to Subpart D. EPA, however, will expand the Subpart D hearing to address any of the 10 USDI proposals if a person who would be adversely affected by the change requests that it be considered in the hearing. Interested persons are also permitted to comment on the 10 proposed changes. Finally, EPA has determined that if no comments are submitted and no one requests a hearing on one or more of the proposed changes, EPA will approve the change.

Finally, unit IV explains the procedures by which EPA will implement and/or consider the proposed changes.

I. Background, Findings, and Opinion

A. 1972 Cancellation and Suspension Order

On March 9, 1972, the Agency issued notices and an order cancelling and suspending registrations of products for predator control containing sodium cyanide, as well as strychnine, 1080 (sodium fluoroacetate) and thallium sulfate—three other compounds used as predacides (PR Notices 72-2 and 72-3, published in the **Federal Register** of March 18, 1972 (37 FR 5718)). The order was not contested, nor was judicial review of the order sought. Accordingly, the order became final after 30 days.

The decision to ban these poisons was based, in part, on the findings of a special committee chaired by Dr. Stanley Cain, which the USDI and the President's Council on Environmental Quality had commissioned to study the use of chemical toxicants for predator control. The committee's findings dealt at length with the effects of the use of sodium cyanide, strychnine, and 1080 for predator control. The report points out the extreme toxicity of these compounds, their nonselectivity, and their potential impact on the environment, which "is increased by secondary hazard, accumulation in the animal, and combined characteristics of chemical stability and solubility in water." This report reconfirmed an earlier finding that the predator control program took a heavy environmental toll.

The Cain committee noted the absence of any meaningful information on the efficacy of poison baiting, especially in relation to the economic loss caused by predators to the sheep industry.

It was this and other available information which led to the Agency's conclusion that the hazards from the use of these chemicals were not counterbalanced by the benefits derived through their use, and ultimately to the decision to cancel the predator uses.

B. 1975 Registration of M-44 Cyanide Capsules

In July 1975, the Fish and Wildlife Service submitted an application to register sodium cyanide for use in the "M-44" to control coyotes and certain other predators. The M-44 is a spring-loaded device that ejects a lethal amount of sodium cyanide into the mouth of a coyote or other canine tugging on the device.

Regulations in Subpart D provide that an application for "use of a pesticide at a site and on a pest [that had] been finally cancelled or suspended" would be considered a petition for reconsideration of the prior cancellation decision (40 CFR 164.130). Under the Subpart D regulations, the Agency must determine whether the applicant submitted "substantial new evidence which may materially affect the prior cancellation" order and which "could not, through exercise of due diligence, have been discovered * * * prior to the issuance of the final order" (40 CFR 164.131(a)). If the Administrator finds that such evidence was presented, he then initiates a formal adjudicatory hearing, employing to the extent feasible the same procedures used in a cancellation hearing. *Id.* at 164.131(c). (If the Administrator concludes that there is no substantial new evidence, he denies the application. *Id.* at 164.131(b).)

As in other proceedings under FIFRA, the proponent of use bears the burden of proof in a reconsideration hearing (40 CFR 164.132(a)). Following the presentation of evidence and an Initial Decision by the presiding officer, the Administrator makes a Final Decision on whether to modify the previous cancellation order.

After reviewing the application for registration of the M-44, the Administrator determined that the FWS had presented sufficient information to warrant holding a reconsideration hearing under the Subpart D rules. Accordingly, pursuant to a notice published in the **Federal Register** of July 15, 1975 (40 FR 29755), EPA conducted public hearings on August 12-15, 1975, to reconsider the 1972 order cancelling the use of sodium cyanide for predator control. Following this hearing, on September 16, 1975, the Administrator modified the March 9, 1972 Order to allow registration of the M-44 Cyanide Capsules. A notice announcing this decision was published in the **Federal Register** on September 29, 1975 (40 FR 44726).

C. Previous Modifications to M-44 Cyanide Capsules Registration

Since 1975, EPA has received and approved two requests to modify some of the restrictions in the 1975 order. As explained below, neither of the requests was subject to the Subpart D rules because neither involved a proposal to use the M-44 at a site or on a pest that was currently prohibited. Rather, the requests affected other terms and conditions of the use of the M-44's.

Even though the Subpart D rules did not apply to these modifications, EPA designed its review procedures to recognize and implement the policy goals that led to promulgation of those rules. The Subpart D requirement to hold a public hearing before changing a prior cancellation or suspension order is designed to protect the procedural rights of affected persons. The hearing opportunities and other procedural protections afforded to such persons under FIFRA and the Administrative Procedure Act in connection with the original decision to cancel or suspend a pesticide registration would be rendered meaningless if similar procedural protections were not available in connection with a decision to modify or rescind a prior cancellation or suspension order. Likewise, the procedural safeguards established by Subpart D would be rendered meaningless if the order resulting from the Subpart D hearing were subsequently modified without providing similar procedural protections to persons who might be adversely affected by such modification. Therefore, an opportunity to request a public hearing was provided in connection with the proposed modifications of the restrictions.

Following this policy, the Agency announced in the **Federal Register** of March 22, 1976 (41 FR 11871) a proposal to modify Restriction Number 22(24) [1] the restriction pertaining to the antidote kit. The proposal to modify the restriction resulted after the State of Montana pointed out that the antidote kits were expensive, a fact not presented at the public hearings in August 1975, which were held to reconsider the cancellation and suspension Order of 1972. Although expense alone was not sufficient reason to justify a modification, a reassessment of the human health considerations did permit the Agency to propose a modification of the restriction regarding the contents of the antidote kit by decreasing the number of perals of amyl nitrite from 12 to a minimum of 6 and deleting reference to antidote injections of sodium nitrite and sodium thiosulfate. After receiving no comments or requests for a formal hearing, the Agency announced in the **Federal Register** of May 27, 1976 (41 FR 21690), that it had amended the restriction.

Similarly, in the **Federal Register** of February 10, 1977 (42 FR 8406), the Agency announced a proposal to modify Restrictions 18(3) and 20(4) to allow use of M-44 Sodium Cyanide Capsules by Indian Governing Authorities. The original restrictions contained wording which, in effect, did not permit the governing authorities of Indian reservations not subject to State jurisdiction to be eligible registrants of sodium cyanide capsules to be used in the M-44 device. The Navajo Nation informed the Agency of certain facts not presented at the public hearings in August 1975. In particular, Federal law and treaties between the Navajo Nation and the United States provide that there shall be no State jurisdiction over the Navajo reservation and that lands subject to Navajo authority are not under the direct control of the Federal Government. After receiving no comments on the proposed modification or requests for a formal hearing, this modification became effective on March 15, 1977 (42 FR 8406).

D. Emergency Use of M-44's to Protect Threatened/Endangered Wildlife

Specific exemptions under the provisions of section 18 of FIFRA have been granted to USDI since 1977 for the use of sodium cyanide in M-44 devices to protect the endangered whooping crane against predators in Gray's Lake National Wildlife Refuge in Idaho.

Specific exemptions were also granted to USDI during the years of 1977 to 1982 for the use of sodium cyanide in M-44 devices to protect the endangered Aleutian Canada goose against the Arctic fox at Agattu Island, which is part of the Alaska Maritime National Wildlife Refuge.

In accordance with Subpart D procedures, these requests for specific exemptions constituted petitions for reconsideration of the September 16, 1975 Order, which prohibited use of sodium cyanide in wildlife refuge areas (restriction Numer 5 in the Administrator's Order and Number 8 in the product label). Additionally, the requests were for control of wild canids suspected of preying on a Federally designated endangered species, i.e., the whooping crane and the Aleutian Canada goose, whereas the Order permits the use of sodium cyanide only to control wild canids suspected of preying on livestock and poultry (restriction Number 2 in the Administrator's Order and Number 5 in the product label).

The Agency granted these exemptions after determining that an emergency condition did in fact exist and that the criteria which provide for an emergency waiver of hearing had been met (40 CFR 164.133).

In addition to receiving a specific exemption in May 1985 to use sodium cyanide to protect the whooping crane at the Gray's Lake site, USDI also requested and received a specific exemption to allow the use of M-44 sodium cyanide capsules in the M-44 device in the Mississippi Sandhill Crane National Wildlife Refuge to protect the endangered Mississippi sandhill crane against predators. This is the first year that this use was requested at the Mississippi Sandhill Crane National Wildlife Refuge. This exemption was granted in accordance with Subpart D procedures as described above.

E. Current Applications

On July 6, 1984, FWS submitted an application to amend its registration by modification of 10 use restrictions imposed by the Order dated September 16, 1975, and published in the **Federal Register** of September 29, 1975 (40 FR 44726), regarding registration of M-44 sodium cyanide capsules for use in predator control. USDI subsequently requested another modification on July 18, 1985. The restrictions affected by the requested modifications are described in detail in Unit II of this Notice.

II. Proposed Modifications

The following paragraphs set out the current wording for each of the 11 restrictions which FWS has asked EPA to modify, the wording of the revision proposed by FWS, and the rationale offered by FWS for these proposed changes. The proposed changes are based on practical considerations that have become clear after 10 years of using the M-44 in the field. In 1975, when EPA established the initial 26 use restrictions for M-44's, it was not possible to foresee the need for these changes.

The rationales below summarize the facts and explanations presented by USDI in support of the proposed changes. Some of the material USDI uses to support the proposed changes are specifically named in the rationale discussion below. The materials that were utilized included USDI's requests for specific exemptions, final reports submitted by USDI in connection with

[1] The numbers identify the restriction numbers given in the Final Order and in the product label. The number in parentheses corresponds to the product label restriction number.

past use under specific exemptions, a 1981 Environmental Assessment by USDI of the proposed use of the M-44 at Grays Lake, a draft paper entitled "The Whooping Crane Recovery Program: The Role of Animal Damage Control," as well as other correspondence and conversations between USDI and EPA Personel.

A. Restriction Number 2(5)

Current wording:

The M-44 device shall be used only to take wild canids suspected of preying upon livestock and poultry.

Proposed change:

The M-44 device shall only be used to take wild canids suspected of preying on livestock, poultry or federally designated threatened or endangered species.

USDI rationale:

As result of this change, USDI expects to be able to take action more promptly to protect threatened or endangered species, in accordance with their responsibility under the Endangered Species Act (16 U.S.C. 1531-1543). USDI cites the results and information gained through the use of M-44 under section 18 of FIFRA to protect the endangered whooping crane at Gray's Lake National Wildlife Refuge (GLNWR) as support for this modification.

USDI has been involved in an effort to increase populations of the endangered whooping crane. One of the sites at which this project is being carried out is GLNWR. When the project was first originated, the coyote, now the major predator on cranes at GLNWR, was very scarce in this area. USDI believes that the coyote population was held in check by the use of 1080 in bait stations at the refuge because when the use of 1080 was discontinued in 1972, an increase in the coyote population followed. By 1977, it became apparent to USDI that coyote populations had increased sharply and that control measures would be necessary if the whooping crane program was to succeed. USDI found that control by trapping was difficult due to the terrain and land ownership patterns. Their greatest success in control came from shooting from a helicopter, but aerial gunning tended to disrupt the cranes and was expensive in terms of manpower and cost.

The use of sodium cyanide in the M-44 device has been authorized under emergency exemptions to protect the whooping crane against predators at GLNWR since late in 1977. USDI considers the use of M-44's to be a critical component of an integrated predator control program at this site. USDI claims that the success of efforts to increase the population of whooping cranes is evident from a comparison of the number of chicks fledged as a percentage of the eggs which hatched. USDI submitted a draft of a paper entitled "The Whooping Crane Recovery Program: The Role of Animal Damage Control" by R.C. Drewien, *et al.*, which showed that when M-44's were not used for the 3-year period of 1975 to 1977, 41 percent of the chicks fledged. The percentage fledged increased to 54 percent for the 3-year period of 1982 to 1984, when M-44's were being used. USDI considers the success of their efforts to be directly dependent on reducing predation. Since its first use at the Gray's Lake site, the M-44 has been responsible for taking 47 whooping crane predators (correspondence to EPA dated May 23, 1985.)

USDI also believes that the use of the M-44 under the specific exemption granted for use on Agattu Island to protect the Aleutian Canada goose was responsibile for taking the last Arctic fox on this island, thus eliminating the predation problem.

Based on the success of the use of M-44's at GLNWR and on Agattu Island, USDI requested and was granted the use of the device under an emergency exemption in May 1985 at the Mississippi Sandhill Crane National Wildlife Refuge to protect the endangered Mississippi sandhill crane.

In summary, USDI contends that there is a need for this use to continue at the above sites and that the M-44 would probably be useful at other sites to protect threatened or endangered species from predation.

B. Restriction Number 4(7)

Current wording:

The M-44 device shall only be used in instances where actual livestock losses due to predation by wild canids are occurring. M-44 devices may also be used prior to recurrence of seasonal depredation, but only when a chronic problem exists in a specific area. In each case, full documentation of livestock depredation, including evidence that such losses were caused by wild canids, will be required before application of the M-44 is undertaken.

Proposed change:

The M-44 device shall only be used in instances where losses due ot predation by wild canids are occurring or where losses can be reasonably expected to occur based upon prior experience of predation in a specific area. Full documentation of livestock depredation, including evidence that such losses were caused by wild canids, will be required before application of the M-44 is undertaken.

USDI rationale:

USDI proposes that this change is intended to simplify the language of the restriction. USDI does not expect that the actual use of the device will change under the proposed wording, but the intent will be clarified by deleting imprecise language such as "recurrence of seasonal depredation" and "chronic problems."

C. Restriction Number 5(8)

Current wording:

The M-44 device shall not be used in: (1) National or State Parks; (2) National or State Monuments; (3) Federally designated Wilderness areas; (4) Wildlife refuge areas; (5) areas within National forests or other Federal lands set aside for recreational use (6) Prairie dog towns; and (6) areas where exposure to the public and family and pets is probable.

Proposed change:

The M-44 device shall not be used: (1) In areas within National forests or other Federal lands set aside for recreational use, (2) areas where exposure to the public and family and pets is probable, (3) in prairie dog towns, or, (4) except for the protection of federally designated threatened or endangered species, in National or State Parks; National or State Monuments; Federally designated Wilderness areas; and wildlife refuge areas.

USDI rationale:

USDI has employed the use of the M-44 sodium cyanide capsules under specific exemptions since 1977 to protect the endangered whooping crane from wild canids at the Gray's Lake National Wildlife Refuge. USDI concludes from this experience that the M-44 is an effective, highly selective device which can be used safely in National wildlife refuges and similar areas. Data collected over the 8 years of use under the section 18 program at Gray's Lake National Wildlife Refuge indicate that 47 animals from the target species were taken while only nine nontarget animals (all crows) were killed (USDI correspondence to EPA dated May 23, 1985).

USDI considers the use of M-44 sodium cyanide capsules to be a critical component of an integrated predator control program to protect whooping crane eggs and chicks from mammalian predation at Gray's Lake National Wildlife Refuge. The success with this

program over the years prompted USDI to request the use of this device under a specific exemption at the Mississippi Sandhill Crane National Wildlife Refuge to protect the endangered Mississippi Sandhill Crane against wild canids.

There is a need to protect threatened and endangered species regardless of where they occur. The current restriction prohibits use of the M-44 on those lands where these species are most often found, such as National wildlife refuges and wilderness areas. USDI contends that unless this restriction is modified to allow use of the M-44 device on these areas where its use is currently restricted, one of the most effective methods of controlling predators of various threatened or endangered species would not be available on lands where such species are most likely to be found.

D. Restriction Number 10(15)

Current wording:

The maximum density of M-44's placed in any 100 acre pastureland area shall not exceed 10; and the density in any one square mile of open range shall not exceed 12.

Proposed change:

The density of M-44 devices shall, as a rule, be the minimum necessary to prevent or reduce losses:

USDI rationale:

Because USDI believes that the M-44 has been shown to be highly selective for canids, USDI contends that restrictions on the density of M-44 are not needed to protect nontarget wildlife. The present restriction limits the efficient and effective use of M-44's in some locations. USDI argues that prompt resolution of depredation problems occasionally requires placement of more than the number of devices allowed by the current restriction. USDI contends that conditions of terrain, vegetation, coyote density, or coyote movements may necessitate local placement of more devices.

E. Restriction Number 11(16)

Current wording:

The M-44 device may be placed in the vicinity of draw stations (livestock carcasses), provided, that no M-44 device shall be placed within 30 feet of a carcass; no more than 4 M-44 devices shall be placed per draw station; and no more than 3 draw stations shall be operated per square mile.

Proposed change:

No M-44 device shall be placed within thirty (30) feet of a livestock carcass used as a draw station.

USDI Rationale:

See USDI's rationale in Unit II D. above for Restriction Number 10(15).

F. Restriction Number 12(18)

Current wording:

M-44 devices shall be inspected at least once a week to check for interference or unusual conditions and shall be serviced as required.

Proposed change:

Each M-44 device shall be inspected by the applicator at least once every four (4) weeks to check for interference or unusual conditions and shall be serviced as required.

USDI rationale:

USDI states that weekly checks do little to protect nontarget animals or to ensure device safety since M-44's are traditionally used in areas where there is minimum exposure to people. In addition, USDI argues that frequent checks often require travel to remote areas and therefore are time consuming and expensive. Further, USDI notes that expended devices pose no danger.

G. Restriction Number 14(20)

Current wording:

An M-44 device shall be removed from an area if, after 30 days, there is no sign that a target predator has visited the site.

Proposed change:

An M-44 device shall be removed from an area if, after thirty (30) days, there is a cessation of predation due to target species unless documented prior experience indicates that a predator problem may recur during the 30 day period immediately ahead.

USDI rationale:

USDI proposes to modify this restriction to make it consistent with the proposed revision of Restriction Number 4(7), which would permit M-44 use where losses can reasonably be expected to occur based on prior experience of predation in a specific area.

H. Restriction Number 17(23)

Current wording:

Bilingual warning signs in English and Spanish shall be used in all areas containing M-44 devices. All such signs shall be removed when M-44 devices are removed.

a. Main entrances or commonly used access points to areas in which M-44 devices are set shall be posted with warning signs to alert the public to the toxic nature of the cyanide and to the danger to pets. Signs shall be inspected weekly to ensure their continued presence and ensure that they are conspicuous and legible.

b. An elevated sign shall be placed within 6 feet of each individual M-44 device warning persons not to handle the device.

Proposed change:

Bilingual warning signs in English and Spanish shall be used in all areas containing M-44 devices. All such signs shall be removed when M-44 devices are removed.

a. Main entrances or commonly used access points to areas in which M-44 devices are set shall be posted with warning signs to alert the public to the toxic nature of the cyanide and to the danger to pets. Signs shall be inspected at least once every four (4) weeks to ensure their continued presence and ensure that they are conspicuous and legible.

b. An elevated sign shall be placed within fifty (50) feet of each individual M-44 device warning persons not to handle the device.

USDI rationale:

USDI proposes to revise subparagraph (a) to require inspection of signs every 4 weeks to be consistent with Restriction Number 12(18). Based on its experience with M-44's since 1975, USDI believes that signs rarely need maintenance or replacement more often than once every 4 weeks. USDI also proposes to revise subparagraph (b) to provide for placement of a warning sign within 50 feet of a device. USDI reasons that a sign placed within 6 feet of a device works against its own purpose to keep people and animals away from M-44's because people (and perhaps domestic animals accompanying them) will approach dangerously close to the device in order to read the sign.

I. Restriction Number 19(26)

Current wording:

Each authorized M-44 applicator shall keep records dealing with the placement of the device and the results of each placement. Said records shall include, but need not be limited to:

1. The number of devices placed.
2. The location of each device placed.
3. The date of each placement, as well as the date of each inspection.

4. The number and location of devices which have been discharged and the apparent reason for each discharge.
5. Species of animals taken.
6. All accidents or injuries to humans or domestic animals.

Proposed change:

Each applicator shall keep records dealing with the placement of M-44 devices and the result of such placement. Such records shall include but need not be limited to:
1. The number of devices placed per ranch unit or allotment.
2. The general description of the ranch unit or allotment where placed.
3. The date of placement and removal.
4. The number and species of animals taken per ranch unit or allotment.
5. All accidents or injuries to humans or domestic animals.

USDI rationale:

USDI argues that the recordkeeping requirements it proposes to delete are unnecessary based on USDI's experience with M-44's since 1975. The Agency has considered that the wording "Location of each device placed * * *" to mean that detailed maps showing the location of each device must be maintained. Such maps have been maintained since 1975. However, USDI states that the devices can be easily located without the use of these maps. Similarly, USDI argues that records on "number and location of devices which have been discharged and the apparent reason for each discharge" are superfluous. Most discharges are caused by target animals that are taken, and therefore recorded as taken. Moreover, USDI states that when the units are discharged but animals are not found, field men can only speculate as to the reason for discharge. USDI argues that such speculation has no value in managing or regulating M-44 use.

J. Restriction Number 23(10)

Current wording:

One person other than the individual applicator shall have knowledge of the exact placement location of all M-44 devices in the field.

Proposed change:

One person other than the individual applicator shall have general knowledge of the location of M-44 devices in the field.

USDI rationale:

The current language creates excessive manpower costs by requiring two people to travel to each location where M-44's are set. Only rarely do M-44's have to be recovered by a person other than the individual who placed them. Such unusual situations are adequately covered by Restriction Number 17(23), which requires a warning sign at each location, and Restriction Number 19(26), which requires records of numbers of units on each ranch or land unit. These signs and records, together with supervisors', cooperators', and colleagues' knowledge of coyote behavior, local terrain, and logical M-44 use patterns, are sufficient for retrieval of the devices.

K. Restriction Number 25(11)

Current wording:

In areas where more than one governmental agency is authorized to place the M-44 devices, the agencies shall exchange placement information and other relevant facts to ensure that the maximum number of M-44's allowed is not exceeded.

Proposed change:

In areas where more than one government agency is authorized to place M-44 devices, the agencies shall exchange placement information and other relevant data.

USDI rationale:

USDI contends that this change is appropriate if restrictions on the density of M-44s are removed. See USDI's rationale in Unit II D. and E. above of Restriction Numbers 10(15) and 11(16).

III. EPA's Determinations

A. Applicability of Subpart D Rules to USDI's Applications

The 1984 USDI application proposes changes in 10 of the restrictions (Restriction Numbers 2(5), 4(7), 10(15), 11(16), 12(18), 14(20), 17(23), 19(26), 23(10), and 25(11)) on use of the M-44. None of those proposed changes would authorize use of the M-44 against a pest or on a site that is prohibited by a previous cancellation or suspension order. Hence, the requirements of the Subpart D rules do not apply to the 1984 USDI application.

The provisions of Subpart D do, however, apply to the 1985 FWS application which proposes modification of Restriction Number 5(8). This proposal seeks to expand the use of the M-44 to a site where use is prohibited under the September 1975 Order. As such, the regulations governing Subpart D require that the Agency treat this application to modify the restriction as a petition to reconsider its 1972 cancellation as modified by the September 1975 Order. The regulations state that if the Administrator finds that there is "substantial new evidence" which may warrant reconsideration of the prior order, he shall issue a notice announcing that the Agency will hold a hearing to examine the new evidence and to determine whether the order should be modified or reversed (40 CFR 164.131).

B. Substantial New Evidence Pertaining To Use of M-44's at New Sites

The EPA has reviewed the information submitted with the 1984 and 1985 USDI applications for registration and the requests for emergency exemptions described above as well as information available from other sources. EPA has determined that this information meets the standard of 40 CFR 164.131. Specifically, EPA finds that new evidence is available that suggests that the presence of coyotes and other wild canids on wildlife refuge lands poses a great obstacle to the success of increasing populations of endangered or threatened species in those areas, that the M-44 device is a highly selective means of predator control which minimizes disruption of the species being protected, and that the M-44 device is less costly and more effective than other control methods.

USDI is involved in an effort designed to increase populations of the endangered whooping crane. Gray's Lake National Wildlife Refuge (GLNWR) in Idaho is one of the areas where this effort is being made. When the project was first proposed in 1972, the coyote, now the major predator on cranes at GLNWR, was very scarce in this area. The whooping crane program experienced no serious problems from predators until 1975 when two eggs were lost and two chicks were suspected of being killed by predators. In 1977, it became apparent that coyote populations had increased sharply and that control measuers would be necessary if the whooping crane program were to succeed. Control by trapping was difficult owning to the terrain and land ownership patterns. The greatest success in control came from shooting from helicopter, but aerial gunning disrupted the cranes and was expensive in manpowr and cost.

The M-44 device, use of which has been authorized under emergency exemptions since 1977, has been a highly effective method of predator control at GLNWR. USDI considers the use of M-44's to be a critical component of an integrated predator control program at GLNWR. USDI believes its use could be beneficial in similar projects for endangered or threatened species. One example is the protection of the Mississippi Sandhill Crane at the

Mississippi Sandhill Crane National Wildlife Refuge where a problem similar to that at Gray's Lake is curently being experienced.

Because predators did not become a significant factor affecting endangered species until after 1975, the use of M-44's to control predators on wildlife refuge areas for the protection of threatened or endangered species was not considered in previous Agency action regarding use of sodium cyanide in 1972 and 1975.

The 1972 decision to suspend and cancel uses of sodium cyanide was based, in part, on the heavy environmental toll resulting from predator control use. With the registration in 1975 of the M-44 sodium cyanide capsules, this decision was modified, based in part on the demonstrated high selectivity on this control method. USDI has developed data under specific exemptions that have been authorized since 1977 for this use. These data further demonstrate that kills of nontarget species by the M-44 device are minimal. Specifically, during this time, 47 target animals and nine nontarget species (all crows) were killed during approximately 30,000 M-44 use nights at GLNWR (one M-44 left for 1 day is equivalent to one use night).

No human mishaps have occurred during the use of the M-44 under the emergency exemptions. The devices are placed in areas to which the public does not have access, or they are used only at times the areas are closed to public.

Upon consideration of the data and information presented, EPA concludes that there is substantial new evidence that may materially affect the prior decision regarding sodium cyanide use. Accordingly, EPA is directing that a public hearing be conducted. The issues in the hearing shall be whether substantial new evidence exists and whether such substantial new evidence requires further modification of the 1972 order.

C. Proposed Modifications Not Involving New Sites or Pests

EPA is persuaded by the information and rationales presented by USDI that each of the proposed changes for Restriction Numbers 2 (5), 4(7), 10(15), 11(16), 12(18), 14(20), 17(23), 19(26), 23(10), and 25(11) is consistent with the statute and the Agency's regulations. These changes are not subject to Subpart D rules for the reasons discussed above. The Agency further concludes that use of the M-44 subjects to the restrictions, modified as proposed by USDI, would not cause unreasonable adverse effects on the environment. Accordingly, EPA has determined that the proposed changes should be approved. Unless a hearing is requested, in accordance with the procedures in unit IV B. below, or comments are submitted which persuade the Agency the changes should not be approved as proposed, EPA will issue an order, which modifies the 1975 order, adopting the changes. The order EPA proposes to issue is presented below.

Proposed Order

Before the Administrator, U.S. Environmental Protection Agency, Washington, D.C., In the matter of: Applications to Register Sodium Cyanide For Use In The M-44 Device to Control Predators, FIFRA Docket No. 382.

For the reasons contained in unit II of this document, portions of the Order of the Administrator dated September 16, 1975, regarding applications to register sodium cyanide for use in the M-44 device to control predators are superseded.

Accordingly Restrictions Numbers 2, 4, 10, 11, 12, 14, 17, 19, 23, 25 in the Order of September 16, 1985, are hereby amended by this Order to read as follows:

* * * * *

Restriction Number 2. The M-44 device shall only be used to take wild canids suspected of preying on livestock, poultry or federally designated threatened or endangered species.

* * * * *

Restriction number 4. The M-44 device shall only be used in instances where losses due to predation by wild canids are occurring or where losses can be reasonably expected to occur based upon prior experience of predation in a specific area. Full documentation of livestock depredation, including evidence that such losses were caused by wild canids, will be required before application of the M-44 is undertaken.

* * * * *

Restriction number 10. The density of M-44 devices shall, as a rule, be the minimum necessary to prevent or reduce losses.

* * * * *

Restriction number 11. No M-44 device shall be placed within thirty (30) feet of a livestock carcass used as a draw station.

* * * * *

Restriction number 12. Each M-44 device shall be inspected by the applicator at least once every four (4) weeks to check for interference or unusual conditions and shall be serviced as required.

* * * * *

Restriction number 14. An M-44 device shall be removed from an area if, after thirty (30) days, there is a cessation of predation due to target species, unless documented prior experience indicates that a predator problem may recur during the 30 day period immediately ahead.

* * * * *

Restriction number 17. Bilingual warning signs in English and Spanish shall be used in all areas containing M-44 devices. All such signs shall be removed when M-44 devices are removed.

a. Main entrances or commonly used access points to areas in which M-44 devices are set shall be posted with warning signs to alert the public to the toxic nature of the cyanide and to the danger to pets. Signs shall be inspected at least once every four (4) weeks to insure their continued presence and insure that they are conspicuous and legible.

b. An elevated sign shall be placed within fifty (50) feet of each individual M-44 device warning persons not to handle the device.

* * * * *

Restriction number 19. Each applicator shall keep records dealing with the placement of M-44 devices and the result of such placement. Such records shall include but need not be limited to:

1. The number of devices placed per ranch unit or allotment.
2. The general description of the ranch unit or allotment where placed.
3. The date of placement and removal.
4. The number and species of animals taken per ranch unit or allotment.
5. All accidents or injuries to humans or domestic animals.

* * * * *

Restriction number 23. One person other than the individual applicator shall have general knowledge of the location of M-44 devices in the field.

* * * * *

Restriction number 25. In areas where more than one government agency is authorized to place M-44 devices, the agencies shall exchange placement information and other relevant data.

IV. Procedural Matters

The deadlines and procedures for participating in the Subpart D proceeding to consider allowing the use of the M-44 at a new site are described below in unit IV. A. Deadlines and procedures for commenting and or

requesting a hearing for one or more of the proposed modifications not subject to Subpart D are described below in unit IV. B.

A. Deadlines and Procedures for the Subpart D Proceeding

In view of the findings discussed in units III A. and B. above, a hearing will be held to reconsider the 1972 order, as modified by the September 1975 order. This hearing will be conducted under the provisions of the Administrative Procedure Act governing formal adjudications, under EPA's rules of practice governing hearings (40 CFR 163.1–164.111 and 164.130–164–133) and under the procedures established in this notice. The hearing will be conducted by an EPA Administrative Law Judge (ALJ) who will preside over the presentation of sworn testimony and oral cross-examination and who will generally supervise the proceeding. During the hearing, the proponents of the modifications will have the burden of proof (40 CFR 164.132(a)).

At the close of the hearing, the parties will have an opportunity to present briefs to the ALJ, who in turn will prepare an Initial Decision containing findings of facts and conclusions of law. The Initial Decision must specifically determine whether substantial new evidence exists and if so, whether it requires reversal or modification of the 1972 order, as modified by the September 1975 order, to permit the use of sodium cyanide in the M–44 device to protect federally threatened or endangered species in areas where the use of the M–44 is prohibited (40 CFR 164.132). This preliminary decision may be appealed to the Administrator for a final Agency decision. Under EPA's Rules of Practice, if no appeal is taken within 20 days after the ALJ files his Initial Decision, the Initial Decision becomes final (40 CFR 164.101).

A final Agency decision modifying or reversing the September 1975 Order would not, by itself, constitute registration of sodium cyanide use on lands to protect Federally designated endangered or threatened species. A section 3 or 24(c) registration would have to be issued. Such regulatory actions could only authorize use of sodium cyanide to the extent allowed by the Agency's final decision in the Subpart D proceeding. Currently, this use is authorized under the provisions of section 18. This exemption expires on May 28, 1986. EPA could issue another emergency exemption if M–44 has not been registered for this use, the criteria in 40 CFR 164.133 are met, and an emergency condition is deemed to exist.

1. *Procedures for requesting to participate in the proceedings.* Any interested person who wishes to participate in this proceeding either as a party or as an *amicus curiae*[2] shall submit a Notice of Inent to Participate to the Hearing Clerk on or before April 18, 1986.

The Notice shall identify the person (individual or organization) and his representative, if any. The Notice of Intent to Participate shall also provide an address at which documents in the proceeding can be served. The Notice of Intent to Participate shall indicate whether the person wishes to participate as a party or as an *amicus curiae*. The United States Department of the Interior, Fish and Wildlife Service, is also being notified by registered mail of EPA's decision to hold a Subpart D hearing. USDI is required to submit its Notice to Participate within 30 days of receiving the registered letter or within 30 days of publication of this, whichever is later.

Notices of Intent to Participate must be submitted to: Ms. Bessie Hammiel, Hearing Clerk (A–110), Rm. 3708, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Any person who fails to submit a Notice of Intent to Participate in the proceeding within the specified time period shall not be allowed to participate in the proceeding unless he or she shows good cause why he or she should be admitted.

Applicants and other interested parties who might be affected by a decision to modify or reverse the 1972 order as modified by the September 1975 order should be aware that participation in the hearing initiated by this notice may be their sole opportunity to present evidence and/or testimony concerning the predacidal use of sodium cyanide prior to final Agency action. Moreover, judicial review under FIFRA section 16(b) of any action concerning the use of sodium cyanide which is taken by the Administrator at the conclusion of this Subpart D proceeding can only be obtained by a person who has been "a party to the proceedings * * *."

Each person requesting to participate in this proceeding as a party shall file with the Hearing Clerk a Statement of Position. This statement must be part of the Notice of Intent to Participate and shall contain a written response describing the person's position and interest with respect to the issues in unit III B. of this notice. If the person is an applicant, the statement shall also contain the number assigned by EPA to his or her application, a copy of the proposed labeling of his or her product, and a description of the proposed use (40 CFR 164.24). The Statement of Position shall be submitted to the address above and served on all parties.

2. *Schedule for the hearing and the decisions of the Administrative Law Judge and the Administrator.* The use of sodium cyanide in the M–44 device to protect endangered species has, as discussed earlier, been authorized under the provisions of FIFRA section 18 since 1977. Because such use is generally part of long-term programs, requests under section 18 can be expected in the future.

EPA does not believe that section 18 should be used to permit the long-term use of a pesticide; rather, the section 3 registration process would be the proper mechanism in securing this use. Additionally, EPA believes that it would be in the public interest to reach a prompt, final decision in this matter. Accordingly, EPA is establishing a deadline for issuance of an Initial Decision. The ALJ assigned to any adjudicatory hearing requested on the action initiated by this notice shall issue an Initial Decision no later than 9 months from the date on which this notice is published in the **Federal Register**. Review of any exceptions to the Initial Decision will follow the schedule provided in 40 CFR 164.101, and a Final Decision will be issued as soon as possible thereafter.

In view of the limited scope of the issues and their relatively straightforward nature, EPA believes that 9 months should give the participants ample time to conduct discovery, to present evidence, to conduct cross-examination, and to prepare briefs for the ALJ, and for the ALJ to prepare and issue an Initial Decision.

If it appears that additional time will be needed, the ALJ shall promptly inform the Judicial Officer of the circumstances which contribute to the need for more time and shall propose a schedule for completing the hearing, together with a new deadline for issuance of the Initial Decision. The Judicial Officer is given authority to establish a new schedule.

If an appeal from the Initial Decision is taken, it is expected that a final decision would be issued within 60 days.

3. *Field hearings.* The principal location for this hearing will be EPA headquarters in Washington, DC. However, EPA recognizes that some of the potential witnesses are located

[2] An *amicus curiae* is a person whose role is limited to filing written briefs. An *amicus curiae* is not a party, and thus would not be entitled to obtain judicial review.

throughout the United States. Accordingly, EPA authorizes the ALJ upon a showing of good cause to hold field hearings at other locations, if appropriate. The ALJ shall determine the appropriate location, timing, and duration of such field hearings (40 CFR 164.50(a)(10)).

4. *Separation of functions.* Finally, the Agency's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of this proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in an investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following Agency offices, and the staffs thereof, are designated as the trial staff to perform all investigative and prosecutorial functions in this case: The Office of Pesticides and Toxic Substances and the Office of General Counsel.

From the date of this notice until any final decision in this case, the ALJ, the Judicial Officer, the members of the staff in the immediate offices of the Deputy Administrator and the Administrator, the Deputy Administrator, and the Administrator shall not have any *ex parte* contact or communication with any members of the trial staff, or with any other interested persons not employed by EPA, on any of the issues involved in this proceeding. However, persons interested in this case should feel free to contact any other EPA employee, including the trial staff, with any questions they may have.

B. Deadlines and Procedures for Commenting and/or Requesting a Hearing on the Proposed Modifications Not Subject to Subpart D

The specific procedures and deadlines for commenting on any of the proposed modifications or requesting that any of the proposed modifications be included as part of the adjudicatory hearing are set forth below.

1. *Procedure for commenting on the proposed modifications.* Any interested person may comment on one or more of the 10 proposed modifications not subject to the Subpart D proceedings. Written comments, in triplicate, must be received on or before April 18, 1986. The Agency will not consider requests to extend the comment period.

Written comments must be identified by the document control number [OPP-36105] and—

Mailed to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person: bring comments to: Rm 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter.

2. *Procedure for requesting inclusion of a proposed modification in the adjudicatory hearing.* Any person who would be adversely affected by any of the proposed modifications of the restrictons may request a formal public hearing be held on the proposed modification. Such requests shall set forth with specificity the factual and/or legal issues which the requesting party proposes for consideration at such hearing. Any request must specifically identify which of the 10 proposed modified restrictions the party wants to be included in the adjudicatory hearing. Such requests must be received on or before *April 18, 1986.* Requests shall be addressed to: Ms. Bessie Hammiel, Hearing Clerk (A-110), Rm. 3708, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

3. *Consequences of not commenting/requesting a hearing.* If no such request is received within 30 days of the publication of this notice, the proposed order will be made final, taking into account any comments received (see unit III C. of this notice for the proposed action), and will become effective immediately, and the adjudicatory hearing will be limited to consideration of the use of M-44 sodium cyanide capsules on lands for the protection of Federally designated threatened or endangered species.

Dated: March 11, 1986.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

[FR Doc. 86-5973 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50653; FRL-2984-6]

Issuance of Experimental Use Permits; FMC Corp., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purpose.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Program, Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

279-EUP-78. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 4,599 pounds of the insecticide carbosulfan on alfalfa to evaluate the control of various alfalfa insects. A total of 1,533 acres are involved; the program is authorized in the States of Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Corolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

279-EUP-79. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 431.25 pounds of the insecticide carbosulfan on citrus to evaluate the control of various citrus insects. A total of 65 acres are involved; the program is authorized only in the States of Arizona, California, Florida, and Texas. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

279-EUP-89. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of a 2,112 pounds of the insecticide carbosulfan on apples to evaluate the control of various apple insects. A total of 132 acres are involved; the program is authorized only in the States of

California, Georgia, Idaho, Indiana, Maine, Maryland, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wisconsin. This permit and the two above are effective from February 14, 1986 to February 14, 1987. The permits are issued with the limitation that all treated crops are destroyed or used for research purpose only. (Jay Ellenberger, PM 12, Rm. 202 CM#2, (703-557-2386))

10182-EUP-37. Renewal. ICI Americas, Inc., Concord Pike & New Murphy Road, Wilmington, DE 19897. This experimental use permit allows the use of 556 pounds of the herbicide butyl (*R*)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoate on various crops to evaluate postemergence control of annual and perennial grasses. A total of 2,780 acres are involved. The program is authorized in all 50 States, except the State of Alaska. The permit was previously effective from November 6, 1984 to November 30, 1985. The permit is now effective from February 14, 1986 to February 14, 1987. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Richard Mountfort PM 23, Rm. 237, CM#2, (703-557-1830))

45639-EUP-25. Extension. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 22,600 pounds of the herbicide diethatyl-ethyl on carrots, celery, and peppers to evaluate the control of weeds. A total of 4,250 acres are involved; the program is authorized only in the States of California, Delaware, Florida, Georgia, Kentucky, Michigan, New Jersey, New York, North Carolina, Pennsylvania, and Wisconsin. The experimental use permit is effective from February 4, 1986 to February 1, 1987. A temporary tolerance for residues of the active ingredient in or on carrots, celery, and peppers has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703-557-1830))

773-EUP-1. Issuance. Pitman Moore, Inc., P.O. Box 344, Washington Crossing, NJ 08560. This experimental use permit allows the use of 5.7 pounds of the fungicide 1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole on poultry to evaluate the control of *Aspergillus fumigatus*. Approximately 30 hatcheries are involved. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900))

773-EUP-2. Issuance. Pitman Moore, Inc., P.O. Box 344, Washington Crossing, NJ 08560. This experimental use permit allows the use of 36.3 pounds of the fungicide 1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole on poultry to evaluate the control of *Aspergillus fumigatus*. Approximately 30 hatcheries are involved. This permit and the one above are authorized only in the States of Alabama, Georgia, North Carolina, and South Carolina. Both experimental use permits are effective from January 1, 1986 to December 31, 1987. The permits are issued with the limitation that treated chicks are not sold or used for feed or human consumption. The permits will use the same active ingredient but different formulations. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: March 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-5752 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50650; FRL-2984-7]

Issuance of an Experimental Use Permit to the U.S. Department of the Interior

AGENCY Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an Experimental Use Permit (EUP) to the U.S. Department of the Interior (USDI). The permit 6704-EUP-28 allows the use of a total of 0.98 pound of sodium fluoroacetate (Compound 1080) in single lethal dose baits (SDB's) on Kiska Island to evaluate the control of the arctic fox and impacts on nontarget wildlife. A maximum of 6,128 acres may be treated; the program is authorized only in the State of Alaska.

DATE: The permit is in effect from November 6, 1985 to November 6, 1987.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20640. Office location and telephone number: Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2600).

SUPPLEMENTARY INFORMATION: On February 14, 1985, EPA received an application from USDI for an EUP to test the use of Compound 1080-treated baits to eradicate the arctic fox. The program allows the use of up to 100,000 SDB's (50,000 per year) treated with 4 mg each of Compound 1080. Testing is being conducted on the Kiska Island, Aleutian Islands, Alaska. Kiska Island is about 22 miles long, 1.5 to 6.2 miles wide, and contains 69,598 acres.

The purpose in eradicating the arctic fox is to benefit the endangered Aleutian Canada Goose. The USDI contends that prior to the introduction of arctic foxes by man, the Aleutian Canada Goose was a common breeding bird throughout the Aleutian Islands. Foxes subsequently eradicated the goose on all islands except Buldir (these predators were not introduced on Buldir because access to the island is very difficult by boat). If the goose population is to recover from its current endangered status, its breeding range must be expanded beyond Buldir Island.

Foxes were eradicated on several small islands through a combination of trapping shooting, and the use of M-44's. The logistical difficulties involved in maintaining a successful operational program in the remote Aleutian Islands makes the eradication of arctic foxes on any of the large islands an extremely difficult, time-consuming task. The USDI contends that if expansion of the Aleutian Canada Goose is to be achieved, a more efficient and effective method to eliminate arctic foxes must be found.

As authorized under EPA's regulations, 40 CFR 172.11(a), the Agency issued a notice in the **Federal Register** of April 17, 1985 (50 FR 15218), announcing the receipt of an EUP application from USDI and inviting public comments on the application. The public was given a 30-day period to comment on the USDI application.

The Agency received three sets of comments on this EUP application. All three sets of comments objected to the issuance of the permit. A discussion of those comments follows.

1. *Size of proposed use site.* One commenter questioned the size of the proposed use site in that it would cover an area of approximately 6,128 acres. The purpose of this experiment is to determine whether it is possible to use SDB's to eliminate arctic foxes from larger islands in the Aleutian chain where shooting, trapping, and M-44's have been unsuccessful. It appears necessary to treat a large portion of

Kiska Island in order to have a chance at eradicating the fox.

2. *The number of toxic baits.* The use of 50,000 baits per year appeared excessive to two commenters. The Agency agrees that the number of baits used may be very large and that many baits may be available to nontarget organisms. However, the large number of baits is a necessary part of the testing program, as the complete removal of the arctic fox is the objective of the program, along with evaluation of impacts to nontargets. In view of the objective, however, the large number of baits is a necessary part of the test program to ensure that every fox on the Island is likely to be exposed to a SDB. The experimental program, of course, will closely evaluate the effects on nontargets. The effects of the SDB's on nontargets will be limited to the area of use. If nontarget losses occur, they should be mitigated through reinvasion from neighboring islands as well as other population-adjusting factors.

3. *Aleutian Canada Goose.* The Aleutian Canada Goose is already on the road to recovery. One commenter felt that since the overall population of the Aleutian Canada Goose is increasing, the eradication of the fox may not be necessary.

The Agency feels that since recolonization by Aleutian Canada Geese in areas from which arctic foxes have been eradicated has proved to be a slow process, delaying eradication programs would only serve to prolong the period of time when the species is confined to small breeding colonies (which tend to limit overall reproductive potential and which make the species very vulnerable to isolated "disasters"). By acting now to expand the total range of possible breeding habitat for the Aleutian Canada Goose, USDI would provide the species an opportunity to expand its breeding range and its population. Transplanting birds might be necessary to start breeding colonies on Kiska, due to the island's distance from current breeding ranges and the bird's tendency to "home," that is, return to the same breeding area every year. This chancy and slow process would be time consuming. A successful effort, however, would greatly increase the reproductive potential of the species due to the much larger size of Kiska Island in comparison to the areas where the geese now breed.

4. *Compound 1080 baits on arctic foxes.* One comment objected that registration of 1080 baits for arctic fox control would create problems of abuse and enforcement. The Agency feels that the chance of abuse is slight considering that the proposed treatments of any one island would be limited to 2 years, only one or two islands would be treated in a given period, and only Federal employees familiar with 1080 and this program would be involved. In any event, such a concern is not present with this permit.

5. *The use of Compound 1080 for animal control.* Two commenters were opposed to issuance of the EUP because they were opposed to the use of 1080 under most circumstances. The Agency feels that although this EUP will not provide all the answers needed to evaluate the use of 1080 baits to control the arctic fox, it should provide insight into the more specific comments discussed elsewhere.

6. *Alternative control methods.* One commenter suggested introducing neutered red foxes to Kiska Island as an alternative control measure. The contention is that red foxes would outcompete arctic foxes by occupying preferred denning and feeding locations. As the red foxes die out, the island would, in theory, become fox-free. The USDI considered the red fox alternative and dismissed the idea as they felt the idea was not practical on a large island.

The Agency believes that USDI's request for an EUP for the SDB is reasonable and accordingly has issued the permit.

Authority: 7 U.S.C. 136c.

Dated: March 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-5253 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3507).

Copies of this submission are available from the Commission by calling Doris R. Benz, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB No.: 3060-0139

Title: Request for Approval of Proposed Amateur Radio Antenna and Notification of Action

Form No.: FCC 854

Action: Revision

Estimated Annual Burden: 250 Responses; 125 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-5992 Filed 3-18-86; 8:45 am]

BILLING CODE 6712-01-M

Window Notice for the Filing of FM Broadcast Applications

[Report No. CF-2 [1]]

Released: March 14, 1986.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed on the attached appendix may be submitted for filing during the period beginning March 24, 1986, and ending April 24, 1986, inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel-249 A

SPARTA, GA

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-5993 Filed 3-18-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-758-DR]

Amendment to Notice of a Major-Diaster Declaration; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-758-DR), dated February 21, 1986, and related determinations.

DATED: March 12, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of California, dated February 21, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the

[1] NON-80/90 Allocation.

President in his declaration of February 21, 1986:

Trinity and Nevada Counties as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.) (Billing Code 6718-02.)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-5948 Filed 3-18-86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-760-DR]

Notice of Major Disaster and Related Determinations; Utah

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA-760-DR), dated March 13, 1986, and related determinations.

DATED: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: Notice is hereby given that, in a letter of March 13, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*; Public Law 93-288), as follows:

I have determined that the damage in certain areas of the State of Utah resulting from severe storms and flooding, beginning on February 12, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these pruposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. John D. Swanson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Utah to have been affected adversely by this declared major disaster and are designated eligible as follows:

Cache, Morgan, Wasatch, and Weber Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.) (Billing Code 6718-02.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-5949 Filed 3-18-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreements Filed

Correction

In FR Doc. 86-5142, beginning on page 8242 in the issue of Monday, March 10, 1986, make the following correction:

On page 8242, in the third column, the last line should read "Agreement No.: 203-010894".

BILLING CODE 1505-01-M

Ocean Freight Forwarder License: Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Sea to Sea, Foreign Forwarders, c/o 128 Squirrel Tree Lane, Mt. Laurel, NJ 08054, Catherine F. Hennick, Partner, James A Covello, Partner

Robert Rye Lee dba Lee's Material Services, 5701-A Bellaire Blvd., Houston, TX 77081

Meteor Air Freight, Inc., 2610 N.W. 72nd Avenue, Miami, FL 33122, Officers: Maria E. Lledo, President, William Lledo, Treasurer, Joanne Fernandez, Secretary

Virginia A. Miller and Company, Inc., 6945 Clinton Drive, Houston, TX 77020, Officers: Virginia Ann Miller, President, Warren Chester Eitelbach, Vice President, Lavone McClellan, Assistant Vice President, Robert Eikel, Secretary/Treasurer.

By the Federal Maritime Commission.
Dated: March 14, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-5966 Filed 3-18-86; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009735-016.

Title: Steamship Operators Intermodal Committee Agreement.

Parties:

Associated Container Transportation (Australia Ltd.)
Barber Blue Sea Line
Companhia de Navegacao Maritima Netumar
Coordinated Caribbean Transport, Inc.
Evergreen Marine Corp., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana
Cia Sud Americana de Vapores

Synopsis: The proposed amendment would add Cia Sud Americana de Vapores and delete Atlantic Container Line G.I.E. as parties to the agreement.

Agreement No.: 202-010252-003.

Title: New Zealand-Pacific Coast Agreement.

Parties:

Blue Star Line, Ltd.
Columbus Line

Synopsis: The proposed amendment would extend the independent action waiting period from seven to ten days.

Agreement No.: 224-010716-001.

Title: Port of San Francisco Terminal Revenue Sharing Agreement.

Parties:

City and County of San Francisco (Port)

Evergreen Marine Corp. (Taiwan) Ltd. (Evergreen)

Synopsis: The proposed amendment would modify the agreement to change the minimum annual TEU thruput guarantee and the scale of charges for wharfage and dockage, and to provide that the new schedule of rates apply to the Space Charter and Sailing Agreement of Evergreen and Japan Line. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: March 14, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-5969 Filed 3-18-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-10]

Volga Forwarders Service, Inc., Application for an Ocean Freight Forwarder License; Order of Investigation and Hearing

Volga Forwarders Service, Inc. is a Florida corporation now operating as an air freight forwader. Volga held an ocean freight forwarder license until October 1984, when its license was revoked for failure to maintain a surety bond as required by the Commission's regulations governing the licensing and operations of ocean freight forwaders. 46 CFR 510.14. Volga applied for a new license in August 1985. Between the revocation of its license and the application now pending, Volga had a change of ownership and organization. The current officers of Volga are: (1) Aisa N. O'Hallorans, President Director; (2) Cesar O'Hallorans, Treasurer Director; and (3) Orlando A. Arenciba, Secretary.

Aisa O'Hallorans owns 100% of the Volga stock and is the proposed qualifying individual under the Commission's regulations. 46 CFR 510.11. In July 1980, Ms. O'Hallorans, as the sole proprietor of L. G. Int'l. Freight Forwarder, was denied an ocean freight forwarder license for engaging in the business of ocean freight forwarding without a license in violation of the then applicable law.[1] In settlement of the Commission's claim against her for the unlawful forwarding, Ms. O'Hallorans signed a promissory note in the amount of $3,500 on July 29, 1981. Ms. O'Hallorans made payments on the note only until November 1982, and at the time of the current Volga application, Ms. O'Hallorans still owed $1,407. It was not until this obligation was called to Ms. O'Hallorans' attention during the processing of Volga's current application for a license that she satisfied the debt.

The cancellation of Volga's surety bond, which in turn resulted in the revocation of Volga's initial license, was based upon the failure of Volga to reimburse the bonding company for the company's payment of a claim for unpaid freight charges against Volga. As in the case of promissory note, the claim was satified only after it was discovered by the Commission while processing the current application and then brought to the attention of Ms. O'Hallorans.

As part of its application for a new license, Volga submitted a credit reference from the Coral Gables Federal Savings and Loan. Subsequent inquiry revealed that after the letter had left the savings and loan, it had been altered to make it appear that the bank account which had been certified by Coral Gables was that of Ms. O'Hallorans only and not the actual joint account which Ms. O'Hallorans, in fact, shared with a Mr. Benjamin Rodriquez.

Under section 19 of the Shipping Act of 1984, 46 U.S.C. app. 1718, an ocean freight forwarder license may be issued to any person that the Commission determines to be qualified by experience and character to render forwarding services. The failure of both Volga and Ms. O'Hallorans to reasonably meet financial obligations in the past and the falsification of information submitted to the Commission as part of the application for a license indicate that Volga lacks the character required of a licensed ocean freight forwarder.

Therefore, it is ordered, that pursuant to sections 11 and 19 of the Shipping Act of 1984, 46 U.S.C. app. 1710, 1718, a formal investigation and hearing is instituted to determine whether Volga Forwarders Service, Inc., possesses the necessary experience and character to render forwarding services and be licensed as an ocean freight forwarder;

It is further ordered, that Volga Forwarders Service, Inc., is named Respondent in this proceeding;

It is further ordered, that a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the Initial Decision of the Presiding Officer in this proceeding shall be issued by March 13, 1987, and the final decision of the Commission shall be issued by July 13, 1987;

It is further ordered, that in accordance with Rule 42 of the Commission's Rules of Practice and Procedure, 46 CFR 502.42, the Director of the Commission's Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered, that notice of this Order be published in the **Federal Register**, and a copy be served upon the Respondent and the Commission's Bureau of Hearing Counsel;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, that all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as mailed directly to all parties of record.

By the Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-5968 Filed 3-18-86; 8:45 am]

BILLING CODE 6730-01-M

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[1] Until the passage of the Shipping Act of 1984, 46 U.S.C. app. 1701-1720, ocean freight forwarders were licensed under section 44 of the Shipping Act, 1916. This statutory provision was repealed by section 20(a) of the Shipping Act of 1984, 46 U.S.C. app. 1719(a), and forwarders are now licensed under section 19 of that Act. 46 U.S.C. app. 1718.

[Docket No. 86-1]

Cancellation of Tariffs or Assessment of Penalties Against Non-Vessel, Operating Common Carriers in the Foreign Commerce of the United States; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined tht Docket No. 86-1 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and the preparation of an environmental impact statement is not required.

Docket No. 86-1, published on January 7, 1986 (51 FR 683), involves cancellation of tariffs or assessment of penalties against non-vessel operating common carriers in the foreign commerce of the United States.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 533-5725.

John Robert Ewers,

Secretary.

[FR Doc. 86-5967 Filed 3-18-86; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supplement 17]

Changes to Federal Travel Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of Changes to Federal Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 17, transmitting new pages to amend Federal Travel Regulations (FTR) FPMR 101-7 to include Federal and State tax tables to be used when computing the relocation income tax (RIT) allowance for reimbursements received in calendar year 1985.

EFFECTIVE DATE: The revised provisions transmitted by Supplement 17 are effective for transferred employees whose effective date of transfer is on or after November 14, 1983, and who received reimbursement for relocation expenses during calendar year 1985. For purposes of these regulations, the effective date of transfer is the date the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Cooke, Regulations and Policy Division (703) 557-1253 and 557-1256 or FTS 557-1253 and 557-1256.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Background

a. Public Laws 98-151, November 14, 1983 (97 Stat. 977) and 98-473, October 12, 1984 (98 Stat. 1969) amended the statutory authority for reimbursement of the employee relocation expenses contained in Subchapter II of chapter 57, title 5, United States Code, by adding new section 5724b authorizing agencies to reimburse transferred employees for the additional income tax liability incurred by them as a result of certain relocation expenses reimbursements.

b. GSA Bulletin FPMR A-40, Supplement 14, which was issued April 1, 1985, and effective November 14, 1983, implemented the procedures for the calculation and payment of a RIT allowance. Supplement 14 contained prescribed Federal and State marginal tax rate tables for calendar years 1983-84.

Explanation of Changes

Supplement 17 amends the FTR as follows:

a. Appendix 2-11.A, Federal Tax Table for RIT allowance, Page 3 and 4 is added for use in the calculation of the RIT allowance for covered taxable reimbursements received during calendar year 1985.

b. Appendix 2-11.B, State Tax Table for RIT allowance, Page 5 and 7 is added for use in the calculation of the RIT allowance for covered taxable reimbursements received during calendar year 1985.

c. Appendix 2-A, Page 7 is amended to include reference to relocation services and the RIT allowance in the quick reference table of current allowances. (This change is not published in the **Federal Register**).

Accordingly, the Federal Travel Regulations (FTR) are amended as follows:

Chapter 2. Relocation Allowances

1. **Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5707, Executive Order No. 11609, July 22, 1971 and No. 12466, February 27, 1984.

2. Appendix 2-11.A, Federal Tax Table for RIT allowance is amended by adding the following new table:

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1985

The following table is to be used to determine the Federal marginal tax rate for computation of the RIT allowance as prescribed in FTR 2-11.8e(1). This table is to be used for employees who received covered taxable reimbursements during calendar year 1985.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
11 percent	$3,455	$4,668	$4,834	$7,245	$7,770	$9,566	$3,329	$4,460
12 percent	4,668	5,865	7,245	9,726	9,566	12,134	4,460	5,767
14 percent	5,865	8,209	9,726	12,174	12,134	17,001	5,767	8,384
15 percent	8,209	10,420	NA	NA	NA	NA	NA	NA
16 percent	10,420	12,957	NA	NA	17,001	21,757	8,384	10,689
17 percent	NA	NA	12,174	15,623	NA	NA	NA	NA
18 percent	12,957	15,242	15,623	19,303	21,757	26,795	10,689	13,161
20 percent	15,242	17,601	19,303	23,250	NA	NA	NA	NA
22 percent	NA	NA	NA	NA	26,795	32,275	13,161	15,569
23 percent	17,601	21,513	NA	NA	NA	NA	NA	NA
24 percent	NA	NA	23,250	29,995	NA	NA	NA	NA
25 percent	NA	NA	NA	NA	32,275	39,016	15,569	18,966
26 percent	21,513	28,102	NA	NA	NA	NA	NA	NA
28 percent	NA	NA	29,995	37,075	39,016	46,428	18,966	22,953
30 percent	28,102	35,112	NA	NA	NA	NA	NA	NA
32 percent	NA	NA	37,075	44,145	NA	NA	NA	NA
33 percent	NA	NA	NA	NA	46,428	60,694	22,953	29,565
34 percent	35,112	42,507	NA	NA	NA	NA	NA	NA

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifyingWidows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
35 percent	NA	NA	44,145	59,644	NA	NA	NA	NA
38 percent	42,507	53,394	NA	NA	60,694	80,537	29,565	39,359
42 percent	53,394	72,157	59,644	83,982	80,537	114,119	39,359	54,702
45 percent	NA	NA	83,982	113,966	114,119	147,522	54,702	75,409
48 percent	72,157	101,995	113,966	145,359	NA	NA	NA	NA
49 percent	NA	NA	NA	NA	147,522	207,441	75,409	110,906
50 percent	101,995		145,359		207,441		110,906	

3. Appendix 2–11.B, State Tax Table for RIT allowance is amended by adding the following new table:

State Marginal Tax Rates by Earned Income Level—Tax Year 1985

The following table (pages 5 thru 8, Appendix 2–11.B) is to be used to determine State marginal tax rates for calculation of the RIT allowance as prescribed in FTR 2–11.8e(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1985.

	Marginal tax rates (stated in percents) for the earned income amounts specified in each column.[1] [2]			
	$20,000 to $24,999	$25,000 to $49,999	$50,000 to $74,999	$75,000 and over
State (or district):				
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	8	8	8	8
4. Arkansas	6	7	7	7
5. California	3	7	11	11
If single status [3]	8	11	11	11
6. Colorado	8	8	8	8
7. Connecticut	0	0	0	0
8. Delaware	7.6	9.9	10.7	10.7
9. District of Columbia	10	11	11	11
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8.5	10	10.5	11
If single status [3]	10.5	11	11	11
13. Idaho	7.5	7.5	7.5	7.5
14. Illinois	2.5	2.5	2.5	2.5
15. Indiana	3	3	3	3
16. Iowa	8	11	12	13
17. Kansas	7.5	9	9	9
18. Kentucky	6	6	6	6
19. Louisiana	4	4	6	6
20. Maine	7	9.2	10	10
If single status [3]	9.2	10	10	10
21. Maryland	5	5	5	5
22. Massachusetts	5.375	5.375	5.375	5.375
23. Michigan	5.35	5.35	5.35	5.35
24. Minnesota	14	16	16	16
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27. Montana	9	10	11	11
28. Nebraska	(4)	(4)	(4)	(4)
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	2	2.5	3.5	3.5
32. New Mexico	3.5	5.6	6.5	7.8
If single status [3]	6.1	6.9	7.4	7.8
33. New York	11	14	14	14
If single status [3]	13	14	14	14
34. North Carolina	7	7	7	7
35. North Dakota	6	8	9	9
36. Ohio	4.75	5.7	6.65	9.5
37. Oklahoma	6	6	6	6
38. Oregon	10.8	10.8	10.8	10.8
39. Pennsylvania	2.35	2.35	2.35	2.35
40. Rhode Island	(5)	(5)	(5)	(5)
41. South Carolina	7	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.75	7.75	7.75	7.75
46. Vermont	(6)	(6)	(6)	(6)
47. Virginia	5.75	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	3.5	7.4	10.5	13
If single status [3]	8.2	12.6	13	13
50. Wisconsin	8.7	9.5	10	10
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75, etc.) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in FTR 2-11.8e(2)(b).
[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.
[4] 19 percent of Federal income tax liability. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2-11.8e(2).
[5] 23.15 percent of Federal income tax liability. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2-11.8e(2).
[6] 26.5 percent of Federal income tax liability. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2-11.8e(2).

Dated: February 28, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-5957 Filed 3-18-86; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Private/Public Sector Advisory Committee on Catastrophic Illness; Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of April, 1986:

Name: Secretary's Private/Public Sector Advisory Committee on Catastrophic Illness.

Date and Time: April 2, 1986, 9:00 a.m. until 12 noon.

Place: The Humphrey Auditorium, The Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Purpose: The purpose of the Private/Public Sector Advisory Committee on Catastrophic Illness will be to: (1) Solicit input from all interested parties regarding how government and the private sector can work together to address the problems of affordable insurance for catastrophic illness; and (2) to reflect periodically the views of the interested parties as well as the constituencies represented on the committee regarding the report on catastrophic health care which the Secretary of Health and Human Services must submit to the President by the end of the year.

Agenda: This meeting will be the initial meeting of the Advisory Committee. It will include welcome and opening remarks; a review of purpose, scope and membership of the catastrophic illness study; and discussion of final product and time frame.

Anyone wishing to obtain a roster of members, minutes of meetings, or the other relevant information should write to or call Ms. Charlene Quinn, Executive Director, Advisory Committee on Catastrophic Illness, Immediate Office of the Secretary, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245-2641.

Agenda items are subject to change as priorities dictate.

Dated: March 17, 1986.

Charlene Quinn,

Executive Director.

[FR Doc. 86-6173 Filed 3-18-86; 9:34 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-345-PN]

Medicare Program; Monthly Capitation Payment for Physicians Outpatient Maintenance Dialysis Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: Under the Medicare program, physicians receive a monthly capitation payment (MCP) for services provided to outpatient maintenance dialysis patients. The ratesetting methodology used to compute the MCP includes a home/facility physician treatment capability ratio which reflects that physicians can care for more home dialysis patients than infacility patients in a given time. The current ratio is 10:7 (or about 1.4 to 1). This notice would correct this ratio based on statistically valid physician treatment capability data. The new ratio would be 3.9 to 1.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on April 18, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-345-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC; or

Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-345-PN. Comments will be available for public inspection as they are received, beginning approximately three weeks after today, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Robert Niemann, (301) 597-1810.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Physicians' services to renal dialysis patients are reimbursable if the services are otherwise covered by the Medicare program and if they are reasonable and medically necessary. Before August 1983, the Medicare program reimbursed physicians for services provided to outpatient maintenance dialysis patients under one of two methods—the initial method or the alternative reimbursement method (ARM).

On May 11, 1983, under the authority of section 1881(b)(3)(B) of the Social Security Act, we published in the **Federal Register** final regulations (48 FR 21254) that effective August 1983, eliminated the initial method and the ARM and implemented a new monthly capitation payment (MCP) system.[1] Regulations implementing the MCP system are located at 42 CFR 405.542. Under the MCP system a physician is reimbursed a single predetermined amount per patient per month for the physician's outpatient dialysis services. The same amount is paid for home dialysis patients as for in-facility dialysis patients. Because physicians spend much less time with home dialysis patients as compared to in-facility dialysis patients, the MCP provides an economic incentive for physicians to promote the use of home dialysis. Until a modified form of the initial method is reinstated in accordance with the court's order, the MCP is the only way that the Medicare program pays for physicians' outpatient maintenance dialysis services.

B. MCP System—Ratesetting Methodology and Current Rates

The current rates for physicians' services to outpatient maintenance dialysis patients set under the May 11 final rule range from $144 per patient per month to $220 per month, with an

[1] In response to a law suit, *National Association of Patients on Hemodialysis and Transplantation, Inc. et. al. v. Heckler*, 588 F. Supp. 1108 (D.D.C. 1984), a federal district court has ordered the Secretary to reinstate a modified form of the initial method. the effect of this court decision would essentially provide two options for payment for physician outpatient maintenance dialysis services. We are proceeding to develop a notice of proposed rulemaking to accomplish this end. It will be published in the **Federal Register** shortly.

average rate of $187.88 per month. (This number represents a weighted average by State ESRD population using the latest figures.) Each locality has an MCP rate, determined as follows:

As a proxy for the physician's involvement with a dialysis patient we assumed a value of one physician-patient contact per dialysis session, and 149 dialysis sessions per patient per year, or 12.4 dialysis sessions per patient month. We used this figure of 12.4 sessions as a base multiplier. This multiplier was applied to the local prevailing charge for a medical specialist's brief follow-up office visit for an established patient (CPT-4 Code 90040). We added to the resulting figure an amount representing a routine monthly examination, based on the prevailing charge for an intermediate follow-up office visit (CPT-4 Code 90060). We weighted this sum for the national averages of patients dialyzing in-facility (83 percent) and at home (17 percent). We weighted for the in-facility proportion by multiplying the sum based on the medical procedure model by .83. We weighted for the home proportion by multiplying the base sum by .17, and then multiplied that result by .7 which represents the 10:7 home/facility physician treatment capability ratio used under the previous ARM system. A home physician treatment capability ratio of 10:7 means that a physician can care for about 10 home patients for every 7 facility patients, a ratio of about 1.4 1. In other words, home patients require about 70 percent as much physician care as facility patients.

Finally, as under the previous ARM system of payment, we set upper and lower limits on physician monthly capitation payments based on a truncated list of national prevailing charges for CPT-4 Codes 90040 and 90060. We set the upper limit based on the ninetieth percentile of charges and the lower limit based on the sixteenth percentile. The sixteenth percentile was chosen because there was only a $1 difference between the tenth and sixteenth percentiles and the resulting lower limit yielded a more reasonable range of payments compared to the previous ARM range.

II. Provisions of This Notice

A. Physician Treatment Capability Ratio and MCP Rates

This notice proposes to correct the 1.4 to 1 physician treatment capability ratio currently used in the MCP ratesetting methodology to 3.9 to 1, based on independently-collected statistically valid physician treatment capability data. We believe this correction is reasonable for the following reasons:

On February 1, 1985, the General Accounting Office (GAO) issued a final report, GAO/HRD-85-14, entitled "Changes Needed in Medicare Payments to Physicians Under the End-Stage Renal Disease Program." In this report the GAO referred to a statement we had made in our May 11, 1983 final rule in response to a comment regarding the 1.4 to 1 physician treatment capability ratio. In general, we stated that this ratio was based on expert medical advice provided at the time the ARM payment method has been established (1974) and that absent any further data to the contrary, we believed it would be reasonable to continue using this ratio as the weighting factor under the MCP system.

The GAO report then summarized data from questionnaires GAO has sent in 1982 to a nationwide statistical sample of nephrologists. The GAO questionnaire included questions asking the nephrologists how ofter they saw their infacility patients and how often they saw their home dialysis patients. The GAO attempted to obtain responses from all of the ESRD physicians in ten selected States (Alaska, Arizona, Arkansas, Hawaii, Massachusetts, Nevada, Oregon, Rhode Island, Louisiana and Washington). There was a 75 percent response rate (183 responses).

A sample of physicians was selected from the remaining 40 States. It was drawn from a sample of ESRD facilities stratified by size; then all physicians practicing at the selected facilities were queried. The sample six was selected so that the overall expected sampling error would be no more than plus or minus 0.8 percent at the 95 percent confidence level. The response rate was 64 percent, or 162 out of the 254 physicians selected.

The data collected show that nephrologists furnish 3.9 times as many services to infacility dialysis patients as they do to home dialysis patients. Therefore, the physician treatment capability ratio is 3.9 to 1, not 1.4 to 1. The GAO recommended that this ratio be used in setting MCP rates instead of the 1.4 to 1 ratio.

We believe that the GAO data warrant a change in the MCP rates. This notice would not change the methodology for calculating the MCP. Rather, it would correct the physician treatment capability ratio by using the statistically valid 1982 GAO data that would have been used in the May 11, 1983 final rule had they been available to us at that time.

B. New MCP Rates

The proposed change discussed in A. above would result in a new average MCP rate of $173.07 per patient per month with upper and lower limit rates of $203.00 and $132.00, respectively.

III. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Introduction

Executive Order 12291 requires that, for any major rule, a regulatory impact analysis be performed and made available to the public. A "major rule" is defined as one that is likely to result in:

- An annual effect on the national economy of $100 million or more;
- A major increase in costs or prices for consumers, any industries, any government agencies, or any goegraphic regions; or
- 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 import markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), we prepare and publish a regulatory flexibility analysis for notices such as this for which an opportunity for public comment is offered, unless the Secretary certifies that the notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all physicians participating in Medicare as small entities.

In considering whether the change to the MCP requires a regulatory impact analysis or regulatory flexibility analysis, we determined that it would not meet the criteria for a major rule under the Executive Order. However, we determined that the proposed change would have a significant impact on a substantial number of physicians. Therefore, although a regulatory impact analysis is not required, we have performed a regulatory flexibility analysis.

In the discussion below, we discuss the expected impact of this proposed change and summarize our expectations of the net effect. This discussion, combined with the rest of this notice, serves as a regulatory flexibility analysis consistent with the requirements of the RFA.

B. Estimated Savings

We estimate the following impact for fiscal years 1986 to 1990 in annualized savings to the program and in beneficiary savings:

IMPACT CAUSED BY CORRECTION TO MCP SAVINGS

[In millions]

Fiscal year	Medicare Program	Beneficiary	Total
1986	[1] $2.1	[1] $0.5	$2.6
1987	12.8	3.2	16.0
1988	13.4	3.4	16.8
1989	14.0	3.5	17.5
1990	14.6	3.6	18.2

[1] Assumes implementation date of Aug. 1, 1986.

C. Impact on Physicians

We estimate the average MCP reduction to be 7.88 percent of $187.88, or $14.81 per dialysis patient per month. Generally, a physician who treats dialysis patients spends about 21.3 percent of his or her time performing services covered by the MCP.[2] Assuming that physicians are reimbursed comparably for both the services included under the MCP and their other patient care services, the MCP reduction would represent a 1.67 percent (21.3 percent times 7.88 percent) reduction in overall earnings from patient care. This would not be a substantial reduction in net earnings.

Although there would be a reduction in payment to the physician, we do not expect the change to affect the rate of assignment or participation because there is an ample supply of physicians in the ESRD program (approximately one physician per twenty-eight patients).

D. Impact on Beneficiaries

In Fiscal Year 1986, approximately 86,600 ESRD beneficiaries would experience on the average, a $2.96 decrease in their monthly coinsurance obligation on the MCP. As previously mentioned, because there is an ample supply of physicians in the ESRD program, we do not believe there would be an adverse effect on access to care.

E. Conclusion

There would be a definite benefit to beneficiaries in cost savings on coinsurance payments. Further, the program savings to the government would be substantial.

The costs of this change would be borne by physicians treating dialysis patients. Since we anticipate no adverse effect on access to care, we conclude that the benefits to society as a whole outweigh the related costs.

[2] Based on our analysis of the final report of HCFA Grant Number 95-P-98174-9-01, *Physicians Who Care for End-Stage Renal Disease Patients: A National Study of Their Practices, Patients and Patient Care*. December 15, 1983. Robert E. Mendenhall, Project Director. For further information contact Ed Dean (301) 594-8488.

IV. Other Required Information

A. Paperwork Burden

This notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

B. Response to Public Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments received timely and respond to the major issues in the notice.

(Sec. 1881 of the Social Security Act (42 U.S.C. 1395rr); 42 CFR 405.542)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: February 6, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 86-5965 Filed 3-18-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-27596]

Issuance of Disclaimer of Interest to Lands in New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Issue Disclaimer of Interest.

SUMMARY: The United States of America, pursuant to section 315(a)(1) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745(a)(1)(1982), does hereby give notice of its intention to disclaim and release all mineral interest, if any, of the real property described below.

Through a private exchange the United States acquired a record interest in the mineral estate of the subject land due to an inadvertent omission of a mineral reservation in the warranty deed conveying the land to the United States. A correction warranty deed later issued to correct the omission. However, a cloud on the title of the mineral estate of the land continues to exist.

DATE: For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201-1397. A decision whether to issue the disclaimer will be made within 45 days following the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Phil Kirk, Roswell Resource Area, (505) 624-1790, P.O. Drawer 1857, Roswell, New Mexico 88201.

The land is described as follows:

New Mexico Principal Meridian

T. 8 S., R. 25 E.,

Sec. 25, that portion of the SE¼ known as Japan placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 60 acres, more or less.

T. 8 S., R. 26 E.,

Sec. 28, that portion of the SW¼ known as Hettie placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 28 acres, more or less;

Sec. 28, that portion of the SE¼ known as Korea placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 60.80 acres, more or less;

Sec. 29, that portion of the S½N½ known as Apex placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 2 acres, more or less;

Sec. 29, that portion of the N½S½ known as Kaiser placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 38.20 acres, more or less;

Sec. 29, that portion of the S½S½ known as Columbia placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 82.40 acres, more or less;

Sec. 30, that portion of the S½NE¼, SE¼NW¼, and Lot 2 known as Lawrence placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad, and exclusive of said right-of-way, and of highways, containing 18.50 acres, more or less;

Sec. 30, the N½SE¼, NE¼SW¼ known as Princess placer mining claim, containing 120 acres, more or less;

Sec. 30, the S½S½ known as Shoestring placer mining claim, containing 156.96 acres, more or less;

Sec. 31, the NW¼ known as Juarez placer mining claim, containing 153.67 acres, more or less;

Sec. 32, N½NE¼;

Sec. 33, N½NW¼.
T. 9 S., R. 25 E.,
Sec. 11, W½NE¼;
Sec. 14, W½NE¼, E½NE¼NW¼.
Aggregating 1060.53 acres, more or less.

Dated: March 11, 1986.

Monte G. Jordan,
Associate State Director.

[FR Doc. 86-5938 Filed 3-18-86; 8:45 am]
BILLING CODE 4310-FB-M

[CA 10678]

Exchange of Public and Private Lands in Riverside County and Order Providing for Opening of Public Lands; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and order providing for opening of public lands.

SUMMARY: The purpose of this exchange was to acquire the non-Federal land for inclusion in the Mecca Hills Recreation Area located in the Southern California Desert. To equalize the values of the public and non-Federal lands in the exchange a cash payment in the amount of $500 was paid to the United States. The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to the operation of the public land laws, but not the United States mining and mineral leasing laws. The United States did not acquire the mineral estate.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office (916) 978-4815.

The United States issued an exchange conveyance document to the County of Riverside, California, on February 10, 1986, for the following described land under the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

San Bernardino Meridian, CA

T. 2 S., R. 2 W.
Sec. 34, NE¼NW¼, S½NW¼, SW¼ and W½SE¼
T. 3 S., R. 2 W.
Sec. 4, Lots 1, 2, 3, 4, 7, and 8

Containing 613.38 acres of public land.

In exchange for these lands, the United States acquired the surface estate of the following described land from the County of Riverside, California:

San Bernardino Meridian, CA

T. 6 S., R. 9 E.
Sec. 36, All

Containing 640 acres of non-federal land.

At 10 a.m. on April 21, 1986, the non-Federal land described above shall be open to the operation of the public land laws generally, except the United States mining laws and mineral leasing laws, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 21, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: March 10, 1986.

Sharon N. Janis,
Chief, Branch of Lands & Minerals Operations.

[FR Doc. 86-5947 Filed 3-18-86 8:45 am]
BILLING CODE 4310-40-M

Minerals Management Service

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3125, Block 144, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 7, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 11, 1986.

J. Rogers Pearcy,
Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-5939 Filed 3-18-86; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Region of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

DATE: The meeting will be held starting on Tuesday, March 25, 1986, from 9:00 A.M. to 5:00 P.M. and ending Wednesday afternoon, March 26, 1986.

Location: Traveler's Inn, Chena Room, 813 Noble Street, Fairbanks, Alaska.

Agenda: The following agenda items will be undertaken:

1. Call meeting to order
2. Roll call
3. Introduction of visitors and guests
4. Approval of minutes
5. National Park Service reports
   a. Charter amendments
   b. Budget reports
6. Committee workshops
   a. Access
   b. Eligibility
   c. Traditional use areas
7. Committee reports
8. Public/Agency testimony
9. Other business
10. Date and agenda for next meeting
11. Adjournment.

Written comments and recommendations received prior to November 11, 1985, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence

Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487.

Robert L. Peterson,

Regional Director.

[FR Doc. 86-5934 Filed 3-18-86; 8:45 am]

BILLING CODE 4310-10-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-143]

Import Investigations; Certain Amorphous Metal Alloys and Amorphous Metal Articles; Issuance of Initial Advisory Opinion and Recommended Determination; Extended Filing Schedule and Review Decision Deadline

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the presiding administrative law judge (ALJ) in the above-captioned investigation has issued an initial advisory opinion (IAO), which states that the modified amorphous metal casting processes used by certain respondents would not infringe the patent in controversy if those processes were used in the United States. The ALJ also has issued a recommended determination (RD), which states that (1) the exclusion order issued in the subject investigation on October 15, 1984, should be modified; and (2) the Commission should issue an order directing all respondents in the investigation to cease and desist from importing into the United States and selling amorphous metal articles made by the patented process.

Notice is also given that the Commission has revised the previous schedule for parties, other Government agencies, and interested members of the public to file written submission concerning the IAO and the RD. The Commission also has extended its deadline for determining whether to review the IAO.

FOR FURTHER INFORMATION CONTACT: For further information about the current proceedings and the original investigation, contact P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350; or contact Stephen L. Sulzer, Esq., Commission investigative attorney, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0419.

SUPPLEMENTARY INFORMATION: Investigation No. 337-TA-143 was conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain amorphous metal alloys and articles, by reason of the alleged infringement of three U.S. patents owned by complainant Allied Corp. (See 48 FR 15963, Apr. 13, 1983.) The investigation resulted in the issuance of a general exclusion order prohibiting the entry of amorphous metal articles manufactured abroad in accordance with the casting process disclosed in claims, 1, 2, 3 ,5, 8, or 12 of Allied's U.S. Letters Patent 4,221,257 (the/275 patent) from entering the United States. (See 49 FR 42803 (Oct. 24, 1984); and USITC Publication 1664 (November 1984), Commission Action and Order of Oct. 15, 1984.)

The Commission currently is conducting advisory opinion proceedings under 19 CFR 211.54(b) to determine whether the modified casting processes used by respondents Hitachi Metals, Ltd., Hitachi Metals International, Ltd., and Vacuumschmelze GmbH would infringe the '257 patent if those processes were used in the United States. (See Motion No. 143-86"C"; Commission Action and Order of July 26, 1985; Motion No. 143-89"C"; and Commission Action and Order of Sept. 11, 1985.)

The Commission also is conducting modification proceedings under 19 CFR 211.57 to determine (1) whether the exclusion order can be enforced without excluding products made by noninfringing processes, and (2) whether the exclusion order should be modified, limited, vacated, or left unchanged. (See Commission Action and Order of July 26, 1985; 50 FR 31269 (Aug. 1, 1985); Motions Nos. 143-86"C" and 143-89"C"; and Letter dated Apr. 16, 1985, from former United States Trade Representative William E. Brock to Commission Chairwoman Paula Stern.)

On March 3, 1986, the ALJ issued an IAO, which states that the modified amorphous metal casting processes used by the Hitachi and Vacuumschmelze respondents would not infringe the '257 patent if those processes were used in the United States. The ALJ also issued an RD (together with proposed findings of fact and conclusions of law), which indicates that the exclusion order should be modified to include; (1) A description of the patented process, (2) the width of amorphous metal articles covered by the order, (3) provisions for recordkeeping and a certification process, and (4) provision for further administrative proceedings as needed. The RD also states that the Commission shoud issue an order directing all respondents to cease and desist from importing into the United States and selling amorphous metal articles made by the patented process.

Written submissions: The filing schedule and Commission deadlines set forth in the Commission Actions and Orders of July 26 and September 11, 1985 (and pubished in the **Federal Register** of Aug. 1, 1985, 50 FR 31260) have been revised and extended. The new schedule and deadlines are set forth below.

March 28, 1986—Deadline for parties to the proceedings to file (1) petitions for review of the IAO, and (2) exceptions to the RD, as well as alternative proposed findings of fact and conclusions of law.

April 9, 1986—Deadline for parties to file (1) responses to the petitions for review of the IAO, and (2) responses to exceptions to the RD and proposed findings and conclusions.

April 16, 1986—Deadline for parties to file (1) replies to responses to petitions for review of the IAO, and (2) replies to responses to exceptions to the RD and alternative proposed findings and conclusions.[1]

May 19, 1986—Deadline for the Commission to determine whether to review the IAO. (See 19 CFR 210.53-.55.)

Interested members of the public and Federal agencies other than those listed below may file written comments concerning the RD (and the issue of whether the Commission should modify the exclusion order) with 14 days after the date of publication of this notice in the **Federal Register.**

The U.S. Customs Service, the Federal Trade Commission, the U.S. Department of Justice, and the U.S. Department of Health and Human Services may file written comments concerning the IAO and the RD within 21 days after service of the IAO and the RD.

No deadline has been set for the Commission to determine whether to adopt or reject the advice set forth in the RD. However, after considering the RD, all information obtained in the modification proceedings, and information on the record of the investigation, the Commission will determine whether the exclusion order should be modified, limited, vacated, or left unchanged.

[1] The original schedule did not provide for reply submissions. However, the Commission has since determined that the complexity of the issues makes such submissions appropriate.

Parties, other Federal agencies, and interested members of the public who file written submissions must file the original and 14 true copies thereof with the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC, on or before the deadlines listed above. Any submission that contains confidential business information covered by the protective order must be appropriately marked. At the same time that the confidential copies of the submission are filed, the submitting party must file a public inspection copy (with all confidential business information deleted).

Any interested member of the public or Government agency that wishes 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 ALJ. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why such treatment should be granted. Documents 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, indicated below.

Public Inspection: Public inspection copies of all documents cited in this notice, and all other nonconfidential documents on the record of the investigation, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Hearing-impaired individuals are advised that information concerning the subject investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6005 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-286 (Final)]

Import Investigation; Anhydrous Sodium Metasilicate From the United Kingdom

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-286 (Final) under section 735(b) of the Tariff Act of 1930 (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 from the United Kingdom of anhydrous sodium metasilicate, provided for in item 421.34 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 10, 1986, and the Commission will make its final injury determination by June 30, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedures, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202-523-0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of anhydrous sodium metasilicate from the United Kingdom are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 16, 1985, by PQ Corp., Valley Forge, PA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise (50 FR 46366, Nov. 7, 1985).

Participation in the investigation.—Person 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 (19 CFR 201.11), not later than twenty-one (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 Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the name and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the 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.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on May 6, 1986, 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 10:00 a.m. on May 28, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. 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 May 13, 1986. 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 9:30 a.m. on May 16, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 21, 1986.

Testimony at the public hearing is governed by § 207.23 of the

Commission's rules (19 CFR 207.23). 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. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 4, 1986. In additon, any person who has not entered an appearance as a party to the investigation may sumit a written statement of information pertinent to the subject of the investigation on or before June 4, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). 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 must 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).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6006 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-269 and 270 (Preliminary) and 731-TA-311-317 (Preliminary)]

Import Investigation; Certain Brass Sheets and Strips From Brazil, Canada, France, Italy, South Korea, Sweden, and West Germany

AGENCY: U.S. International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-269 and 270 (Preliminary) under section 703(a) of the Tariff Act of 1930 (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 from Brazil (investigation No. 701-TA-269 (Preliminary)) and France (investigation No. 701-TA-270 (Preliminary)) of certain brass sheets and strips (UNS C20000-series), the foregoing not cut, pressed, or stamped to nonrectangular shape, provided for in item 612.39 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Brazil and France.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-311-317 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(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 from Brazil (investigation No. 731-TA-311 (Preliminary)); Canada (investigation No. 731-TA-312 (Preliminary)); France (investigation No. 731-TA-313 (Preliminary)); Italy (investigation No. 731-TA-314 (Preliminary)); South Korea (investigation No. 731-TA-315 (Preliminary)); Sweden (investigation No. 731-TA-316 (Preliminary)); and West Germany (investigation No. 731-TA-317 (Preliminary)) of certain brass sheets and strips (UNS C20000-series), the foregoing not cut, pressed, or stamped to nonrectangular shape, provided for in item 612.39 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.

As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by April 24, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A though E (19 CFR part 201).

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-523-4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on these matters can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to petitions filed on March 10, 1986, by counsel on behalf of American Brass, Buffalo, NY; Bridgeport Brass Corp., Indianapolis, IN; Chase Brass & Copper Co., Solon, OH; Hussey Metals Div. (Copper Range Co.), Leetsdale, PA; The Miller Co., Meriden, CT; Olin Corp. (Brass Group), East Alton, IL; and Revere Copper Products, Inc., Rome, NY.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursaunt to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (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.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 4, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202-523-4612) not later than March 31, 1986, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before April 8, 1986, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). 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 must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and request for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII This notice is published pursuant of § 207.12 of the Commission's rules (19 CFR 207.12)

By order of the Commission.

Issued: March 13, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6007 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Import Investigations; Certain Dynamic Random Access Memories

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and 19 U.S.C. 1337a.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 7, 1986, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and under 19 U.S.C. 1337a, on behalf of Texas Instruments, Inc., P.O. Box 225474, 13500 North Central Expressway, Dallas, Texas 75265. Supplements to the complaint were filed on February 13, 27, and 28, and March 3 and 6, 1986. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain dynamic random access memories, components thereof, and products containing same, and in their sale, by reason of alleged direct, contributory, and induced infringement of (1) claims 12-15 and 17 of U.S. Letters Patent 4,043,027; (2) claims 1-3 of U.S. Letters Patent 3,940,747; (3) claims 1-11 of U.S. Letters Patent 4,081,701; (4) Claims 5-8 and 10-18 of U.S. Letters Patent 4,240,092; (5) claims 1-7 of U.S. Letters Patent 4,249,194; (6) claims 1-4 and 6-7 of U.S. Letters Patent 4,533,843; (7) claims 1-4 and 6-7 of U.S. Letters Patent 4,543,500; (8) claims 7-18 and 20-26 of U.S. Letters Patent 3,541,543; (9) claims 1-3 of U.S. Letters Patent 4,495,376; and (10) claims 16-17, 19-22, and 24 of U.S. Letters Patent 3,716,764. 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 that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sulzer, Esq., or Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0419 and 202-523-1273, respectively.

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 March 10, 1986, 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 into the United States of certain dynamic random access memories, components thereof, and products containing same, or in their sale, by reason of alleged direct, contributory, and induced infringement of (1) claims 12-15 and 17 of U.S. Letters Patent 4,043,027; (2) claims 1-3 of U.S. Letters Patent 3,940,747; (3) claims 1-11 of U.S. Letters Patent 4,081,701; (4) claims 5-8 and 10-18 of U.S. Letters Patent 4,240,092; (5) claims 1-7 of U.S. Letters Patent 4,249,194; (6) claims 1-4 and 6-7 of U.S. Letters Patent 4,533,843; (7) claims 1-4 and 6-7 of U.S. Letters Patent 4,543,500; (8) claims 7-18 and 20-26 of U.S. Letters Patent 3,541,543; (9) claims 1-3 of U.S. Letters Patent 4,495,376; and (10) claims 16-17, 19-22, and 24 of U.S. Letters Patent 3,716,764, 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—

Texas Instruments, Inc., P.O. Box 225474, 13500 North Central Expressway, Dallas, Texas 75265.

(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:

Fujitsu, Limited, Marunouchi Center Building, Marunouchi 1-6-1, Chiyoda-ku, Tokyo 100, Japan.

Hitachi, Limited, 6, Kanda-Surugadai 4-Chome, Chiyoda-ku, Tokyo, 101, Japan.

Oki Electric Industry, Company, Limited, 10-3 Shibaura 4-Chome, Minato-ku, Tokyo 108, Japan.

Toshiba Corporation, 1-1 Shibaura, 1-Chome Minatu-ku, Tokyo 105, Japan.

Matsushita Electric Industrial Co., Ltd., P.O. Box 288 Central, Osaka 570-91, Japan.

Matsushita Electronics Corporation, 1-1 Saiwai-cho, Takatsuki, Osaka 569, Japan.

NEC Corporation, 33-1, Shiba 5-Chome, Minato-ku, Tokyo 108, Japan.

Mitsubishi Electric Corporation, Mitsubishi Denki Building, 2-3 Marunouchi, 2-Chome, Chiyoda-ku, Tokyo 100, Japan.

Sharp Corporation, 22-22 Nagaike-cho, Abeno-ku, Osaka 545, Japan.

Samsung Company, Ltd., Samsung Main Building, 250, 2-KA Taepyung-ro, Chung-ku, Seoul, Korea.

Samsung Semiconductor and Telecommunications Co., Ltd., Dong Bang Main Building, 150, 2-KA Taepyung-ro, Chung-ku, Seoul, Korea.

Fujitsu Microelectronics, Inc., 3320 Scott Boulevard, Santa Clara, California 95051.

Hitachi America, Limited, 2210 O'Toole Avenue, San Jose, California 95131.

OKI America Inc., 1 University Place, Hackensack, New Jersey 07601.
Toshiba America, Inc., 2441 Michelle Drive, Tustin, California 92680.
Matsushita Electric, Corporation of America, 1 Panasonic Way, Secaucus, New Jersey 07094.
NEC Electronics, Inc., 401 Ellis Street, P.O. Box 7241, Mountain View, California 94043.
Mitsubishi Electronics America, Inc., 991 Knox Street, Torrance, California 90502.
Sharp Electronics Corporations, 10 Sharp Plaza, Paramus, New Jersey 07652.

(c) Stephen L. Sulzer, Esq., and Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 124 and Room 128, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

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 (19 CFR §§ 201.16(d) and 210.21(a)), 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 responses 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 administrative law judge 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 busienss 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, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6008 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-239 (Final) and 731-TA-248 (Final)]

Import Investigations; Ethyl Alcohol From Brazil

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] [3] pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil of certain ethyl alcohol,[4] provided for in item 427.88 of the Tariff Schedules of the United States (TSUS) and mixtures of certain ethyl alcohol provided for in items 430.10, 430.20, and 432.10 of the TSUS, which have been found by the Department of Commerce to be subsidized by the Government of Brazil and, in addition, which have been found by the Department of Commerce to be sold in United States at less than fair value (LTFV).

Background

The Commission instituted investigation No. 701-TA-239 (Final) effective November 12, 1985, following a preliminary determination by the Department of Commerce that imports of certain ethyl alcohol from Brazil were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 4, 1985 (50 FR 49777).

The Commission instituted investigation No. 731-TA-248 (Final) effective September 24, 1985, following a preliminary determination by the Department of Commerce that imports of certain ethyl alcohol from Brazil were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 10, 1985 (50 FR 41427). Subsequently, the Department of Commerce postponed its final antidumping duty determination and, accordingly, the Commission published a notice in the **Federal Register** of November 14, 1985 (50 FR 47123), revising its schedule for conduct of the investigation.

The hearing was held in Washington, DC, on February 5, 1986, and was a consolidated proceeding for both investigations. All persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 11, 1986. The views of the Commission are contained in USITC Publication 1818 (March 1986), entitled "Certain Ethyl Alcohol from Brazil: Determinations of the Commission in Investigations Nos. 701-TA-239 (Final) and 731-TA-248 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: March 11, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6009 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes determines that an industry in the United States is materially injured by reason of imports from Brazil of certain ethyl alcohol which have been found by the Department of Commerce to be subsidized by the Government of Brazil and, in addition, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[3] Commissioner Lodwick did not participate in these determinations.

[4] The ethyl alcohol (ethanol) covered by these investigations is fuel ethyl alcohol (fuel ethanol), provided for in item 427.88 of the Tariff Schedules of the United States (TSUS) as ethyl alcohol for nonbeverage purposes. The U.S. Department of Commerce has included mixtures of fuel ethanol, provided for in items 430.10, 430.20, and 432.10 of the TSUS, within the scope of these investigations. Further, Commerce stated that other blends may also be included within the scope of these investigations. Fuel ethyl alcohol is subject to additional duties under TSUS item 901.50.

[Investigation No. 337-TA-228]

Import Investigations; Certain Fans With Brushless DC Motors

Notice is hereby given that the prehearing conference in this matter will commence at 8:00 a.m. on March 24,

1986, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: March 11, 1986.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 86-6010 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[332-225]

Import Investigation; Probable Effects Advice Concerning the Possible Removal of Israel's Eligibility for Duty-Free Treatment of Sodium Bromide Under the Generalized System of Preferences

AGENCY: United States International Trade Commission (ITC).

ACTION: Institution of investigation.

SUMMARY: In accordance with the provisions of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission has instituted investigation No. 332-225 for the purpose of obtaining information for use in connection with the preparation of advice requested by the U.S. Trade Representative (USTR), at the direction of the President, as to the probable economic effect on the U.S. industry producing a like or directly competitive article and on consumers of the removal of Generalized System of Preferences (GSP) duty-free status from sodium bromide, provided for in item 420.82 of the Tariff Schedules of the United States, which is imported from Israel.

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Emanuel (202-523-0334) in the Commission's Office of Industries. For information on legal aspects of the investigation, contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-523-0487.

Background and Scope of Investigation: USTR requested the investigation following initiation of a review by the Trade Policy Staff Committee (TPSC). The review was initiated following receipt of a petition filed by the U.S. Bromine Alliance and concerns the possible removal of Israel's eligibility for duty-free treatment of sodium bromide under the GSP. Notice of the TPSC investigation was published in the **Federal Register** of February 18, 1986 (51 FR 5817). The USTR requested that the Commission complete its investigation within 60 days of receipt of the request.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on March 28, 1986. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6004 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-237]

Certain Miniature Hacksaws; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Consent Order

AGENCY: United States International Trade Commission.

ACTION: Termination of repondent Scotty's, Inc., on the basis of a consent order.

SUMMARY: The Commission has determined not to review an initial determination (ID) (Order No. 2) terminating Scotty's, Inc. (Scotty's), as a respondent in the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: E. Clark Lutz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1641.

SUPPLEMENTARY INFORMATION: On February 7, 1986, complainant The Stanley Works, respondent Scotty's, Inc., and the Commission investigative attorney jointly moved (Motion No. 237-3) to terminate this investigation as to respondent Scotty's on the basis of a consent order agreement and a proposed consent order. On February 10, 1986, the presiding administrative law judge issued an ID terminating the investigation with respect to respondent Scotty's on the basis of the proposed consent order. The Commission has received no petitions for review of the ID or comments from Government agencies or the public.

Termination of the investigation as to respondent Scotty's on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 7, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6011 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-237]

Certain Miniature Hacksaws; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Consent Order

AGENCY: United States International Trade Commission.

ACTION: Termination of respondent U.S. General Supply Corp. on the basis of a consent order.

SUMMARY: The Commission has determined not to review an initial determination (ID) (Order No. 1) terminating U.S. General Supply Corp. (U.S. General) as a respondent in the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: E. Clark Lutz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1641.

SUPPLEMENTARY INFORMATION: On February 6, 1986, complainant The Stanley Works, respondent U.S. General Supply Corp., and the Commission investigative attorney jointly moved (Motion No. 237-2) to terminate this investigation as to respondent U.S. General on the basis of a consent order agreement and a proposed consent order. On February 10, 1986, the presiding administrative law judge issued an ID terminating the investigation with respect to respondent U.S. General on the basis of the proposed consent order. The Commission has received no petitions for review of the ID or comments from Government agencies or the public.

Termination of the investigation as to respondent U.S. General on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 7, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6012 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-275 (Final)]

Import Investigation; Oil Country Tubular Goods From Argentina

AGENCY: United States International Trade Commission.

ACTION: Schedule for the subject investigation.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: On January 22, 1986, the Commission instituted the subject investigation without establishing a schedule for its conduct (51 FR 4663, February 6, 1986). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from April 8, 1986 to May 21, 1986. The Commission's schedule for the investigation is as follows: the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on April 28, 1986; the public version of the prehearing staff report will be placed on the public record on April 18, 1986; the deadline for filing prehearing briefs is April 28,1986; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 10:00 a.m. on May 6, 1986; written submissions directly relating to Commerce's final determination will be due on May 28, 1986; and the dealine for filing all other written submissions, including posthearing briefs, is May 13, 1986.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20)

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6013 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-255 (Final) and 731-TA-276 and 277]

Import Investigations; Oil Country Tubular Goods From Canada and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: March 10, 1986.

FOR FUTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002.

SUPLEMENTARY INFORMATION: On December 30, 1985, the Commission instituted the subject investigations and established a schedule for their conduct (51 FR 3270, January 24, 1986). Subsequently, the Department of Commerce extended the dates for its final determinations in the investigations from March 4, 1986 to April 16, 1986 for inv. no. 701-TA-255 (51 FR 3389, January 27, 1986), from March 17, 1986 to April 16, 1986 for inv. no. 731-TA-276, and from March 17, 1986 to May 21, 1986 for inv. no. 731-TA-277. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedules.

The Commission's new schedule for the investigation is as follows: The prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on April 28, 1986; the public version of the prehearing staff report will be placed on the public record on April 18, 1986; the deadline for filing prehearing briefs is April 28, 1986; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 10:00 a.m. on May 6, 1986; written submissions directly relating to Commerce's final dumping determination on Taiwan will be due on May 28, 1986; and the deadline for filing all other written submissions, including posthearing briefs, is May 13, 1986.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR § 207.20).

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason.

Secretary.

[FR Doc. 86-6014 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-271 and 731-TA-318 (Preliminary)]

Import Investigations; Oil Country Tubular Goods From Israel

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-271 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) of a preliminary antidumping investigation No. 731-TA-318 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(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 from Israel of oil country tubular goods,[1] provided for in items 610.32, 610,37, 610.39, 610.40, 610.42, 610.43, 601.49, and 610.52 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Israel and which are alleged to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by April 28, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 12, 1986.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on March 12, 1986 by the Lone Star Steel Company, Dallas, TX and CF&I Steel Corporation, Pueblo, CO.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring the file the entry.

Service list.—Pursuant to § 202.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (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.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on April 7, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202-523-0282) not later than April 2, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before April 9, 1986, a written statement of informaiton pertinent to the subject of the investigations, as provided in section 207.15 of the Commission's rules (19 CR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). 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 must by 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).

Authority: These investigation are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: March 14, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6015 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[1] For purposes of these investigations, "oil country tubular goods" includes drill pipe, casing, and tubing for drilling oil and gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications.

[Investigations Nos. 701-TA-267 and 268 (Preliminary) and 731-TA-304 and 305 (Preliminary)]

Import Investigations; Top-of-the Stove Stainless Steel Cooking Ware From Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a resonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Korea and Taiwan of cooking ware of stainless steel, not including teakettles, ovenware, and kitchenware, for cooking on stove-top burners, provided for in item 653.94 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Korea and Taiwan.

The Commission also determines,[2] pursuant to section 733(a) of the Act (19 U.S.C. 1673(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 such cooking ware of stainless steel from Korea and Taiwan which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 21, 1986, petitions were filed with the Commission and the Department of Commerce on behalf of

[1] The record is defined in § 207.2(i) of the Commission's Ruels of Practice and Procedure (19 CFR § 207.2(i)).

[2] Commissioner Eckes determined that there is a reasonable indication of material injury. Vice Chairman Liebeler determined that there is a reasonable indication of threat of material injury.

the Fair Trade Committee of the Cookware Manufacturers Association, Walworth, WI, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of subsidized and LTFV imports of top-of-the-stove stainless steel cooking ware from Korea and Taiwan. Accordingly, effective January 21, 1986, the Commission instituted preliminary countervailing duty investigations Nos. 701-TA-267 and 268 (Preliminary) and preliminary antidumping investigations Nos. 731-TA-304 and 305 (Preliminary).

Notice of the institution of the Commission's investigations and of a public 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, DC, and by publishing the notice in the **Federal Register** of February 6, 1986 (51 FR 4664). The conference was held in Washington, DC, on February 12, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 7, 1988. The views of the Commission are contained in USITC Publication 1820 (March 1986), entitled "Top-Of-The-Stove Stainless Steel Cooking Ware From Korea and Taiwan: Determination of the Commission in Investigations Nos. 701-TA-267 and 268 (Preliminary) and 731-TA-304 and 305 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: March 10, 1986.

Kenneth R. Mason,

Secretary.

[Fr Doc. 86-6016 Filed 3-18-86-8:45 am]

BILLING CODE 7020-02-M

[332-223]

Locations and Times of Public Hearings; The Impact of Increased U.S.-Mexican Trade on Southwest-Border Development

AGENCY: United States International Trade Commission.

ACTION: Notice of locations and times of public hearings.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Jose Mendez (202-523-8267), Research Division, Office of Economics, U.S. International Trade Commission, Washington, D.C. 20436.

Background: The Commission instituted investigation No. 332-223, The Impact of Increased U.S.-Mexican Trade on Southwest-Border Development, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt on November 25, 1985, of a request therefore from the Committee on Finance of the United States Senate.

Public Hearings: The Commission will hold three public hearing sin connection with this investigation. The first hearing will be held in the Conference Room, Sheraton Fairway Inn, South 10th Street at Wichita avenue, McAllen, Texas, beginning at 9:00 a.m. on April 7, 1986. The second hearing will be held in the 4th floor Auditorium, Texas Commerce Building, Main and Mesa, El Paso, Texas, beginning at 10:00 a.m. on April 8, 1986. The third hearing will be held in the Board of Supervisors Room, County of San Diego Administration Building, 1600 Pacific Highway, San Diego, California, beginning at 10:00 a.m. on April 10, 1986.

Written Submissions: In lieu of or in addition to appearances at the public hearings, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a party desires the Commisison to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commissions' *Rules of Practice and Procedure* (19 CFR 201.6). all written submission, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received no later than March 24, 1986. All submissions should be addressed to the Secretary, U.S. International Trade Commission, Washington, DC. 20436.

Posthearing briefs must be submitted not later than the close of business on April 21, 1986. A sined original and 14 true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's Rules (19 CFR 201.8).

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Issued: March 13, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6003 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30793]

Boston and Maine Corp. Trackage Rights; Delaware and Hudson Railway Co.; Exemption

Delaware and Hudson Railway Company has agreed to grant overhead trackage rights to the Boston and Maine Corporation between Crescent and Mohawk Yard, NY, for a distance of approximately 8.65 miles. The trackage rights will be effective after the notice period required pursuant to 49 CFR 1180.4(g) and after the expiration of the appropriate notice period under the applicable labor protective conditions.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry, Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 13, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-5954 Filed 3-18-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18; (Sub-No. 81X)]

Chesapeake and Ohio Railway Co. Abandonment Exemption in Bay County, MI; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.04 miles of rail line between Valuation Station 1+38.1, near Patterson Street, and Valuation Station 56+32.89, near Bangor Street, in Bay City, Country, MI.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that the line does not handle overhead traffic, and (2) that no formal complaint filed by a user of

rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency was notified in writing at least 10 days prior to filing this notice.

As a condition to use of this exemption, any employee affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective April 17, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by March 28, 1986, and petitions for reconsideration, including environmental; energy, and public use concerns, must be filed by April 7, 1986, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: Rene J. Cunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon enviromental or public use conditions.

Decided: March 7, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-5955 Filed 3-18-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85-46]

Emerson Emory, M.D.; Denial of Application

On August 8, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Emerson Emory, M.D. of Dallas, Texas, (Respondent), an Order to Show Cause proposing to deny the application for registration submitted by Respondent. The statutory predicate for the proposed action is that on August 24, 1979, in the U.S. District Court for the Northern District of Texas, Respondent was convicted of violations of 21 U.S.C. 841(a)(1) and 846, felony offenses relating to controlled substances, and for further reason that Respondent is not authorized to prescribe, dispense or administer controlled substances in the State in which he practices.

By mailgram dated September 15, 1985, Respondent requested a hearing on the issues raised in the Order to Show Cause. Prehearing statements were filed, and on December 4, 1985, Government counsel filed a motion for summary disposition, including copies of supporting documents. Respondent filed no opposition or other response to this motion. Accordingly, Administrative Law Judge Francis L. Young considered the motion, accepting as genuine the supporting materials submitted by the Government.

On January 14, 1986, Administrative Law Judge Young issued his opinion and recommended ruling. No exceptions were filed, and on February 10, 1986, Judge Young transmitted the record in this matter to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based on the following findings of fact and conclusions of law.

The Administrative Law Judge found that, by order dated August 26, 1983, the Texas State Board of Medical Examiners revoked Respondent's license to practice medicine in Texas. The Board then stayed the revocation, suspending Respondent's license for one year, and thereafter placing Respondent's license on probation for ten years. Respondent appealed from this ruling and the reviewing court sustained the Board but set the period of suspension for Respondent's license for 350 days from January 13, 1984. By its Amended Order dated February 23, 1985, the Texas State Board of Medical Examiners placed Respondent's license to practice medicine on probation for 10 years, subject to certain terms and conditions. One of these terms was that "Respondent shall not apply for his Federal Drug Enforcement Administration Controlled Substance Registration and Texas Controlled Substance Registration Certificates without first obtaining written permission of the Texas Board of Medical Examiners." To date, Respondent has not obtained permission to file such an application. Respondent is therefore not authorized to handle controlled substances in Texas, the State from which he has applied for DEA registration.

State authorization to dispense controlled substances is a prerequisite to registration of a practitioner under the Federal Controlled Substances Act. 21 U.S.C. 823(f). DEA has consistently held that when an applicant is without authority to handle controlled substances under the laws of the State in which he practices, or proposes to practice, DEA is without authority to issue a Federal registration. See *Dennis Howard Harris, M.D.*, Docket No. 84-19, 49 FR 39930 (1984); *Marshall S. Tuck, M.D.*, Docket No. 80-28, 45 FR 85845 (1980); *John M. Whitenight, D.O.*, Docket No. 77-30, 43 FR 28259 (1978).

In such cases, a motion for summary disposition is properly entertained and must be granted. It is settled law that when no fact question is involved, or when the facts are agreed, a plenary, adversary administrative proceeding is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, the rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *U.S.* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

The Administrative Law Judge concluded that there is a lawful basis for denial of Respondent's application and recommended that the application for registration executed by Respondent be denied.

The Administrator has examined the entire record in this matter, and hereby adopts the recommended findings and conclusions of the Administrative Law Judge. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration as a practitioner, submitted by Emerson Emory, M.D. be, and it hereby is, denied.

Dated: March 13, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-5978 Filed 3-18-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-32]

John Howard Hottinger, D.D.S.; Partial Revocation of Registration

On June 4, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to John Howard Hottinger, D.D.S. (Respondent), of 4170 Gross Road, Capitola, California 95010, proposing to revoke DEA Certificate of Registration AH1660821, issued to Respondent as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's

September 14, 1984 conviction in the Superior Court of the County of El Dorado, California for issuing an unauthorized prescription in violation of Section 11153(b) of the California Health and Safety Code, a felony conviction relating to controlled substances.

Respondent requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in San Francisco, California on September 10, 1985, Administrative Law Judge Francis L. Young presiding. On December 2, 1985, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Government counsel filed exceptions to the Administrative Law Judge's opinion and recommended decision pursuant to 21 CFR 1316.66. On January 10, 1986, Judge Young transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusion of law as hereinafter set forth.

The Administrative Law Judge found that Respondent received his degree in Dental Surgery from Georgetown University in 1970 and then began to practice dentistry in California. Respondent married shortly before graduation and had a son in 1970. About the same time, Respondent began to abuse cocaine.

On February 21, 1975, in the Superior Court of California, Marin County, Respondent pled guilty to two counts of violating section 11173(a) of the California Health and Safety Code, obtaining a controlled substance by fraud, and one count of violating section 11173(b), making a false statement in a controlled substance prescription. Both offenses are related to controlled substances. Imposition of sentence was suspended and Respondent was placed on two years supervised probation. The conditions of Respondent's probation included ninety days in the Marin County Jail, execution of which was stayed; participation in a treatment/counseling program; that Respondent submit to drug testing; and that Respondent not practice dentistry during the probationary period without court approval.

The Administrative Law Judge found that, at the time of the above-mentioned offenses, Respondent was in the midst of a divorce action. He used cocaine in an attempt to relieve the stress involved and then wrote prescriptions in his wife's name for medications with which he tried to offset the effects of the cocaine.

In June 1975, the California State Board of Dental Examiners instituted disciplinary proceedings against Respondent and alleged eight grounds for such action. The Board based its action on the above-mentioned conviction in Marin County and other matters relating to the prescribing of drugs, including prescribing controlled substances for non-dental purposes. In October 1977, Respondent entered into a stipulation of settlement with the Department of Health and the Board of Dental Examiners. He admitted the factual allegations contained in the eight grounds for the disciplinary action. As a result, Respondent was placed on probation for five years, on condition that his dental license be suspended for one year and his DEA Certificate of Registration be surrendered to the Board of Dental Examiners.

After the one year suspension period, Respondent resumed his practice of dentistry. In December of 1978, Respondent again began abusing cocaine. In early 1979, he voluntarily entered into an intensive rehabilitation program in San Francisco in order to control his cocaine abuse problem. After five weeks of in-patient therapy, Respondent commenced regular participation in an Alcoholics Anonymous program, which he continued until approximately January, 1983, when he moved from the San Francisco Bay Area to Santa Cruz, California.

Respondent remained drug free and sober between 1979 and early 1983. Respondent believed that his substance abuse problem was under control and, therefore, did not join an Alcoholics Anonymous Chapter upon his arrival in Santa Cruz.

Judge Young further found that Respondent joined the dental practice of a Dr. Richard Andrews in early 1983 in Santa Cruz. Dr. Andrews was sufficiently impressed with Respondent that he proposed to Respondent that they become partners in the dental practice. Toward the end of 1983, Dr. Andrews decided to retire from dentistry and sell the entire practice to Respondent. The ensuing negotiations, involving a sum of money in excess of $200,000, created considerable tension between the two dentists as they continued to work together.

In early December 1983, Respondent once again began to abuse cocaine. Just before Christmas of that year, Respondent and his fiancee went to Lake Tahoe for a short vacation. Anticipating his impending first meeting with his fiancee's parents, a reunion with his 15 year old son, poor weather conditions which prevented skiing, and the strain of the still on-going business negotiations, Respondent again turned to alcohol and cocaine use as he had done in 1974 under similarly stressful circumstances. Respondent again used his prescription writing privileges, this time at a South Lake Tahoe hospital, to try to obtain Demerol, a Schedule II narcotic controlled substance. The South Lake Tahoe Police were called to the hospital and upon arriving they found Respondent, who appeared to be intoxicated, attempting to obtain Demerol with an outdated prescription that he had written himself. Respondent was later charged and arrested for this unlawful attempt to obtain Demerol.

On March 14, 1984, a four count information was filed in the Superior Court for El Dorado County, California, charging Respondent with violations of the California Business and Professional Code and the California Health and Safety Code, arising out of his attempt to obtain controlled substances at the South Lake Tahoe Hospital the previous December. Respondent was convicted in California Superior Court on September 14, 1984, based on his plea of *nolo contendere,* to one count of violation of the California Health and Safety Code, issuing an unauthorized prescription, a felony. Imposition of sentence on this conviction was suspended and Respondent was placed on five years probation, required to perform 150 hours of community work and fined $1,000.

On December 6, 1984, an accusation was filed against Respondent by the California State Board of Dental Examiners to subject him to disciplinary action for unprofessional conduct. There has been no final action by the Dental Board as a result of this accusation.

The Administrative Law Judge found that Respondent has attempted to rehabilitate himself a number of times. In January 1984, after his disastrous Lake Tahoe vacation, Respondent joined Alcoholics Anonymous in Santa Cruz, where he remains an active member. In May 1984, Respondent joined the Physician's Diversion Program, a rehabilitative program sponsored by the California Board of Medical Quality Assurance. He also began a year of intensive psychotherapy starting in July 1984.

The Administrative Law Judge further found, based on Respondent's background, that he suffers from an addictive pesonality and must remain in treatment for the rest of his life to avoid abusing drugs and alcohol. He also believes that Respondent has

demonstrated a determination now to undertake this commitment.

The Administrative Law Judge observed that this is another in the increasing number of cases presenting health care professionals who, falling into drug abuse, misuse their DEA registration to obtain drugs for their own indulgence. There is no evidence in the record that Respondent utilized the drugs in question except for his own use. He further stated that the evidence shows reasonable assurance that Respondent will refrain from further drug abuse and will not misuse his DEA registration. Accordingly, the Administrative Law Judge recommended that Respondent be permitted to retain his DEA registration provided that, beginning six months after the effective date of the final agency order in this case, and every six months thereafter, Respondent shall submit to the DEA Special Agent in Charge, San Francisco, California:

(1) A list itemizing each prescription for a controlled substance written by Respondent during the preceding six months and each occasion during that period which he administered a controlled substance, stating the date, the substance, the quantity, the purpose, and the patient's name and address, and

(2) A written statement from the Facilitator or other appropriate person having personal knowledge that Respondent has regularly and effectively continued his participation in an appropriate continuing therapy program during the preceding six months, detailing any lapses of Respondent in attendance, or into drug or alcohol abuse which may have occurred.

The Government filed exceptions to the Administrative Law Judge's recommended ruling premised on the belief that the Administrative Law Judge did not accord sufficient weight to Respondent's continued recidivism regarding the abuse of controlled substances and the fact that Respondent has two convictions relating to misuse of his DEA registration. Government counsel points to the fact that every time Respondent comes under stress or faces a crisis, he turns to cocaine and alcohol. There is no more significant indicator of what a person's future conduct will be than the example set by his past conduct. Respondent has been involved in several rehabilitative programs and failed. The Administrative Law Judge found that he must remain in constant treatment to ensure that he does not relapse into drug abuse. Government counsel argues that, based on his background, Respondent should not be permitted to retain his registration to handle controlled substances. In the event that the Administrator did not consider revocation to be appropriate, Government counsel suggested that, at very lest, he consider restricting Respondent to Schedules III through V and that Respondent be denied registration in Schedule II.

The Administrator agrees with Government counsel that Respondent should not be permitted to remain registered in Schedule II. However, based on Respondent's strong rehabilitative efforts, the Administrator believes that Respondent should be permitted to retain a DEA registration in Schedules III, IV and V, conditioned along the lines recommended by the Administrative Law Judge.

Based on the foregoing, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AH1660821, issued to Respondent John Howard Hottinger, D.D.S., be revoked in Schedule II. It is further ordered that the Respondent be issued a DEA registration in Schedules III, IV and V subject to the previously enumerated conditions. This order is effective April 18, 1986.

Dated: March 13, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-5979 Filed 3-18-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Migrant and Seasonal Farmworker Programs; Proposed Allocation Formula

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed State planning estimates and revised allocation formula; request for comments.

SUMMARY: The Employment and Training Administration is publishing (1) the proposed State planning estimates for Program Year 1986 for Job Training Partnership Act migrant and seasonal farmworker programs, and (2) a description of the allocation formula and rationale used in arriving at the planning estimates for each State, including a discussion of the comments received on the report of the Interagency Task Force on Farmworker Population Data. Comments are requested on the proposed allocation formula and the State planning estimates.

DATE: Written comments on this notice are invited from the public. Written comments must be received on or before April 18, 1986.

ADDRESS: Written comments should be submitted to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, Room 6122, Patrick Henry Building, 601 D Street NW., Washington, DC 20213.

FOR FURTHER INFORMATION CONTACT: Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 376-1226.

SUPPLEMENTARY INFORMATION:

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I. Introduction; Scope and Purpose of Notice.
II. Description of Allocation Formula; Comments on Interagency Task Force Report on Farmworker Population Data.
III. Program Year 1986 Proposed State Planning Estimates.

I. Introduction; Scope and Purpose of Notice

For each program year, The Employment and Training Administration (ETA) publishes State Planning Estimates resulting from an allocation formula to enable Job Training Partnership Act (JTPA) Section 402 grant applicants to develop required modifications to their current grants. Since Program Year (PY) 1986 (July 1, 1986–June 30, 1987) is the second year of the current 2-year designation period, current grantees will be funded for PY 1986 unless the actions called for at § 633.315 of the JTPA regulations are appropriate, 20 CFR 633.315 (Replacement, corrective action, termination.). Applications therefore will not be accepted from other organizations.

This year (PY 1986), a revised allocation formula is being used as a result of an exhaustive 2-year study of farmworker population data and the allocation formula by the Department of Labor (Department) and the Interagency Task Force on Farmworker Population Data (Task Force). The Task Force was convened by the Department in an effort to further refine the allocation formula used since the inception of JTPA. Accordingly, Part II of this notice provides a description of the revised formula and the rationale for it for public comment, and a discussion of the Task Force report factors which influenced the revision of the formula. Part III of this notice provides the PY 1986 Proposed State Planning Estimates.

II. Description of Allocation Formula; Comments on Interagency Task Force Report on Farmworker Population Data

Allocation Formula

The proposed distribution is based on data obtained in the Decennial Census of the Population, 1980. More specifically, the proposed planning estimates derive from the Census occupational codes which the Department considered to represent most accurately the nation's disadvantaged agricultural labor force. The persons included in the data base are individual workers who reported on the Census questionnaire that they earned an income at or below 70% of the Lower Living Standard Income Level (LLSIL) set by the Bureau of Labor Statistics and who earned more than half of their income from wages (See 50 FR 24506, June 11, 1985). Basically, the formula proposed differs from the one currently in use in that (1) the 70% LLSIL is now used rather than the Department of Health and Human Services (HHS) Poverty Index for the income threshold, and (2) farm operators are now counted only if over half of their income is derived from wages.

Task Force Report

When it announced the Program Year 1985 State Planning Estimates in its notice published in the **Federal Register** on April 30, 1985, the Department stated:

> The Department does not now expect to receive the report of the Interagency Task Force on Farmworker Population Data in time for review and comment until after Program Year 1985 has begun. Program Year 1985 will afford the Department and interested organizations a full opportunity to consider the results of the report and implement changes, if any, to become effective Program Year 1986.

The Task Force Report provides the information for the changes that are being made in the allocation formula on which the State Planning Estimates are based.

The Task Force was convened in November 1983, after the Department first used Census occupational data to form the data base for determining allotments for JTPA section 402 programs. Public comments raised a number of issues which the Department concluded merited study. The Task Force consisted of specialists in the fields of demography, economics, sociology, and statistics, an employment and training programs specialist, and a representative of JTPA section 402 grantees. Staff from ETA, the U.S. Department of Agriculture, and the Bureau of the Census were represented in this group.

The Task Force examined the issues which were considered to be the most important in arriving at a formula for determining State allotments for JTPA section 402 programs. Those issues were:

i. Selection of the appropriate data base.

ii. Inclusion or exclusion of farm operators, farm managers, and farmworker supervisors in or from the data base.

iii. Use of Standard Occupational Classification (SOC) codes. Standard Industrial Classification (SIC) codes Standard Industrial Classification (SIC) codes.

iv. Use of LLSIL versus Department of Health and Human Services (HHS) Poverty Index as the total income criterion.

v. Inclusion or exclusion of dependents in or from the data base.

The Task Force report was presented to the Department in August 1985, and a notice announcing its availability and requesting comments was published at 50 FR 42789 on October 22, 1985. In response to written requests for copies of the report, the Department distributed a total of 119 copies of the report and received 11 responses, only nine of which included substantive comments. There was no consensus of any of the issues discussed in the report. The Department proceeded to select the data base population which seemed most relevant and which provided a closer agreement with the population which is eligible for, and traditionally receives, full job training services.

The report did not contain recommendations. Rather, for each of the issues examined, the report presented the options available to the Department with arguments for and against each option.

A. Selection of the Appropriate Data Base

The Department has decided that the data source for the distribution of JTPA section 402 funds will continue to be the 1980 Census of the Population. The Census data provide a closer agreement with the population which is eligible for, and traditionally receives, full job training services.

This decision complies with the requirements of section 162(a) of JTPA which provides:

> All allotments and allocations under this Act shall be based on the latest available data and estimates satisfactory to the Secretary. All data relating to economically disadvantaged and lower income persons shall be based on 1980 Census or later data.

The Department believes that the use of Census data permits a better targeting of scarce available resources.

That data contained in the Census of the Population are occupational data rather than industrial. Therefore, only persons actually engaged in agricultural labor are counted. This is as opposed to industrial data which include, in this case, all people who worked in the agricultural industry even if they never performed farm work.

The Census data also include income totals which identify the disadvantaged, and distinguish between income earned through wages and that earned through self-employment. Although other sources are updated more frequently than the Census, those data have shortcomings which the Department believes render them inferior to the 1980 Census as a source on the number and occurrence of disadvantage farmworkers.

"[T]he Department could have decided to allocate all of the funds at its discretion." *California Human Development Corp.* v. *Brock*, 762 F. 2d 1044, 1049 (D.C. Cir. 1985). Instead, it "carefuly sought to arrive at an allocation formula based on factual data available" to the Department. *California Human Development Corp.* v. *Donovan*, 586 F. Supp. 696, 698 (D.D.C. 1984), *aff'd, sub nom. California Human Deveopment Corp.* v. *Brock, supra.*

The Department's use of the 1980 Census as a data source "is reasonably consistent with its congressional mandate. . . ." 762 F. 2d 1045. The proposed continued use of that data source, along with the refinements and adjustments in the allocation formula described in this notice, and the full review conducted by the Task Force, fulfill the Department's promise to conduct " 'on-going review and analysis of data sources' in future years." 762 F. 2d at 1051 and n. 46, *citing* 48 FR 54915 (1983). It is the Department's view that the result is a reasonable approach, carefully arrived at, and satisfactory to the Secretary and the Department. *See* 29 U.S.C. 1572(a).

The following is a list and short discussion of alternative sources of data on farmworkers:

(1) *Hired Farm Working Force Survey.* This Department of Agriculture (USDA) survey is made every 2 years. The data are a projection from a small sample and count only hired farmworker, and as such, excluded sharecroppers, tenant farmers, and renters who are classified as farm operators. Also, the sample does not provide State and county data.

(2) *Census of Agriculture.* Although published every 5 years as opposed to

the 10-year intervals in the Census of the Population, this is industrial data without income figures. Also, the figures include considerable multiple counting, since the data concern relatively short periods of employment and the same workers are probably counted more than once.

(3) *Department of Labor Publications.*—(a) *ES-202 Report*—This is a monthly publication which contains income data, but the count is industrial, not occupational, and represents a projection of the total population from a sample. The sample size and collection method vary from State to State.

(b) *ES-223 Data*—This is a bi-monthly publication which provides data down to the county level, but does not classify workers either by industry or occupation and provides no information on income. Furthermore, workers employed for 150 or more days in a year are not counted, and employers who employ fewer than 500 employees do not contribute to the report. Considerable multiple counting occurs.

(c) *Farm Labor Survey*—This is a quarterly publication which projects from a small sample the average number of persons engaged in agriculture each month by State. However, the data are industrial and contain no information on income. Therefore, this source was not considered suitable as a data base for determining State allocations.

(4) *Current Population Survey (CPS).* This is a monthly updating of the Decennial Census. The chief disadvantage of the CPS is the small sample size which prohibits the collection of statistically reliable data at the State and county level. It has been estimated that it would cost more than $1,000,000 to sufficiently enlarge the sample to provide data for all States.

Therefore, with these choices in mind, the Department decided that no alternate source provided later reliable data.

B. Inclusion of Farm Operators, Farm Managers, and Farm Supervisors in or From the Data Base

The JTPA permits persons in the occupational codes for Farm Operators, Farm Managers, and Farm Supervisors to be considered to be farmworkers if they are disadvantaged and derive more than half of their earned income from wages. These are the same requirements that apply to all persons in the 10 occupational codes which the Department has determined best represent the agricultural labor force.

Farm managers and farm supervisors historically have been included in the data base for farmworker job training programs. Inclusion of disadvantaged farm operators allows the Department to count sharecroppers, tenant farmers, renters, and other disadvantaged small farm owners and operators.

C. Use of Standard Occupational Classification (SOC) Codes and Standard Industrial Classification (SIC) Codes

The Department decided to continue to use the SOC and not SIC data, since the former is limited to persons in agricultural occupations while the later include all persons engaged in the agricultural industry whether they do farm work or not, e.g., persons who work in clerical, administrative and technical positions, but who do not perform farm work.

D. Use of LLSIL Versus Department of Health and Human Services (HHS) Poverty Index as the Total Income Criterion

The Department has decided to change from the HHS Poverty Index to the 70% LLSIL level as the income criterion.

This change is consistent with the eligibility criteria in the regulations for JTPA section 402 programs and with the practice of other programs funded through other Titles of JTPA.

E. Inclusion or Exclusion of Dependents in or From the Data Base

The Department has decided to use 70% of LLSIL and individual workers, without dependents because dependents of JTPA section 402 eligible persons normally receive only nontraining-related supportive services on which by regulations at 20 CFR 633.304(b)(2), not more than 15% of grant funds can be spent. This change is consistent with the section 402 eligibility criteria.

III. Program Year 1986 Proposed State Planning Estimates

The proposed State Planning Estimates are set forth in this notice. They reflect the revised formula provisions described above. In addition, the planning estimates reflect (1) the application of a 75% hold-harmless provision to minimize the effects of the revised formula and reduced appropriation amount, and (2) that States and Territories which would receive less than $60,000 by application of the formula (Alaska, Rhode Island, and the District of Columbia), will receive no allotment since the amount they would receive is deemed insufficient to effectively operate a program. Although the Department reserves the right not to allocate any funds for use in a State whose allocation is less than $120,000 in accordance with 20 CFR 633.105(b)(2), jurisdictions which would receive more than $60,000 but less than $120,000 (Delaware and New Hampshire), will be given a minimum allocation of $120,000.

The formula is applied to a total amount to be distributed of $55,535,000. This figure represents the enacted level of $60,357,000 reduced by a $2,595,000 sequestration effective March 1, 1986 pursuant to Pub. L. 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985. In addition, $2,227,000 is being withheld for the section 402 national account, of which $1,983,861 is for migrant housing and $170,000 is for the Hope, Arkansas Rest Center.

The Department intends to employ a hold-harmless provision for a period of 3 years, and thereafter, allocate to each jurisdiction the amount it would receive by a direct application of the Census data without a hold-harmless provision.

Signed at Washington, D.C. this 12th day of March 1986.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

Appendix.—U.S. Department of Labor—Employment and Training Administration Office of Financial Control and Management Systems PY 1986 MSFW Allotment to States 02-19-1986

	Allotment
Alabama	774,193
Alaska	0
Arizona	1,001,566
Arkansas	1,140,959
California	7,881,007
Colorado	705,840
Connecticut	253,520
Delaware	120,000
District of Columbia	0
Florida	3,419,487
Georgia	1,515,670
Hawaii	241,161
Idaho	796,276
Illinois	1,059,592
Indiana	806,617
Iowa	1,456,693
Kansas	894,709
Kentucky	1,342,394
Louisiana	781,203
Maine	322,950
Maryland	274,928
Massachusetts	281,121
Michigan	835,651
Minnesota	1,379,565
Mississippi	1,437,736
Missouri	1,080,785
Montana	661,908
Nebraska	1,077,714
Nevada	132,732
New Hampshire	120,000
New Jersey	316,914
New Mexico	463,978
New York	1,373,941
North Carolina	2,825,698
North Dakota	646,628
Ohio	907,535
Oklahoma	599,973
Oregon	831,679
Pennsylvania	1,160,237
Rhode Island	0
South Carolina	1,049,588
South Dakota	688,665
Tennessee	941,977
Texas	4,521,771
Utah	215,105

	Allotment
Vermont	211,483
Virginia	947,703
Washington	1,415,186
West Virginia	215,573
Wisconsin	1,338,296
Wyoming	196,995
Puerto Rico	2,870,098
Formula Total	55,535,000
TA/Hous	2,227,000
Grand Total	57,762,000

[FR Doc. 86-5976 Filed 3-18-86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Professional Development/Overview Section) to the National Council on the Arts will be held on April 3-4, 1986 from 9:00 a.m. to 5:30 p.m., Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on April 4, 1986 from 11:00 a.m. to 5:30 p.m., to discuss Policy and guidelines.

The remaining sessions of this meeting on April 3, 1986 from 9:00 a.m. to 5:30 p.m. and April 4, 1986 from 9:00 a.m. to 11:00 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 12, 1986.

[FR Doc. 86-5940 Filed 3-18-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological, Behavioral, and Social Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological, Behavioral, and Social Sciences (BBS).

Date and Time: April 3 and 4, 1986; 9:00 a.m. to 5:00 p.m.

Place: Room 506, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. David T. Kingsbury, Assistant Director, Biological, Behavioral, and Social Sciences, (202) 357-9854, Room 506, National Science Foundation, Washington, DC 20550.

Summary of Minutes: May be obtained from the contact person.

Purpose of Advisory Committee: The Advisory Committee for BBS provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BBS.

Agenda: Discussion of BBS directorate-wide priorities and planning activities; mode of committee operation regarding expanded committee responsibility in the area of review of biotechnology-related environmental research; and plans for subsequent meetings of the committee.

Dated: March 13, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 6002 Filed 3-18-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Third Quarter CY 1985 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health or safety). The following incidents were determined to be abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial action taken. These events are also being included in NUREG-0090, Vol. 8, No. 3 ("Report to Congress on Abnormal Occurrences: July-September, 1985"). This report will be available in the NRC's Public Document Room, 1717 H Street NW, Washington, D.C. 20555, about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

Management Control Deficiencies

One of the abnormal occurrence examples notes that serious deficiencies in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—Because of continuing problems with the operation of LaSalle Nuclear Power Station, the NRC Region III Office initiated a special Task Force in July 1985 to perform an in-depth review of the facility's operations. Among the problems which triggered the task force study were three instances where errors in installation during equipment modifications affected the operability of Emergency Core Coolant System (ECCS) and the shutdown cooling systems. The Task Force identified a number of items indicative of poor management performance by the licensee (Commonwealth Edison Company). The LaSalle Nuclear Power Station, a two unit facility utilizing boiling water reactors designed by General Electric, is located in LaSalle County, Illinois.

Nature and Probable Consequences—LaSalle Units 1 and 2 received full power licenses in June 1982 and March 1984, respectively. Subsequently, the licensee has experienced numerous personnel, equipment, and regulatory problems, many of which can be attributed to deficiencies in management controls. These recurring problems have not individually been of major safety significance, but represent a trend which is not acceptable over the long run at an operating nuclear station.

To fully assess the scope and nature of the problems, the NRC Region III Office initiated a special Task Force review of the performance of the LaSalle Station in July 1985. The task group identified a number of items indicative of poor management performance. Among the principal findings of the task force, and other NRC inspections:

—Three instances in which installation errors occurred during equipment modifications at the facility in 1985. One event led to the inoperability of Unit 2 Emergency Core Cooling System (although the plant was shut down at the time) for several days. In addition, for part of this time secondary containment was not maintained as required by Technical Specifications.

—The other two events affected the operability of the shutdown cooling systems of Units 1 and 2, respectively. These events are discussed further below.

—A total of 172 violations of NRC requirements have been identified by NRC inspections from 1982 through July 1985. Three fines have been assessed, and a fourth one has been proposed (for the modification errors mentioned above, and described further below).

—Twenty-four instances between October 1984 and July 1985 where personnel errors or other actions during maintenance or modification work affected the operations of the plant. Included were five instances where reactor scrams (automatic shutdowns) were triggered by persons performing maintenance or modification work.

—Reported equipment problems—caused either by hardware failures or personnel errors—have occurred in a number of systems. Among the problems have been 25 failures of the control room ventilation system toxic gas detectors, 56 Licensee Event Reports (submitted to the NRC by the licensee) or Deviation Reports (internal licensee reports) on fire protection system problems, and 10 failures of the vent stack wide range gas monitors.

—The plant appears to routinely operate with several Limiting Condition for Operation (LCO) "time clocks" running. The plant's Technical Specifications contain numerous instances where the plant must reduce power or shut down within a specified time period if certain conditions or equipment problems exist. During a two week period reviewed by the Task Force, the number of time clocks for these LCOs averaged from three to six per unit at any one time.

—The number of outstanding work requests for repairs or maintenance of control room equipment remains high—running about 80 per unit in September 1985. These outstanding work requests may not be significant on an individual basis, but they tend to decrease the reactor operators' confidence in control room instruments and indicators.

—There is an excessive backlog of equipment modifications. In September 1985 the number totaled 543, not including those in progress and 270 of these have been designated as priority modifications. The priority modifications include 85 resulting from commitments to the NRC. The licensee's ability to complete these modifications in a timely manner is in doubt—only 74 modifications were completed between January and August 1985.

As mentioned previously, among the problems which resulted in the task force study were three instances where equipment modification errors affected the operability of the ECCS and the shutdown cooling systems. These events are described as follows.

1. Unit 2 was shut down in February 1985 for an outage that included installation of environmentally qualified electrical equipment. The Unit has three divisions of ECCS equipment. Division III of the ECCS was removed from service in March 1985 for normal maintenance. Between April and June 1985, due to inadequate controls in the design, inspection, and testing areas, the piping to two reactor vessel water level actuation switches in Division I of the Unit 2 Emergency Core Cooling System (ECCS) was installed backwards and, as a result, the Division I ECCS pumps would not have initiated as required on a low-low-low reactor vessel water level trip signal. On June 5, 1985, while unaware that Division I was inoperable, the licensee removed Division II of the ECCS from service for modification. Therefore, all three ECCS divisions were inoperable and automatic initiation capability of the ECCS in response to a low-low-low reactor vessel water level signal was lost until the problem was discovered and corrected on June 10, 1985.

In addition, again because the licensee was unaware that Division I of the ECCS was inoperable, the secondary containment was declared inoperable from June 5 to June 8, 1985, due to maintenance on the reactor building ventilation system. Even though the reactor was in cold shutdown, failing to maintain containment integrity when all ECCS capability is lost is a violation of Technical Specifications.

The event was caused by a lack of adequate design documentation, inspection, and testing controls. The NRC considered this violation particularly significant since its causes were almost identical to a violation which was discovered in Unit 1 in April 1985, and for which the licensee was cited for inadequacies in design and test controls. On April 17, 1985, while performing monthly functional tests on Unit 1, the licensee found that two switches for the Unit 1 Automatic Depressurization System (ADS) were miswired, making the trip system "B" for ADS initiation inoperable.

Following the discovery on June 10, 1985, of the loss of automatic actuation of ECCS capability, NRC Region III sent a Confirmatory Action Letter to the licensee on June 17, 1985, documenting the steps to be taken by the licensee both prior and after startup of Unit 2.

2. On July 17, 1985, the licensee discovered that the piping to the Unit 1 Residual Heat Removal (RHR) shutdown cooling pump high suction flow alarm and isolation switches was installed backwards. A verification walkdown failed to identify this improper installation. This installation resulted in these switches being inoperable during power operation, and a Technical Specification Limiting Condition for Operation was exceeded. Although there are several redundant signals that may provide this same system isolation function, this violation demonstrates another example of the lack of adequate design document and testing controls in the licensee's program.

The NRC Region III forwarded a Conformatory Action Letter to the licensee on July 22, 1985, documenting additional actions to be taken by the licensee prior to startup of either Unit 1 or Unit 2.

3. During this same period of time, another instance was discovered in which the piping to the two Unit 2 RHR Shutdown Cooling pump suction high flow isolation switches was installed backwards. The licensee failed to recognize this improper installation during a verification walkdown, but after a review of data associated with an alternate test, identified the problem with the installation of the lines to the switches. Although the Technical Specification does not require these switches to be operable in cold shutdown, this violation demonstrates further design and testing failures in the licensee's modification program.

Cause or Causes—The deficiencies appear to have resulted from a failure to aggressively resolve equipment problems, inadequate planning and control of site activities, and an excessive number of personnel errors—all of which are indicative of significant deficiencies in the licensee's site management structures and systems to control site activities.

Actions Taken To Prevent Recurrence

Licensee—The immediate actions required prior to startup (as described in the two Confirmatory Action Letters referenced above) were completed and Unit 2 was authorized to start up on July 20, 1985. The licensee is performing the actions required after Unit 2 startup. In addition, the licensee has completed the actions required prior to Unit 1 startup (the licensee has shut down Unit 1 for maintenance on July 12, 1985; the plant was restarted on July 27, 1985.)

Over the past two years the licensee has undertaken a company-wide Regulatory Improvement Program to improve the performance of its management for its nuclear power plants. This program has included issuance of policy directives, organization modifications, some personnel changes, increased management involvement in the day-to-day operations at the nuclear facilities (by both corporate and station management), training activities, and efforts to reduce the number of personnel errors and procedural violations.

The licensee also retained a consultant to review its station operations.

The licensee's Regulatory Improvement Plan has been less effective at the LaSalle Station than at the other Commonwealth Edison facilities. Some evidence of improved performance has been observed, but additional steps are needed to obtain effective, continued improvements.

Additional corrective actions may be required in response to the NRC escalated enforcement actyion, issued September 27, 1985, described below.

NRC—Considerable effort has been required to monitor the licensee's performance and to review and document violations. As discussed previously, numerous violations have been found and several fines have been assessed.

In regard to the equipment modification errors which occurred in June and July 1985, on September 27, 1985, the NRC issued a notice of violation and proposed imposition of civil penalties of $125,000. The base penalty for violations would normally be $50,000; however, the amount was increased to $125,000 because of the number of incidents and because of previous poor performance of the licensee in similar areas.

The NRC letter noted that the violations demonstrated a need for the licensee to re-examine its commitments made to the NRC with regard to operability testing. On October 30, 1984, the licensee failed to perform adequate tests on the Standby Gas Treatment System (SBGT) after maintenance work was performed. As a result, plant personnel were not aware that the SBGT was inoperable until the problem was brought to their attention by the NRC Resident Inspector. That event resulted in a $25,000 civil penalty. In its response, the licensee stated, "In order to preclude this type of problem in the future, LaSalle Station will require that a test be conducted to demonstrate operability anytime a safety-related system is returned to service. A Post Maintenance Operational Test Checklist has been developed to ensure that the post maintenance test specified adequately demonstrates system operability in light of work performed."

The violations cited in the September 27, 1985 NRC letter indicate that more effective controls must be implemented to ensure that operability tests will be performed on safety-related systems after maintenance or modification and before these systems are returned to service.

The results of the Task Force formed by NRC Region III in July 1985 have been discussed with the licensee's Chief Executive Officer.

On November 22, 1985, the Regional Administrator of Region III issued a letter to the licensee under 10 CFR Part 50.54(f) requesting information on the licensee's plans to improve its performance in managing its maintenance, operation, and modification activities, including those problems identified in the Task Force report.

The licensee replied to the request on December 23, 1985. NRC Region III is currently evaluating the adequacy of the response. Further regulatory action will be taken, as appropriate.

* * * * *

Inoperable Steam Generator Low Pressure Trip

One of the general abnormal occurrence criteria notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrence.

Date and Place—On August 7, 1985, Maine Yankee Atomic Power Company found 9 of the 12 pressure transmitters that monitor pressure of the three steam generators (SGs) inoperable due to closed or partially closed root valves. These transmitters provide low steam pressure inputs to the Reactor Protection System, the Main Steam Isolation System, and the Feedwater Isolation System. The closed root valves caused three of the four low-SG-pressure logic channels of these systems to be inoperable. The significance of this is that in the event of a steam line rupture the subsequent reactor trip, main steam isolation and main feedwater isolation would not have initiated automatically on low steam pressure signals. This condition had existed since June 20, 1984.

Maine Yankee utilizes a three loop pressurized water reactor designed by Combustion Engineering, Inc. and is located in Lincoln County, Maine.

Background

Low steam pressure provides several protection signals in the event of a main steam line break. The three main steam lines exit containment into the mechanical penetrations room where each line is provided with an isolation non-return valve and an excess flow check valve. Each of these steam lines has four instrument taps between the non-return valve and the containment wall. Each instrument tap contains a root valve, instrument isolation valve, a drain valve, and a pressure transmitter. The pressure transmitters provide low pressure signals to four independent measurement channels, designated as channels A, B, C and D. Each channel provides the following:

—Pressure indication on the main control board (MCB) sigma meter for each SG. (Sigma meters are a brand name of a small horizontally mounted meter. All twelve sigma meters are located in the same area of the MCB so that all channels can be easily compared.)

—An input to the Reactor Protection System (RPS). The low-SG-pressure trip setpoint is 485 psig. RPS logic is any 2 of 4 low-SG-pressure signals on any two independent protection channels from one or more SGs.

—Independent of RPS:

• An input to close all excess flow check valves on low pressure (400 psig) from a single SG and provide a pretrip alarm (535 psig). Signal is any 2/4 from a single SG.

• A low-SG-pressure signal to provide a feedwater isolation signal. Signal is 2/4 from a single SG.

• A low-SG-pressure signal coincident with a safety injection actuation signal to provide a main feedwater pump train trip. Signal is 2/4 from a single SG.

The purposes of the above trips in the event of a main steam line break are: to scram the reactor, isolate the SGs, and stop feedwater to the SGs preventing continued steam release, reactor overcooling, and a possible reactor restart.

In addition to the trip signals, Channel A provides an input to the plant computer, indication on the safe shutdown panel, and a second meter on the MCB.

Nature and Probable Consequences—On August 7, 1985, the control room operators noted that the SG pressure indication for SG #1 Channel D was reading approximately 520 psig vice actual SG pressure of 630 psig. Calibration of the pressure transmitter by Instrumentation and Control (I&C) personnel was satisfactory and the technicians suspected that the instrument line may have been blocked. Using the drain valve, the technicians blew down the line and found that after an initial volume of water was drained, the steam pressure in the line was minimal.

An operator was sent to the mechanical penetration room to check the position of the instrument root valve. The operator, suspecting that the valve (MS-46) for SG #1 Channel B was open, attempted to verify it as open by turning the valve in the open direction and discovered the valve was, in fact, not open. The next valve check was MS-47 which was also checked in the open direction and was found to be similar to MS-46.

All root valves (four for each of the three SGs for a total of 12) were checked. Three valves were found open (MS-45, 65 and 85). These three valves are the Channel A pressure detector root valves. The other nine root valves were found shut or nearly shut. The operator reported moving a number of valves approximately 1/16 to 1/32 of a turn in the closed direction. Full stem travel is approximately 5 and ½ turns. Six valves (MS-44, 64, 66, 84, 86 and 87) were found cracked open and three valves (MS-46, 47, and 67) were found shut.

The low-SG-pressure trip is designed to operate even when one of the four channels is out of service, with a trip occurring if two of the remaining channels sensed low pressure. However, the closed root valves affected three channels (Channels B, C, and D) and thus the low-SG-pressure trip would not have operated if a main steam line break had occurred.

Three possible consequences of the closed root valves were of primary concern: (1) The loss of a trip signal to the Reactor Protection System which controls the insertion of reactor control rods, (2) delayed isolation of the intact steam generators from the ruptured pipe following a main steam line break accident, and, (3) the prevention of automatic main feedwater pump trip. These consequences are discussed as follows

In the unlikely event of a large main steam line rupture, the reactor trip on low-SG-pressure would be the first trip received by the RPS resulting in a reactor scram within several seconds. The closed root valves would have prevented this trip. However a number of other trips were available to scram the reactor, e.g., delta T power, high nuclear flux, or low primary system pressure. Thus the closed root valves would have caused a delay in reactor scram.

Of greater concern was the possibility of extended steam blowdown outside containment and reactor overcooling. The closed root valves would delay main steam and feedwater isolation and prevent automatic trip of the main feedwater pumps. Thus, if a main steam line rupture had occurred, the steam blowdown and flow of main feedwater to the affected SGs would have continued beyond the termination point currently assumed in plant safety analyses. This would result in overcooling of the reactor vessel and possible reactor recriticality. In addition, the ruptures outside containment, there would be adverse environmental conditions for equipment in the turbine building.

Cause or Causes—Inadequate administrative controls resulted in the SG pressure instrument root valves being left in the closed position. A hydrostatic test required that the root valves be closed by operations personnel and the instrument isolation valves be closed by I&C personnel. The test procedure did require I&C personnel to reopen the instrument isolation valves but did not specifically call for the root valves to be opened by operations personnel. The licensee does not manipulate root valves on normal system alignments. The three root valves for Channel A were opened following completion of a plant modification involving installation of the subcooled margin monitor (SMM). The two activities (hydrostatic test and plant modification) were worked concurrently and both required the "A" root valves to be shut. However, maintenance controls for the SMM modification properly directed opening of the "A" root valves following completion of the modification. Consequently, 9 of the 12 root valves remained in a closed or nearly closed position for a fifteen month period.

The licensee found on September 3, 1985 that the installation of the SMM modification also adversely affected the low-SG-pressure reactor trip. Errors in design and post installation testing of the SMM modification resulted in the Channel A portion of low-SG-pressure reactor trip being disabled. Therefore, even though the Channel A root valves were open, a proper trip signal would not have been received by the RPS. The feedwater trip for Channel A was unaffected.

It should be noted that since the Channel A root valves were open, and the root valves for Channels B, C and D leaked or were partially open, the sigma meters in the control room accurately displayed steam generator pressure. However, due to the restricted path for sensing steam pressure, the RPS would not have responded in accordance with design and tripped the reactor on low steam pressure.

Actions Taken to Prevent Recurrence

Licensee—The licensee has developed a program to correct and prevent recurrence of the mispositioning of instrumentation root valves as well as inadequate design change review as delineated below:

Root Valves

1. Verify as open all root valves associated with safety related instrumentation identified in the Technical Specifications.
2. Incorporate all root valves identified in (1) above into appropriate operating procedures to ensure that they are open and verified to be open prior to startup from each refueling outage.
3. Verify that appropriate administrative controls (procedures) exist on all isolation valves associated with instrumentation identified in (1) above.
4. Review all special tests and temporary procedures prior to use to ensure that each valve position is individually specified when realigning systems.
5. Review the generic procedures governing the preparation and review of procedures to ensure valve positions are individually specified when realigning systems.

Design Changes/Post Maintenance Testing

1. Redesign the SMM circuitry to eliminate the common connection.
2. Review all previous design changes which involve or could interact with the safety instrumentation system identified in the Technical Specifications.
3. Provide an independent design review of all the design changes identified in (2) above.
4. Develop functional test requirements that are more comprehensive for all systems identified in (2) above that have been significantly modified since the issuance of the

facility operating license (1972), including those undergoing modification during the current outage.

5. Provide documented assurance that the functional test requirements identified in (4) above have been previously satisfied, and no further modifications have been performed, or perform new comprehensive functional tests to satisfy the applicable requirements.

6. Review the engineering design change request (EDCR) procedures to specifically identify instrumentation lead "commoning" as requiring special design review emphasis.

7. Review the quality assurance procedures to require that a comprehensive functional test be performed on modified circuits including any associated circuits that may be affected.

8. Review the EDCR procedures to require a second independent design review of all EDCRs associated with instrumentation identified in (2) above, with particular emphasis to detecting sneak or interactive circuits.

9. Review the procedures governing design change implementation instructions to provide an independent review to ensure that the functional test requirements are appropriately comprehensive.

NRC—An enforcement conference was held with the licensee in the Region I Office on September 9, 1985. At the conference, the licensee was asked to discuss root causes of the occurrences from the aspect of both the root valve closure and the breakdowns in the design review process and post maintenance testing.

At the enforcement conference, the licensee offered a comprehensive analysis of all aspects of the occurrences and outlined a comprehensive program for corrective actions.

The licensee formally transmitted their corrective action program in a letter to the Region I Office on September 13, 1985 and addressed the points outlined above. A special inspection was initiated following the enforcement conference to assess the adequacy of implementation of the proposed licensee corrective actions. The inspection concluded on October 21, 1985, the day before recovery from the then ongoing refueling outage. The inspection found the licensee's corrective program comprehensive, well conceived, and properly implemented. There were no issues found by the inspection that impacted on timely plant startup.

On October 29, 1985, the NRC Region I Office issued a Severity Level II violation and civil penalty in the amount of $80,000. The Regional Administrator emphasized that corrections were needed in the areas of improved administrative control of valves, control of design changes, preparation and implementation of temporary procedures, and control of the post maintenance or post modification testing process including test design, test procedures, and their review.

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Management Deficiencies at Tennessee Valley Authority

One of the abnormal occurrence examples notes that serious deficiencies in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place.—Because of serious NRC concern regarding significant programmatic and management deficiencies at Tennessee Valley Authority (TVA), on September 17, 1985, the NRC issued a request for information pursuant to 10 CFR Part 50.54(f) to enable the NRC to determine whether or not the licenses for the Browns Ferry and Sequoyah facilities should be modified or suspended or the application for the Watts Bar facility should be denied. The licensee's facilities are described as follows:

Facility	Number of units	Reactor designer	Reactor type	Facility located
Browns Ferry	3	General Electric	Boiling Water	Limestone County, AL.
Sequoyah	2	Westinghouse	Pressurized Water	Hamilton County, TN.
Watts Bar	2	Westinghouse	Pressurized Water	Rhea County, TN.
Bellefonte	2	Babcock & Wilcox	Pressurized Water	Jackson County, AL.

Operations at all three Browns Ferry units have been suspended by the licensee since March 1985. Operations at both Sequoyah units have been suspended by the licensee since August 1985. The two units at Watts Bar are under construction and fuel loading for Unit 1 had been projected for January 1986; however, the licensee issued a stop-work order on all safety related welding activities for both units during August 1985. This order was lifted in September 1985.

Nature and Probable Consequences—The September 17, 1985, NRC letter forwarded to the licensee the latest Systematic Assessment of Licensee Performance (SALP) Reports. This assessment was prepared by the staff for each of the facilities described above, as well as for the TVA headquarters' functions.

The SALP program is an integrated NRC staff effort to collect available observations and data on a periodic basis and to evaluate licensee performance based upon this information. SALP is supplemental to normal regulatory processes used to ensure compliance to NRC rules and regulations. SALP is intended to be sufficiently diagnostic to provide a rational basis for allocating NRC resources and to provide meaningful guidance to the licensee's managment to promote quality and safety of plant construction and operation.

The collection of performance observations and data are then reviewed by a SALP Board, composed of NRC senior personnel, to assess licensee performance. Licensee performance is assessed in selected functional areas, depending upon whether the facility is in a construction, preoperational, or operating phase. Each functional area normally represents areas which are significant to nuclear safety and the environment, and which are normal programmatic areas. Some functional areas may not be assessed because of little or no licensee activities or lack of meaningful observations. Special areas may be added to highlight significant observations.

Each functional area is classified into one of three performance categories. Briefly, these are (1) Category 1: Reduced NRC attention may be appropriate, (2) Category 2: NCR attention should be maintained at normal levels; and (3) Category 3: Both NRC and licensee attention should be increased. The SALP Board also categorizes the performance trend over the course of the SALP assessment period, i.e., the performance is improving, remaining constant, or declining. The SALP reports for TVA covered the period from March 1, 1984 through May 31, 1985 (Watts Bar Unit 1 was for January 1, 1985 through May 31, 1985).

Based on an overall assessment of the licensee's performance, the NRC has concluded that TVA has demonstrated ineffective management of its nuclear program. This poor performance is indicated by:

—Four successive SALP periods with Category 3 performance in Plant Operations for the Browns Ferry facility,
—Three successive SALP periods with Category 3 performance in Quality Assurance and Administrative Controls Affecting Quality for both the Browns Ferry and Sequoyah facilities,
—Three successive SALP periods with Category 3 performance in Maintenance and Security and Safeguards for the Browns Ferry facility,
—Multiple escalated enforcement actions, including a Confirmatory Order regarding the Browns Ferry Regulatory Performance Improvement Program, an Order regarding identification, evaluation and reporting of significant issues, frequent enforcement conferences, and several significant civil penalties since March 7, 1984,
—Numerous significant events since March 1, 1984, at TVA facilities. Several of these events are described below.

Browns Ferry Facility

1. On August 14, 1984, overpressurization of the Unit 1 core spray system occurred while conducting a core spray system logic surveillance test with the reactor operating at 100 percent power. The air control solenoid for the actuator of the core spray system inboard isolation valve was incorrectly rebuilt during maintenance sometime prior to the beginning of the current fuel cycle on December 29, 1983. The isolation valve is a check valve with an air actuator which is used to move the flapper for test purposes. This, in conjunction with operator error and procedural deficiencies caused the opening of the inboard injection valve during the performance of the core spray logic surveillance test. Backflow of reactor coolant at reactor system pressure into the low pressure core spray system resulted. The low pressure section of the core spray system was overpressurized and portions of the core spray system piping were heated to approximately 400°F.

The high pressure/low pressure isolation arrangements provided between the high pressure reactor coolant system and the low pressure core spray system were substantially degraded, reducing primary system containment integrity and providing the potential for structural damage to the core spray system. In addition, as a result of this event, thirteen persons received minor radioactive skin contamination.

The event was caused by a combination of personnel errors, lack of control over maintenance activities, inadequate post-maintenance testing, and procedural deficiencies.

This event, together with other events involving degraded isolation valves in emergency core cooling systems, were reported as abnormal occurrence AO 84-8 in NUREG-0090, Vol. 7, No. 3 ("Report to Congress on Abnormal Occurrences: July-September 1984"). As described in the report, on January 28, 1985, the licensee was issued a civil penalty in the amount of $100,000.

2. While conducting a shutdown margin test on Unit 3 on October 22, 1984 (after an extended shutdown for refueling, plant modifications, and inspections), numerous procedural and equipment deficiencies necessitated a re-evaluation, which extended the outage for another month.

The Technical Specifications require that the correct rod withdrawal sequence be verified prior to reactor startup. However, an incorrect rod withdrawal sequence was programmed into the Rod Worth Minimizer computer program and due to inadequate verification of the program, the errors in control rod programming were not discovered until 31 rods had been fully withdrawn from the core. No rods were actually withdrawn in the wrong sequence, however.

The Technical Specifications require that jet pumps be demonstrated to be operable prior to startup. Two jet pump differential flow instruments were inoperable due to valve alignment errors and were therefore unavailable for the demonstration of jet pump operability. The reactor was taken to the startup mode and made critical in violation of Technical Specifications.

In addition to the above, various other procedural steps of several different procedures were not accomplished which were required to be completed prior to criticality. One of the examples involved the failure to perform steps in one procedure which were identified as critical steps that resulted in the low pressure coolant injection mode of the residual heat removal system not being fully operable and could have led to a violation of Technical Specification Limiting Condition for Operation. A subsequent procedure which required verification that the critical steps were accomplished was also not completed. Additional examples of procedural violations as well as two examples of inadequate procedures were also identified.

The event was caused by a lack of discipline in the conduct of operations. This was exemplified by personnel errors, inattentiveness to procedural details, inadequate control of safety equipment during return to service following maintenance, and a fundamental misunderstanding of the definition of "reactor startup".

On February 27, 1985, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $112,500 for violations associated with the improper startup.

3. During a reactor startup on Unit 3 on February 13, 1985, the licensee failed to satisfy Technical Specification requirements for reactor vessel water level instrumentation operability. Specifically, due to normal error inherent to low reactor pressures and temperatures, two Yarway water level instruments indicated a reactor vessel water level about 39" (25" greater than the actual vessel water level). Two of the three GEMAC water level instruments were indicating a reactor vessel water level of 37", and the third GEMAC water level instrument was indicating 10". The operators believed the GEMAC instrument indicating 10" was erroneous because the other two were approximately in numerical agreement with the Yarways. (the 10", 37", and 39" levels are control point levels; even at 10", there was over 17 feet of water above the top of the core.)

Even when a half scram occurred as a result of low reactor water level, the operators failed to determine which instruments were providing correct reactor water level indication. However, the heatup was discontinued until the instruments began to converge. The NRC believes reactor operation should have been suspended until the cause of the problem was determined. Such action in necessary because the errors in the GEMAC instruments were caused by a malfunctioning reference leg which was common to the Barton water level instruments and which degraded two channels of the one-of-two-taken-twice logic associated with the reactor water level scram in the Reactor Protection System. Instead, operators reset the half scram by raising the reactor vessel water level in manual control, and continued the heatup of the system.

This event was considered serious by the NRC because operators had sufficient information to indicate that important instrumentation was inoperable and, instead of identifying and fixing the cause of the problem, they continued with the reactor startup. In addition, the Plant Superintendent for Operations and Operations Supervisor became aware of this event approximately at midnight on February 13, 1985; however, the fact that the

water level instruments were inoperable was not recognized and they did not direct discontinuation of startup.

The event resulted from a failure to take corrective action when a similar reactor vessel water level instrument problem occurred on November 20, 1984. If effective corrective actions had been taken at that time, the event in February could have been prevented. Contributing causes were a lack of knowledge by the operators due to a deficient training program and communications and coordination problems between operators, maintenance, and management.

On July 22, 1985, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $150,000.

4. During a routine inspection on August 16, 1985, it was determined that major discrepancies existed in the design of cable tray supports at all three Browns Ferry units. Cable tray supports in the control bay area were not designed to accommodate seismic loading. Cable tray supports in the Diesel Generator Buildings were improperly designed in that the seismic loads used in the design calculations were obtained from the Reactor Building seismic analysis instead of the Diesal Building seismic analysis. In addition, cable tray support calculations in the Reactor Building showed a lack of thoroughness, clarity, consistency, and accuracy. As a result, many supports may not be able to serve their intended function during a seismic event.

During this same inspection, the licensee's implementation of corrective action to address as known deficiency related to cable trays was found to be inadequate. In February, 1981, the licensee became aware of many overloaded cable trays in the cable spreading room of the control bay and a corrective action report was initiated. The root cause determination and corrective action associated with the report was delinquent and ineffective until July, 1985. The actions taken between the time period of February, 1981 to July, 1985 consisted of forwarding the information to various design groups within TVA, and attempts at preventing additional cable trays from becoming overloaded. The cable trays which were known to be overloaded were not evaluated until July, 1985, when the licensee determined that the cable trays could not be considered qualified for a seismic event.

The inadequate design of safety related cable tray supports was caused by inadequate design controls during the construction phase of the plant. This condition was aggravated during subsequent modifications which resulted in cable trays being overloaded beyond their original design. A lack of aggressive action to correct the deficiencies once they were identified in 1981 further exemplified the inability of management to coordinate resources available in the design, modification, and quality assurance organizations in a timely manner.

5. On September 24, 1985, the licensee delared all eight emergency diesel generators associated with the standby a.c. power supply and distribution system inoperable. The diesels were considered inoperable for two reasons. Although some of the diesels have been in service for about thirteen years, the manufacturer's recommended three, six and twelve-year inspections and maintenance activities had not been performed. (The recommended annual maintenance had been performed). Simultaneously, the diesel battery racks that support the batteries which are required for startup and operation of the diesels were found to be not qualified for the loads resulting from a postulated seismic event. As a result of the diesel generators being inoperable, the licensee was unable to satisfy three Technical Specification requirements regarding diesel generator operability and emergency core cooling system operability. The resulting unanalyzed condition prompted compensatory measures and several safety evaluations. This occurrence is considered significant by the NRC in that once again, the degraded condition of the plant could have been prevented had proper corrective action been initiated following previous identification of the problem. The failure to perform the manufacturer's recommended maintenance on the diesal generators was identified by the NRC resident staff and cited as a violation of Technical Specifications on July 16, 1984. The licensee reported on August 16, 1984, that full compliance with the requirement would be met on October 5, 1984; however, full compliance was never achieved.

Sequoyah Facility

1. On April 19, 1984, a significant event at Unit 1 occurred involving damage to a compression fitting at the incore probe seal table. Unit 1 was at 30% power, with maintenance in progress for cleaning of the interior of the D-12 thimble tube (stainless steel tubing about 0.3 inch O.D.). The cleaning assembly for drybrushing of the thimble tube was inserted about 80 feet into tube D-12 when the high pressure seal fitting, which forms the reactor coolant system (RCS) pressure boundary, failed. At the first indication of leakage, the eight workers in the incore instrument room immediately left the room through the containment airlock without injury or significant exposures. Shortly after the workers left the area, RCS pressure caused ejection of thimble tube D-12. The RCS pressure caused a 25-35 gallons per minute (gpm) average unisolable reactor coolant leak. After extensive preplanning and mockup training, plant personnel recovered the highly radioactive thimble tube over the period of April 25-28, 1984.

The cause of the event is attributed to failure of the licensee to control modifications made to the cleaning fixture used to support the dry brushing apparatus. The tool had been repeatedly modified since 1979 by plant personnel without performing technical evaluations or tests to determine the effects of the modifications of the tool on the thimble tube seal reactor coolant pressure boundary.

On May 7, 1985, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $112,500. This event was reported in Appendix C of NUREG-0090, Vol. 7, No. 3 ("Report to Congress on Abnormal Occurences: July-September 1984").

2. During early 1985, the NRC expressed concern to TVA regarding environmental qualification of electrical equipment issues. TVA hired an independent contractor to review the documentation to determine compliance with 10 CFR Part 50.59. The contractor found that the documentation appeared to be inadequate at all TVA sites. As a result of this, as well as other certain technical concerns, the licensee shut down the operating Sequoyah Units 1 and 2 on August 21, 1984; as discussed previously, all three Browns Ferry units were already shut down.

Watts Bar and Bellefonte Facilities

Construction at Watts Bar Unit 1 is essentially complete and the licensee had projected a fuel load date of March 1985; Unit 2 is about 75% complete. Unit 1 fuel load has been delayed pending resolution of various concerns raised by the NRC staff and TVA employees. Bellefonte Units 1 and 2 are abut 86% complete, respectively.

1. On July 18 and 19, 1985, the licensee issued stop-work orders on installation of Class 1E electrical cable at the Belllefonte and Watts Bar sites, respectively. The orders followed a review by TVA of its general construction specifications which set electrical cable installation requirements for all TVA facilities. TVA

advised NRC Region II that this review found an inadequacy in cable pull tension requirements with respect to industry practices.

2. On August 23, 1985, TVA issued a stop-work order on all safety-related welding activities at the Watts Bar site as the result of preliminary NRC Region II inspection findings which raised questions on the adequacy and accuracy of welder recertification. On August 23, 1985, NRC Region II issued a confirmation-of-action letter which provides that TVA will thoroughly review its welder recertification program, determine if appropriate code welding activities have been conducted by properly certified welders, and determine the safety significance of any welding activities conducted by uncertified welders. TVA agreed not to resume safety-related welding activities at the site without NRC concurrence. Welding activities were resumed in September 1985 after NRC Region II reviewed the certification program.

3. On August 29, 1985, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $100,000 to TVA for violation involving control room design modifications at Watts Bar Unit 1. The violations concerned inaccurate status reports submitted from November 8, 1983 to October 3, 1984. The licensee stated that certain items were complete when in fact they were not, despite notice from the NRC inspectors that the reports were not accurate. The violations resulted from carelessness and inattention to detail in assuring the accuracy of information submitted to the NRC and was indicative of a breakdown in management controls.

Cause or Causes—Most of the problems encountered by the licensee were caused primarily by breakdowns in managment and procedural controls, with personnel errors also a contributing factor. Deficiencies have been noted in procedures, training of personnel, maintenance, required documentation, accuracy of the submittals to the NRC, and in taking timely, effective action on problems which are identified. The NRC believes that there is a lack of effective management both at the Corporate and site levels.

Actions Taken To Prevent Recurrence

Licensee—The licensee, in addition to taking corrective actions in regard to specific problem areas, has made attempts to improve management at their plants. For example, the licensee initiated a Regulatory Performance Improvement Program at the Browns Ferry Facility in mid-1984 to improve performance. However, this has not apparently been effective as evidenced by the NRC SALP report as enclosed in the previously referenced NRC September 17, 1985 letter.

TVA is evaluating the apparent ineffectiveness of the Program and has acknowledged the management shortcomings, attributing them to the past organization which has led to a lack of responsibility, accountability and productivity. A reorganization was accomplished with key personnel changes. At Brown Ferry, the plant manager, assistant plant manager for maintenance and the operations supervisor have been replaced. A corporate entity was established with a single chain of command responsible for all nuclear activities. This eliminated the dual organizational structure which has, in the past, separated the engineering/construction activities from the operating activities. Prior to the restart of Browns Ferry, the licensee plans an in-depth operational readiness review to verify the integrity of personnel, procedures, and equipment. An industry peer review to be conducted by personnel from other utilities and the Institute of Nuclear Power Operations is also planned.

TVA has recently undertaken reorganization at its other sites to effect more timely resolution of potential safety issues. This action is essentially a decentralization of plant-specific engineering staff deemed necessary to support the operating staff.

TVA has initiated some policy changes to help correct weaknesses in nuclear and operating experience of some of the lower levels of management, as well as reactor operators. During the past several years, a number of key managers with extensive nuclear and operating experience left TVA. A number of licensed reactor operators and senior reactor operators have also left to work at other utilities.

In addition to the above, TVA is required to address the general and specific concerns noted in the NRC September 17, 1985 letter.

As previously noted, TVA has shut down all of their operating plants (Browns Ferry and Sequoyah facilities) until plant specific problems and general concerns are resolved to the satisfaction of the NRC.

NRC—In order to assure high level attention to the problems at TVA, an NRC Senior Management Team (consisting of the Executive Director for Operations, the Directors of the Offices of Nuclear Reactor Regulation, Inspection and Enforcement, and Investigations, the Regional Administrator of Region II, and senior managers from these four Offices) was formed and meets regularly to discuss and implement corrective actions. These corrective actions consist of an augmented inspection program for Browns Ferry; Commission briefings; a re-evaluation of the Browns Ferry Regulatory Performance Improvement Plan; augmented Systematic Appraisal of Licensee Performance of all TVA facilities; and an in-depth operational readiness inspection program.

On July 3 and August 1, 1985, the Executive Director for Operations (EDO) forwarded to TVA concerns with TVA performance. On September 10, 1985, the NRC Team met to review the latest SALP reports for TVA's four sites and for TVA headquarters functions. Based on continuing concerns with TVA performance, the EDO forwarded previously referenced 10 CFR Part 50.54(f) letter.

The letter addressed a number of concerns, including corporate oversight, qualifications of new personnel, commitment control, timely resolution of conditions adverse to quality, adequacy of the operational readiness plan, maintenance improvement program, plant modification control, evaluation of seismic design concerns, environmental qualification of electrical equipment important to safety, onsite independent safety engineering group, fire protection program, and outstanding licensing issues.

The letter requested information in accordance with the following schedules:

1. Information specific to Sequoyah 60 days prior to restart of either Sequoyah unit.

2. Information specific to Browns Ferry 90 days prior to restart of any Browns Ferry unit.

3. Information specific to Watts Bar 90 days before the licensee anticipates requesting a fuel-load license for Watts Bar Unit 1.

4. Information specific to TVA corporate 60 days prior to startup of any of the TVA Units or a request for licensing of Watts Bar Unit 1.

On November 1, 1985, TVA submitted the requested information specific to Sequoyah and TVA corporate changes. These submittals are under review. The information pertaining to the Browns Ferry and Watts Bar facilities is expected in early 1986.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

During the third calendar quarter of 1985, an overview of 1984 misadminstration events disclosed that

the first two events below (which occurred during 1984) should have been reported as abnormal occurrences.

Therapeutic Medical Misadministration

The general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—From October 17, 1984 to November 1, 1984, a patient treated on the cobalt-60 teletherapy unit at the University Health Center of Pittsburgh's Joint Radiation Oncology Center, Magee—Women's Hospital site, received a radiotherapy administration of 3584 rads rather than the prescribed 2000 rads.

Nature and Probable Consequences—The patient was receiving the second of two courses of therapy to the ninth and tenth ribs using cobalt-60 external beam therapy. This region was being treated palliatively to relieve pain from metastatic disease. There was, in addition, a primary site under treatment with an entirely separate treatment plan which included the lung and mediastinum. Both treatment plans involved supraclavicular regions. The course of treatment to the primary site proceeded normally to its conclusion.

The first course to the metastatic area, 2000 rads in five treatments, prescribed on September 13, 1984, had been completed without any problems. The prescription for the second course of treatment, prescribed on October 16, 1984, was 2000 rads to be delivered in ten treatments. However, when the treatment dose for the second course was calculated, the dosimetrist assumed that the prescription was the same as the earlier one.

Rather than checking the prescription and preparing a new calculation as required by the Joint Radiation Oncology Center (JROC) procedures, the dosimetrist relied on a verbal communication and only decay-corrected the output from the first treatment. As a result, the patient began to receive treatment fractions that were twice those of the prescribed dose. This error was not discovered until the patient had received 3584 rads in the second course of therapy, when one of the treatment technologists noticed that the delivered dose differed from the prescribed dose by greater than 10%. Further treatment was stopped at that time.

The consequence of this incident was that the patient received an unprescribed does to the ribs of 1584 rads. The licensee reported that although the patient received more radiation than was prescribed, the patient has not, and likely will not suffer any ill-effects other than a modestly aggravated soft tissue reaction. The licensee reported that the actual dosage received is within a clinically acceptable range for the desired effect.

Cause or Causes—The cause was failure to comply with established procedures and oversights by the responsible staff, as evidenced by the following:

1. A requisition slip, required by established procedure, was not issued to request the second course calculation by the dosimetrist. The dosimetrist proceeded on verbal instructions which were relayed rather than received directly.
2. The dosimetrist failed to read the prescription in the patient's chart.
3. The dosimetrist failed to initiate a new calculation sheet for the new course of treatment.
4. A second dosimetrist, requested to make a correction for a separation change after the third treatment of the course in question, made that correction on the wrong sheet. Finding no calculation sheet for the second course, due to error 3, she made the corrections on the calculation sheet of the first course, overlooking the fact that the dates did not coincide.
5. The physician reviewing the chart after the fifth treatment of the course in question, failed to observe that the dose had already exceeded the prescription, and marked the chart "continue", referring to the primary treatment course of greater concern, going on concurrently.
6. The error was not noticed by the treatment technologists in their routine handling of the patient until the ninth treatment.

Actions Taken to Prevent Recurrence

Licensee—The policies and procedures which should have prevented this occurrence are clearly stated in a Physics Procedure Manual in the possession of each of the dosimetry staff. The policies were reviewed in inservice meetings held for the staff on July 2, 1984 and July 16, 1984 which dosimetrists and technologists attended.

Enforcement of these policies will receive the continued vigilance of management and supervisory staff. A general meeting of the entire physics and dosimetry staff was held on November 8, 1984 to discuss this issue and to re-emphasize the importance and necessity of strictly following the procedures. In addition, management and physics personnel have discussed the occurrence, the consequences, and the importance of following the standard practices with each of the persons involved. The dosimetrist who committed the most critical errors (numbers 2 and 3 above) has received a formal admonishment in writing which is incorporated as part of her personnel record. A memorandum has also been delivered to the physicists in charge at each site reminding them of their responsibility for assuring that procedures are followed correctly at their sites.

NRC—No violations of NRC regulations were associated with this incident. An NRC medical consultant is reviewing the case. Upon receipt of the consultant's report, an inspection will be scheduled.

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Therapeutic Medical Misadministration

The general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On October 25, 1984, NRC was notified that a patient of the Milton S. Hershey Medical Center in Hershey, Pennsylvania, received 15 millicuries of iodine-131 rather than the prescribed dose of 10 millicuries.

Nature and Probable Consequences—A 10 millicurie dose of iodine-131 had been ordered for one patient for treatment for hyperthyroidism and a 5 millicurie dose had been ordered for a second patient as a whole body scanning dose. When the first patient arrived, the technologist opened the bottle containing capsules which had the patient's name on it, dumped them in the patient's hand and gave the patient water with which to take them. The technologist neither verified the activity nor the number of capsules. Later in the day when the second patient arrived, the bottle with this patient's name on it was found to be empty. Several days passed before the licensee was successful in contacting the first patient who remembered taking three capsules, rather than the appropriate two.

The capsules were provided in vials labelled with each patient's name by Nuclear Pharmacy, Inc. It appears that although Nuclear Pharmacy accurately verified the activity of each capsule before dispensing, they dispensed three capsules in one bottle and none in the second. The prescriptive information labels indicated two capsules of 5 millicuries each in the first bottle and one capsule of 5 millicuries in the second bottle.

The referring physicians determined that effects should be minimal and involve only an increased probability of

the first patient ultimately developing hypothyroidism.

Cause or Causes—The cause was failure on the part of a nuclear medicine technologist to verify the activity of the administered dose and failure on the part of Nuclear Pharmacy to properly dispense two patient doses.

Actions Taken To Prevent Recurrence

Licensee—The technologist involved, who was new and apparently not thoroughly familiar with procedures, was reprimanded for not following required procedures. All technologists were retrained regarding procedures and requirements for receipt of radioisotopes, survey of radioisotopes received, dose calibrator verification of all radiopharmaceutical activities, administration to patients, record keeping and notification of incidents. The written procedures were modified and all technologists who are hired in the future will be required to demonstrate thorough understanding of the procedures before being given approval to administer radioisotopes to patients.

Nuclear Pharmacy, Inc.—As a result of this occurrence and a recent enforcement action, Nuclear Pharmacy, Inc. has significantly improved management control of its dispensing operations. Significant improvement was also made to recordkeeping and auditing procedures.

NRC—The incident is being reviewed by an NRC medical consultant. The corrective actions taken by the licensee will be reviewed during a future routine inspection.

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Exposure of Radiographic Personnel Due to Management and Procedural Control Deficiencies

One of the abnormal occurrence examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On August 5, 1985, Western Stress, with offices located in Evanston, Wyoming and Houston, Texas, notified the NRC Region IV Office that radiographic personnel had received whole body radiation exposures in excess of NRC regulatory limits. Subsequent NRC inspections showed that the root causes were due to serious management and procedural control deficiencies.

Nature and Probable Consequences—On August 1, 1985, a radiographer and his helper went to a site at Table Rock, Wyoming to perform radiography with a radiographic camera containing a 29 curie Ir-192 source. After radiographing welds, the helper began developing the film while the radiographer disassembled the radiographic equipment. After being informed that one of the films did not receive the proper amount of exposure, the radiographer went to examine it. As he did, the helper reconnected the drive cable and radioactive source guide tube to the radiography camera. The source was cranked out, and a second exposure of the weld was made. Next, the radiographer developed the film as the helper disconnected the equipment. Neither realized that the radioactive source had not been connected to the drive cable and therefore could not be returned to the exposure device. Consequently, the radioactive source remained in an unshielded condition at the end of the guide tube. The radiography camera was placed near the rear of the truck, but the guide tube and cable were left lying on the ground approximately 20 feet from the weld. The two men then prepared to perform the job of stress relief around the weld. The process took about 5 hours. During this operation, they were either in the truck cab or watching the instrumentation near the weld.

Upon completion of work, all equipment was placed in the truck including the guide tube containing the source and the men returned the truck and equipment to the Western Stress facility in Evanston, Wyoming. The following day, two radiographers took the truck to a job site at Black Canyon, Wyoming. Radiography was performed using the guide tube containing the 29 curie Ir-192 source attached to a radiography camera different from the camera used the previous day. Several exposures were made, and the developed film was found to have double images. The radiographer was then aware of the problem and placed the exposure device and guide tube in a transport container and covered it with bricks. They contacted the company Radiation Safety Officer, and the truck and equipment were returned to the Western Stress facility in Evanston. The source was secured by the Radiation Safety Officer the following day.

The personnel dosimeters of the employees involved in the incident were evaluated. They indicated whole body radiation doses of 22.1, 7.4, and 0.6 rem to the original radiographer, his helper, and another employee, respectively.

On August 6, 1985, NRC Region IV inspectors met with representatives of Western Stress in Evanston, Wyoming and discussed the incident and evaluated information relative to the event.

Subsequently, an anonymous caller contacted NRC Headquarters on August 12, 1985, concerning Western Stress and stated that there had been other work involving the truck containing the exposed source by radiographic personnel who were unauthorized and who did not wear personnel monitoring devices. The job site, at which work was performed after the Table Rock work and before the Black Canyon work, was at Green River, Wyoming.

On August 13, 1985, NRC Region IV was notified by Western Stress management that additional use of the truck containing the radioactive source while in the unshielded condition had not been reported to the NRC during the week of August 6.

An extensive inspection was initiated by NRC Region IV personnel at Evanston, Wyoming on August 14, 1985. The inspection confirmed the information reported by the anonymous caller and later reported by company management. Interviews with radiographic personnel and reenactment of the events indicated that as many as six members of the general public may have received some exposures. However, best estimates are that the exposures were very low.

Oak Ridge Associated Universities Medical and Health Science Division performed cytogenetic dosimetry evaluations on blood samples taken form the radiographic personnel involved. Results of these studies showed at the 80 percent confidence level that the original radiographer's dose was not smaller than 8 rad nor larger than 31 rad and his helper's dose was not greater than 15 rad.

Cause or Causes—The root cause was due to a serious breakdown in management controls and oversight of the licensed program.

Actions Taken To Prevent Recurrence

Licensee—On August 9, 1985, Western Stress voluntarily agreed to suspend operations until management had made the necessary changes in the program to satisfy the NRC that they could meet the NRC's regulatory requirements. Permission to resume operation was given on October 3, 1985, after an additional NRC Region IV inspection confirmed that program improvements had been made. A license amendment was subsequently issued on October 4, 1985, to Western Stress, which included procedural and management changes.

NRC—On August 21, 1985, an enforcement conference was held in the NRC Region IV Office with members of Western Stress management. Items discussed were: the use of unauthorized

radiographers to perform radiography, failure to wear personnel monitoring equipment, multiple failures to make radiation surveys required by regulations or company procedures, and the general breakdown in management controls and oversight of the licensed program.

The event remains under review by the NRC.

* * * * *

Diagnostic Medical Misadministration

The general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considerated an abnormal occurrence.

Date and Place—On August 19, 1985, Riverside Methodist Hospital of Columbus, Ohio, reported to the NRC that a 78-year-old patient had received a radiation exposure from a diagnostic test that was 10 times greater than that which had been intended.

Nature and Probable Consequences—On August 17, 1985, the patient underwent a blood pool imaging study. The diagnostic test involves injecting a radioactive material (sodium pertechnetate-99m) into the patient and then recording the movement and location of the radioactive material with a scanning device. The diagnositc test called for use of 20 millicuries of the sodium pertechnetate-99m, but the patient received 200 millicuries of the material.

A technologist prepared the material for the test, using a dose calibrating device to measure the amount of radioactivity. Measurements were made of the bulk supply of the sodium pertechnetate and of the single-dose syringe prepared by the technologist. The dose calibrator malfunctioned in both measurements, showing a measurement which was 1/10th of the actual amount. Therefore, the dose, measured as 20 millicuries in the calibrator, was actually 200 millicuries.

The error was discovered when the scanning test was performed. The licensee calculated that the patient received a whole body radiation dose of 3.28 to 3.5 rads. (A rad is a standard measure of radiation expsoure.) This level is far below the point where any detectable medical effects would be anticipated.

Cause or Causes—The misadministration was caused by the malfunction of the dose calibrator. The digital display on the calibrator misplaced the decimal point, thereby leading to the use of 200 millicuries of the material instead of the intended 20 millicuries.

The dose calibrator had previously malfunctioned in June 1985 and was returned to the manufacturer for service. The malfunction-by a factor of 10-resurfaced again in August, but could have been corrected by removing and reinserting the container being measured. The Chief Technologist was not informed of the problem, and no action was taken at that time.

Actions Taken To Prevent Recurrence

Licensee—After the misadministration occurred, the licensee attempted to duplicate the instrument malfunction, but was unable to do so. It was placed back in service until August 22, when the malfunction reoccurred. The device was then returned to the manufacturer for repair.

NRC—A special inspection was conducted on September 3, 1985, to review the circumstances of the misadministration. The licensee's handling of the incident and the corrective measures taken were found to be acceptable. No violations of NRC regulations were identified.

Dated in Washington, D.C. this 14th day of March, 1986.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-6035 Filed 3-18-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352-OLA-2; ASLBP No. 86-526-04-LA]

Philadelphia Electric Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Philadelphia Electric Company

Limerick Generating Station, Unit No. 1

Facility Operating License No. NPF-39

This Board is being established pursuant to a notice published by the Commission on December 30, 1985 in the **Federal Register** (50 FR 53226, 53235) entitled "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The amendment would revise Technical Specifications (TS) 4.6.1.2.d and g to allow a one-time-only extension of time to satisfy local leak rate testing requirements on primary containment isolation valves as listed in the amendment application.

The Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Mr. Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 13th day of March, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-6034 Filed 3-18-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Application To Withdraw From Listing and Registration; American Stock Exchange (Common Stock, Par Value $1.00 Per Share); Pacific Stock Exchange (Common Stock, Par Value $1.00 Per Share); Marshall Industries, (File No. 1-5441)

March 12, 1986.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange, Inc. and the Pacific Stock Exchange, Inc.

The reasons cited in the application for withdrawing this security from listing and registration include the following:

The issuer's direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the New York Stock Exchange and the American and Pacific Stock Exchanges. The issuer does not see any particular advantage in the dual trading of its stocks. The issuer believes that listing solely on the New York Exchange provides the issuer with sufficient order depth and liquidity, that dual listing

would result in inappropriate additional costs, and that dual listing would fragment the market for its common stock.

Any interested person may, on or before April 2, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6024 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23000; File No. SR-AMEX-86-7]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1986, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is filing for Commission approval of a three month extension of the pilot procedure under the Exchange's equities allocations procedures which permits a newly listed company which so desires to select the specialist unit for its stock from a list of seven specialist units selected by the Exchange's Committee on Equities Allocations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In June 1984, the Commission approved on a twelve month pilot basis a "modified" equities allocation procedure proposed by the Exchange in order to increase the involvement of a newly listed company in the selection of the specialist unit in its stock.[1] The Exchange made the modified procedure available to companies listing on the Exchange on or after July 1, 1984 as an alternative to the allocation procedure which permits company participation in the selection process to a limited extent (the "limited participation procedure").[2] In June 1985, the Commission granted a six month extension of the modified procedure and in January 1986, a three month extension, to permit it to further review the adequacy of the Exchange's procedures under the pilot and to provide the Exchange with the opportunity to continue to assess the pilot's impact prior to requesting permanent approval.[3]

At the Commission's request, the Exchange is currently compiling information regarding its experience under the pilot to provide the Commission with a comprehensive review of the operation of the pilot to date. To avoid interruption of the pilot program, which is scheduled to terminate at the end of March, the Exchange is requesting a three month extension of the pilot. The Exchange anticipates that it will request permanent approval of the pilot procedure at the close of the three month period.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed procedure is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change also furthers the purposes of section 11A(a)(1)(C)(ii) in that it will stimulate fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. Rather, the proposed rule change, by rewarding superior performance, will enhance competition among Exchange specialists, and, by improving the ability of the Exchange to attract prospect companies which desire greater participation in the specialist selection process, will enhance competition among markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act to enable it to continue its allocation and evaluation pilot without interruption.

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

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[1] *See* Securities Exchange Act of 1934 Release No. 34-21062 (June 18, 1984).

[2] Under the limited participation procedure, the Exchange's Committee on Equities Allocations ("Allocations Committee") submits a list of ten eligible specialist units to the company, which has the right to eliminate three units from further consideration. The Allocations Committee then reconvenes to make its final selection from the remaining seven units.

[3] *See* Securities Exchange Act of 1934 Release No. 34-22185 (June 28, 1985) and Securities and Exchange Act of 1934 Release No. 34-22780 (January 8, 1986).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to allow the Amex to continue its pilot without interruption and to permit the Exchange to further evaluate the pilot and to develop any changes and amendments to the program which may be appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6030 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22998; SR-BSE-85-10]

Self-Regulatory Organizations; Boston Stock Exchange, Inc., Order Approving Proposed Rule Change

The Boston Stock Exchange, Inc. ("BSE") submitted on December 23, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend its rules with regard to the registration of a member or member organization as an independent floor broker. According to the rule change, a member or member organization may be registered as an independent floor broker upon application to and with the consent of the Exchange. Such registration allows the independent floor broker to execute orders on behalf of his public customers, other members on the floor, and members of the Exchange who do not have their Exchange member on the floor.

An Exchange member who desires to act as an independent floor broker must: (1) Establish and maintain on deposit with the Exchange at all times no less than $25,000 in cash or securities or such greater amount as determined by the Market Performance Committee and (2) pass the Exchange administered floor member examination. In addition, an independent floor broker can initiate transactions while on the floor for an account in which he has an interest only if he is registered as a dealer-specialist with the Exchange, and the Exchange has approved of his so acting as a dealer-specialist and has not suspended or withdrawn its approval.

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. 22759, January 2, 1986) and by publication in the **Federal Register** (51 FR 797, January 8, 1986). 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 a national securities exchange and, in particular, the requirements of Sections 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 11, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6021 Filed 8-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23005; File No. SR-BSE-85-9]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Boston Stock Exchange Inc., Relating to Amendments to Chapter XIV of the Boston Stock Exchange Rules

The Boston Stock Exchange, Inc. ("BSE") submitted on December 13, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Chapter XIV of the BSE Rules to require that in order to register as a BSE floor clerk, and applicant must pass the BSE Floor Member Examination. Under the proposal, an individual may perform limited clerical duties with the consent of the Exchange prior to passing the Floor Member Examination, but must take the examination within three months of receiving such consent and cannot assist members in transmitting or executing orders prior to passing the examination.

Notice of the proposed rule change together with the terms of substance of the proposal was given by the issuance of a Commission release (Securities Exchange Act Release No. 22819, January 22, 1986) and by publication in the **Federal Register** (51 FR 4254, February 3, 1986). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6025 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22986; File No. SR-BSE-85-11]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Incorporated Relating to Amendments to Chapter II, Section 15 of the Boston Stock Exchange Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 19, 1985 the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes as

described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is intended to provide enhanced standardized procedures for the execution of good-till-cancelled ("GTC") orders under Chapter II, section 15 of the BSE Rules. The proposal would amend this section to provide that GTC orders must be confirmed or renewed with the specialist on the last business day of each month. In addition, the rule proposal would provide that, irrespective of whether such orders are confirmed or renewed in the manner of their original entry, they shall be executed according to their terms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to provide uniformity for confirmations and reduce risk to member organizations.

(b) The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934, as amended, in that the rule will foster cooperation and coordination as well as reducing risk to member organizations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Boston Stock Exchange does not believe that the proposed change will have any impact upon competition. The proposed modifications are designed to improve record keeping by providing uniformity in confirmation procedures, thus reducing risk to member organizations.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was approved by the Market Performance Committee consisting of members active on the floor of the Exchange, as well as representatives of upstairs member firms. General comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6027 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23006; File No. SR-CBOE-85-50]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating To Establishment of Rules Governing Trading of Equity Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 9, 1985, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared in principal part by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposed rule change would amend CBOE Rule 6.01 and establish new rules 5.08 and 25, subsections .01 through .116, governing the trading of equity securities on the CBOE. The text of the proposed rule change is available at the offices of the Commission and the CBOE, as described further in Section IV ("Solicitation of Comments") of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On May 8, 1985, the Commission issued a release that, among other things, approved in concept a pilot program in side-by-side market-making involving the six most active National Market System ("NMS") Securities, subject to Commission determinations that grants of unlisted trading privileges ("UTP") and exchange side-by-side trading in the pilot stocks would be consistent with the Securities Exchange Act of 1934 ("Act") and the creation of adequate equity and options audit trails. *See* Securities Exchange Act Release

No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985) ("OTC Options Release"). The Commission subsequently stated that it was prepared to grant exchanges UTP in certain NMS Securities, subject to certain conditions. *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 (September 24, 1985) ("UTP Release").

On September 20, 1985, the Commission recited the foregoing background and stated its continued belief "that the side-by-side pilot is appropriate, and that exchange participation in the pilot appears appropriate." Securities Exchange Act Release No. 22439 (September 20, 1985) ("Side-By-Side Release"). The Commission also announced in the Side-By-Side Release that the side-by-side pilot "will begin on January 20, 1985."

In the Release, the Commission acknowledged that this Exchange has until now made a conscious business decision to remain an options-only exchange, and the Commission noted that it "does not believe it would be appropriate to delay the introduction of new trading programs for other marketplaces solely to allow the CBOE to reposition itself as a stock exchange." Side-By-Side Release at 11.

This proposed rule change is a set of rules for trading stock on this Exchange, the approval of which will, among other things, enable the Exchange to be granted UTP in over-the-counter stocks and to participate in any side-by-side pilot.[1] The Exchange has previously stated its intention to apply for UTP, by a letter to Michael Simon, Assistant Director, Division of Market Regulation, SEC, from Frederic M. Krieger, Associate General Counsel, CBOE, dated October 15, 1985.

The system of trading stock, as set forth in the rules, will be a competitive market-maker system, with the market-maker serving in a rotation as Designated Primary Market-Maker ("DPMM"). The DPMM will be responsible for firm quotes and trading crowd accountability. The rules contemplate that the DPMM will be the principal interface for disseminated quotations. The rules track the Exchange's options rules where feasible, continuing the separation between agency and principal functions on the trading floor, as well as maintenance of a limit order book on which public customer orders may be placed.

To effectuate orderly business, the rules have a variety of priority provisions, including book priority, and time priority until occurance of a clearing transaction. To facilitate stock-option combination business, priority is given for stock trades related to stock-option combination transactions. Cross transactions may be effected witout crowd participation if the order can be crossed between the best bid and offer in the crowd.

The rules also contemplate that members will be eligible to trade stock if supported by an appropriate letter of guarantee from a stock clearing firm. This approach is consistent with the use of letters of guarantee in options trading.

The Exchange believes that the proposed rules for trading stock at the Exchange are consistent with the provisions of the Act, and in particular section 6(b)(5) thereof, in that the rules are designed to promote just and equitable principles of trade, to facilitate transactions in securities, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) *By order approve such proposed rule change, or*

(B) *Institute proceedings to determine whether the proposed rule change should be disapproved.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6020 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22985; File No. SR-MSE-86-1]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Midwest Stock Exchange, Incorporated Relating to the Use of Midwest's Automatic Execution System (MAX)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 31, 1986, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of one change to the rules regarding the

[1] The CBOE has filed with the U.S. Court of Appeals for the Seventh Circuit two petitions for review of the Commission releases relating to side-by-side trading. On September 10, 1985, the Court of Appeals dismissed the CBOE's first petition to review the OTC Options Release, finding that the release did not constitute a final decision by the Commission and therefore was not currently subject to judicial review. *CBOE v. SEC*, No. 85-2148 (7th Cir., September 10, 1985) Further, on January 29, 1986, the Court of Appeals granted the Commission's motion to dismiss the CBOE's second petition to review the side-by-side release. The court found that the second release, was "no more a final order" than the first release and therefore was not subject to judicial review. *CBOE v. SEC*, No. 85-3006 (7th Cir., January 29, 1986).

use of Midwest's Automatic Execution System (MAX) as follows:

The time frame between the time a market order is entered into MAX and the time it is automatically executed ("order exposure time") will be reduced from 15 seconds to 0 seconds (i.e., an immediate execution) when, at the time of order entry, the ITS best quotation spread between the bid and the offer in a MAX eligible stock is ⅛ point and the stock is quoted with a minimum variation of ⅛ point.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSE's MAX System establishes the price at which a market order sent over MAX will be automatically executed at the time of order entry. Currently, market orders of up to 1,099 shares are executed automatically by the system at the best ITS bid or offer. The system, however, currently will not automatically execute the order until 15 seconds have elapsed. This allows the specialist time to expose the order to the market and obtain a better execution if available.

The proposed rule change will eliminate the order exposure time, and provide an immediate execution, for market orders up to 1,099 shares sent over MAX where, at the time of order entry, the stock is trading at a ⅛ point, ITS best quotation, market. Because the market can't be bettered if the order is exposed, delaying an automatic execution serves no purpose.

The Exchange believes that eliminating the order exposure time under these circumstances offers a major benefit to order-sending firms by providing them with immediate, guaranteed executions over MAX.

Implementation of the proposed change is consistent with those provisions of sections 6(b)(5) and 11A(a)(1) of the Act which encourage the use of data processing and communications techniques which create more efficient and effective facilitation of transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSE has requested accelerated approval of the proposed rule change because, according to MSE, the proposal currently is ready to be implemented and the benefits arising from implementation thereby would be available as soon as possible.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the proposal in that benefits to the investing public thereby could be maximized for orders up to 1,099 shares where, at the time of order entry, there is a ⅛ point spread between the best ITS bid and offer and the stock is quoted at a minimum variation of ⅛ point. Because such a market offers the best quotation available for MAX orders, the elimination of order exposure time will provide faster executions for such orders and will continue to provide executions at the best available price. Moreover, the Commission notes that it has approved a substantially similar system for the New York Stock Exchange, Inc., ("NYSE").[1] The NYSE proposal was published for comment, but none were received.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6028 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 22498 (October 2, 1985), 50 FR 41082 (October 8, 1985) (File No. SR-NYSE-85-26).

[Release No. 34-23004; File No. SR-OCC-85-18]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving a Proposed Rule Change

The Options Clearing Corporation ("OCC") on November 20, 1985, submitted a proposed rule change to the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal on January 2, 1986.[1] No comments were received. This order approves the proposal.

I. Description

OCC's proposed rule change amends its By-Laws and Rules to provide for the issuance, clearance and settlement of European-style Treasury bill options.[2]

[1] *See* Securities Exchange Act Release No. 22732 (December 20, 1985), 51 FR 144 (January 2, 1986).

[2] OCC Article I, section (uuu) defines a European-style option as one that may be exercised only at expiration. In contrast, American-style options can be exercised at any time up to and including their expiration date. *See* OCC Article I, section 1 (ttt).

OCC's filing followed a proposed rule change filed by the American Stock Exchange ("Amex") in which Amex proposed that these options be traded on the exchange (File No. SR-Amex-85-30).[3] The Commission is publishing today a companion order to this order which approves Amex's proposal.[4]

Recently, the Commission granted approval to OCC to begin the issuance, clearance and settlement of European-style index options (File No. SR-OCC-85-9).[5] The amendments to OCC's By-Laws and Rules that were necessitated by those new-style options will, for the most part, apply to European-style Treasury bill options, as well. In the present filing, OCC has proposed amendments to its By-Laws and Rules which will address the unique character of European-style Treasury bill options. Unlike all other OCC options, these new options ordinarily have a Tuesday, rather than Saturday, exercise date and the proposed amendments adapt OCC procedures to accommodate the differing exercise date.

OCC's By-Laws and Rules that were adapted for European-style options in File No. SR-OCC-85-9 regarding definitions, general rights and obligations of options holders and writers, submission of trade reports, margin requirements, exercise procedures and exercise settlement procedures will apply, with some slight differences discussed below, to European-style Treasury bill options as well. Clearance and settlement of opening and closing transactions in European-style Treasury bill options will be identical to clearance and settlement of transactions in all other Treasury securities options.[6]

Since European-style Treasury bill options differ from all other European-style options which expire on Saturdays in that their expiration dates fall on business days,[7] OCC has proposed to institute new procedures for business-day exercise and settlement of these new options. First, OCC will not issue Preliminary and Final Exercise Reports on expiring European-style Treasury bill options as is the case for other options. Instead, under proposed Rule 806, OCC will issue, on the morning of expiration date, a report listing European-style Treasury bill options expiring on that date and closing prices for the underlying Treasury bills.[8] Clearing Members will not be required to respond to the report. Furthermore, the provisions of Rule 805(f)(2), OCC's automatic exercise procedures, will not apply to European-style Treasury bill options.

Clearing Members may exercise their options by submitting exercise notices in accordance with proposed Rule 806, which essentially mirrors OCC procedures currently in effect for the exercise of any option on a day other than its expiration date.[9] Furthermore, the procedures in proposed Rule 806 for tendering exercise notices after the deadline but prior to their expiration time are analogous to those in Rule 805(e). Procedures for assignment of exercise notices of Clearing Members with open short positions in European-style Treasury bill options will be identical to procedures for assignment of American-style Treasury security options exercise notices.[10] The proposed rule change also would amend Rule 1405 to establish as the exercise settlement date for European-style Treasury bill options the Thursday following the expiration date. Finally, the proposed rule change makes various conforming amendments to the Rules.

II. OCC's Rationale

OCC states that the proposed rule change is consistent with the Act becuase it facilitates the prompt and accurate clearance and settlement of European-style Treasury bill options. OCC states that the proposal does so by applying to European-style options substantially the same clearing system and rules currently used for American-style Treasury bill options, varied only to the extent necessary or desirable to reflect the distinctive exercise features of European-style Treasury bill options.

III. Discussion

For the following reasons, the Commission believes that OCC's proposals should be approved. The Commission believes that the procedures established by OCC to issue, clear and settle European-style Treasury bill options are consistent with its duty to safeguard securities and funds. A noted above, the proposed Rules were adapted from already existing procedures under which OCC has been operating. The changes made to settlement procedures to accommodate European-style Treasury bill options are necessary because of the business-day expiration date of European-style Treasury bill options. For example, the proposed Rules do not provide for Preliminary and Final Exercise Reports and automatic exercise procedures, as OCC currently provides for expirations that occur over weekends, because overnight business-day processing significantly limits the time available both to OCC and its members to comply with such procedures. Although the proposed system would not provide these reports and procedures, the Commission believes that OCC's proposal adequately meets Clearing Member needs at this time. First, Treasury bill options have historically been a low-volume product and, thus, Clearing Members should have little difficulty keeping track of the European-style Treasury bill options they told. Second, although OCC has indicated that it is not now economically feasible to set up new systems to provide these services, OCC has assured the Commission that should Clearing Member interest in European-style Treasury bill options increase significantly, it will establish systems that will more closely parallel those established for other options, including Exercise Reports and automatic exercise. Nevertheless, the Commission expects OCC to monitor volume in European-style Treasury bill options and to implement those services at appropriate volume levels.

In addition, the Commission believes that the limited period between the exercise date and settlement date for European-style Treasury bill options (the options ordinarily must be exercised on a Tuesday and settled two days lated on Thursday) does not impose an inappropriate burden on Clearing Members. Under OCC's current rules the settlement date for Treasury bond and note options is ordinarily two days after the exercise date. Clearing Members have been operating under these procedures for quite some time

[3] *See* Securities Exchange Act Release No. 22492 (October 2, 1985), 50 FR 41076 (October 8, 1985).

[4] *See* Securities Exchange Act Release No. 22999 (March 12, 1986).

[5] *See* Securities Exchange Act Release No. 22369 (August 28, 1985), 50 FR 36176 (September 5, 1985).

[6] *See* Article VI of OCC's By-Laws and Rules 401-503.

[7] Section 1(o) of OCC By-Law Article XIII, as amended by this rule change, will define the expiration date of European-style Treasury bill options to be the "second business day preceding the earliest day of the expiration month on which a one-year Treasury bill has thirteen weeks remaining to maturity." Since Treasury bills mature on Thursdays, European-style Treasury bill options will ordinarily expire on Tuesdays. The expiration dates of all other options fall on Saturdays.

[8] In its original filing, OCC stated that it would not provide price information. However, in the interim, OCC has been able to establish the internal procedures necessary to provide price information to Clearing Members on the expiration date report. OCC filed an amendment to that effect on January 14, 1986.

[9] *See* OCC Rule 801.

[10] *See* OCC Rule 1403.

with no unusual difficulty and there is no reason to suspect that it would be more difficult to cover European-style Treasury bill options in a two-day time frame.

Finally, the issuance of these options, and all European-style options generally, poses potential financial exposure to OCC in the event that a Clearing Member were to become insolvent. Unlike American-style options, European-style options can only be exercised on their expiration date and if a Clearing Member were to become insolvent prior to the expiration date, OCC could not liquidate any European-style options by immediately exercising those options. Under OCC Rule 1106, however, OCC is required to close out an insolvent Clearing Member's long positions as soon as is practicable, which OCC can accomplish by executing appropriate closing transactions immediately. Accordingly, the Commission believes that this adequately assures the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible.

IV. Conclusion

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, more specifically, with section 17A of the Act.

Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-85-18) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6026 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22997; File No. SR-PSE-86-2]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change; Relating to Telephone System Charges

The Pacific Stock Exchange, Inc. ("PSE") submitted on February 3, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4, to institute charges to recover substantially all of the costs for the installation and operation of a new telephone system for use by Exchange members on the new Los Angeles equity trading floor.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-PSE-86-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the PSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 11, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6029 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 12, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Compaq Computer Corporation

Common Stock, $0.01 Par Value (File No. 7-8819)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 2, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6031 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23001; File No. SR-PHLX 86-9]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 4, 1986, the Philadelphia Stock Exchange, Inc., filed with the Securities and Exchange Commission, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") proposes to amend its Rule 1010, relating to withdrawal of approval of underlying stocks, by rescinding Commentary .01(a)(i) relating to certain defaults by an issuer. All other provisions of the rule remain unchanged. Italics indicates material proposed to be added; [brackets] indicate material proposed to be deleted.

Withdrawal of Approval of Underlying Stocks or Underlying Foreign Currencies

Rule 1010 (a) through (c)—No change
Commentary .01(a)
(i) *Rescinded.* [The issuer and its significant subsidiaries have defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest, or sinking fund installment on any indebtedness for borrowed money, or in the payment of rentals under long-term leases, and such default has not been cured within twelve months of the date on which the default occurred.]
(ii) through (iv)—No change
(b) and (c)—No change
.02 through .04—No change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) *Purpose.* The purpose of the proposed rule change is to modify the maintenance criteria for securities underlying listed options. At present, whenever the Exchange, ordinarily relying upon information publicly available at the Securities and exchange Commission, determines with respect to a previously approved underlying stock that the issuer and its significant subsidiaries have defaulted in the payment of certain specified obligations and such default has not been cured within twelve months, the Exchange may not open for trading any additional series of options of the class covering that underlying stock.

Among other things, the maintenance criteria under PHLX Rule 1010, precludes the opening of new series of options contracts when the market price of the subject security is less than $6.00, as measured by the highest closing price recorded in any market on which the underlying security trades. When an issuer defaults in the payment of the obligations, the marketplace will assess the effect of such action and such assessment will be reflected in the price of the stock. In addition, the ability of investors to engage in strategies involving put options affords the opportuntiy to react accordingly in the event an issuer announces a default in the payment of its obligations. Should the stock fall below $6.00, then no additional series can be added and the option will be delisted in due course unless the underlying security is able to comply with eligiblity criteria for listing required by PHLX Rule 1009.

As a general matter, the maintenance criteria for securities underlying listed options has become significantly less restictive over the past five (5) years. This evolutionary process has been the natural result of the maturation of the standardized options program which began in 1973. Stocks eligible for options trading will continue to be widely held and actively traded and considerable information on the issuer will be publicly available.

(b) *Statutory Basis.* The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange for the establishment of reasonable standards in maintaining appropriate stocks to be the subject of options trading.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, in that it will facilitate transactions in securities and perfect the mechanism of a free and open market and protect the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that any burdens will be placed on competition as a result of such change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 235 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order, approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six (6) copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6019 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22990; File No. Phlx 86-7]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Partial Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 25, 1986 the Philadephia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission a proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Philadelphia Stock Exchange proposes to amend Exchange Rules 1012

and 1047 to extend trading hours in foreign currency options on the day prior to expiration to 2:30 p.m. (EST) and eliminate closing rotations at expiration in foreign currency options.

Under curent Exchange Rule 1012, foreign currency options trade until 1:30 p.m. on the day before expiration. In comparison foreign curency options trade on the Chicago Board Options Exchange ("CBOE") until 2;30 p.m. (E.S.T.) and foreign currency futures and options on foreign currency futures trade until 2:16–2:28 p.m. (depending on the particular currency) on the day before expiration. Phlx states that participants frequently assume positions in the foreign currency contacts traded on the exchanges to hedge their positions in Phlx foreign currency options, and, conversely, hedge their Phlx foreign currency options positions with contracts traded on other exchanges.

To beter coordinate the close of Phlx foreign currency options on the last day of trading prior to expiration with the close of trading on the same day in CBOE foreign currency options and in foreign currency futures and options on foreign currency futures, the Phlx proposes to amend Rule 1012 to extend the trading hours in foreign currency options on the day prior to expiration until 2:30 p.m. Phlx believes the proposed change will enable market participants in exchange traded contracts based on foreign currencies to assume, hedge and adjust their positions in response to price movements during the last hour of foreign currency options trading on the CBOE and the staggered closings which occur betwen 2:16–2:28 p.m. (depending on the particular currency) on the International Monetary Market.

Under current Exchange Rule 1047 on the business day prior to expiration of particular series of currency options, a closing rotation is commenced. Phlx proposes to eliminate the use of the closing rotation in foreign currency options. Phlix states that their experience has shown that there is no interst in a closing rotation in currency options. Positions are routinely closed out during free trading. Phlx also indicates that it believes there is no need to adjust a position to the closing price of the underlying vehicle, because currencies unlike stocks are traded continuously.

Phlx states that the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provided in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

The Commission is publishing this release to solicit comment on the proposed rule change. Persons interested in commenting on the proposal should submit six copies of their comments within 21 days from the date of publication of this notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the proposed rule changes, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the proposal also are available at the Phlx.

The Commission finds that the first portion of the proposed rule change—the portion that would extend trading hours in foreign currency options on the day prior to expiration until 2:30 p.m. (E.S.T.)—is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the portion of the proposed rule change pertaining to the extention of trading hours for foreign currency options prior to the thirtieth day after the date of publication of notice thereof, in that the proposed hours are identical to the foreign currency trading hours of the CBOE which are set forth in CBOE Rule 22.5, which were noticed for public comment, although none were received.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the portion of the proposed rule change extending trading hours for foreign currency options on the day prior to expiration from 1:30 p.m. (EST) to 2:30 p.m. (EST) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–6022 Filed 3–18–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 33-6631; File No. 18-100]

Application and Opportunity for Hearing; The Equitable Life Assurance Society of the United States, et al.

March 12, 1986.

Notice is hereby given that The Equitable Life Assurance Society of the United States ("Equitable"), and Separate Account No. 2A of Equitable (Pooled) (the "Account") (collectively "Applicants"), 787 Seventh Avenue, New York, New York 10019, filed an application on January 14, 1986, for an order pursuant to section 3(a)(2) of the Securities Act of 1933 ("1933 Act") amending a prior order exempting from the requirements of section 5 of the 1933 Act, certain interests in the Account attributed to contributions derived under certain plans designed to comply with the Self-Employed Individuals Tax Retirement Act of 1962 ("HR-10"), as described below. All interested persons are referred to the application which is on file with the Commission for the facts and representations contained therein, which are summarized below, and to the 1933 Act for the text of relevant provisions.

Background

The application states that the Account was established and is maintained by Equitable as a "pooled" separate account pursuant to provisions of the New York Insurance Law. Amounts allocated to the Account are derived from contributions under group annuity contracts issued by Equitable in connection with pension and profit-sharing plans qualified under section 401 of the Internal Revenue Code of 1954, as amended ("Code"), annuity plans meeting the requirements for deduction of the employer's contribution under section 404(a)(2) of the Code, and governmental plans as defined in section 414(d) of the Code and as specified in section 3(a)(2) of the 1933 Act.

According to the application, the Account serves as an internal short-term investment account and is maintained solely for the collective investment of the temporary cash positions of Equitable's separate accounts ("Participating Accounts") that are exempt from registration under the Investment Company of 1940 ("1940 Act") pursuant to section 3(c)(11) thereof. The Account invests in high-quality money market instruments of the same type as a Participating Account would otherwise invest in on a direct basis. The purpose of the Account, Applicants represent, is to provide a central vehicle for the more efficient investment of the temporary cash positions of the Participating Accounts, at no additional cost to those accounts or to persons having interests in the Participating Accounts. Applicants point out that there is no separate or additional investment management fee charged to the Account or to the Participating Accounts, no sales charge

for the units of the Account issued to the Participating Accounts, nor any other charges imposed with respect to the Account.

Prior Commission Order

On July 20, 1982, the Commission ordered, pursuant to section 3(a)(2) of the 1933 Act, that interests in the Account credited to Equitable's Separate Account No. 4 ("SA-4") and Separate Account No. 100 ("SA-100") under certain HR-10 plans be exempt from the registration requirements of section 5 of the 1933 Act. Applicants note that, at the time, the HR-10 plans included plans sponsored by certain large professional associations (collectively, "Association Sponsored Plans"), and the only separate accounts funding the Association Sponsored Plans were SA-4 and SA-100. Applicants state that those separate accounts are exempt from 1940 Act registration, but units of interest in SA-4 and SA-100 under group annuity contracts issued by Equitable for the Association Sponsored Plans are registered under the 1933 Act in view of the exclusion of self-employed persons, or HR-10, plans from the exemption otherwise provided by section 3(a)(2).

As pointed out in the application, to the extent that cash assets of SA-4 and SA-100 attributable to contributions under Association Sponsored Plans are allocated to the Account, those assets would be derived from plans covering self-employed persons, and, therefore, the interests in the Account associated with those assets would fall within the HR-10 exclusion of the section 3(a)(2) exemption. Applicants state that in the circumstances, and in view of the nature and purpose of the Account, it believed that it was appropriate to seek an exemptive order under section 3(a)(2). Applicants note that although units in the Account are exempt under the section 3(a)(2) order, Equitable's prospectuses for the Association Sponsored Plans contain certain narrative and financial statement disclosures with respect to the Account.

Expanded Separate Account Funding and Additional Retirement Plan Offerings

The application explains that during 1984, Equitable added its Separate Account No. 3 ("SA-3") to one of the Association Sponsored Plans and filed a 1933 Act registration statement for its Retirement Investment Account ("RIA"), which utilizes SA-4 and Equitable's Separate Account No. 10 ("SA-10"). RIA, according to Applicants, is designed for employers who are partnerships or sole proprietors and maintain retirement plans qualified under section 401 of the Code. In 1985, SA-3 and SA-10 became available under other Association Sponsored Plans and the 1933 Act registration statement for two of those plans included a prospectus for Equitable's new Association Members Retirement Program ("Association Members Program"), under which SA-3, SA-4 and SA-10 are available. The Association Members Program, Applicants state, is designed for smaller businesses owned by employers who are members of trade, professional or other associations. It is available to self-employed persons maintaining retirement plans qualified under section 401 of the Code.

Applicants state that SA-3 and SA-10, like SA-4 and SA-100, invest their temporary cash balances in short-term money market instruments through the acquisition of units of the Account, and it is expected that any future Equitable separate account that may be added to the Association Sponsored Plans, RIA or the Association Members Program, or made available under any similar retirement programs involving HR-10 plans (all of which separate accounts are comprehended within the term "Plan Separate Accounts" herein), would likewise invest their temporary cash balances in units of the Account.

Applicants claim that in all essential respects, the basis upon which the Commission's order of July 20, 1982 was granted is unchanged. It asserts that the use of the Account by SA-3 and SA-4 and SA-100, by SA-100, or by future Plan Separate Accounts is, and will be, as stated in the original application, "essentially a mechanical improvement in the handling of cash assets designed to produce enhanced investment results."

It is stated by Applicants that prospectus disclosures regarding the Account included in each of the prospectuses for the Association Sponsored Plans with respect to SA-4 and SA-100, also are included with respect to SA-3 and SA-10, and that disclosures to the same extent with respect to the Account are set forth in the prospectuses for RIA and the Association Members Program. Applicants further represent that such disclosures would be similarly set forth in any prospectus relating to Plan Separate Accounts.

Applicants contend that if SA-3 and SA-10 has been contemplated as Plan Separate Accounts at the time of the original application they would have been included therein, and covered by the Commission's order. Because additional Plan Separate Accounts are comtemplated, Applicants are requesting a "class" exemption to avoid the effort and expense of further exemptive applications. They represent in that regard, that as the circumstances today are, in essence, the same as they were with respect to SA-4 and SA-100 so far as the use of the Account is concerned, this also will be the case as and when additional Plan Separate Accounts are introduced.

Applicants believe that the amended order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1933 Act.

Request for Amended Order

Based on the foregoing, Applicants request that the Commission issue an amended order pursuant to section 3(a)(2) of the 1933 Act exempting from the registration requirements of section 5 of the 1933 Act, units of interest in Equitable's Separate Account No. 2A issued to Equitable's Separate Account Nos. 3, 4, 10 and100, and to any other Equitable separate account that is used to fund HR-10 plans and is exempt under section 3(c)(11) of the 1940 Act (Plan Separate Accounts).

Notice is further given that any interested persons may, not later than April 7, 1986, at 5:30 p.m., submit to the Commission a request for a hearing on the matter, accompanid by a statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Equitable at the address stated above. Proof of service (or 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 after April 7, 1986, unless the Commission orders a hearing, upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6023 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Delegation of Authority No. 145-4]

Organization, Functions, and Delegations of Authority Under Defense Authorization Act of 1985

By virtue of the authority vested in me by section 1540 of the Department of Defense Authorization Act, 1985, (Pub. L. 98-525), section 306 of the Department of Defense Authorization Act, 1986, (Pub. L. 99-145), Executive Order 12163 of September 29, 1979, 44 FR 56673, as amended, and other applicable authorities concerning delegation of authority, State Department Delegation of Authority No. 145 of February 4, 1980, 45 FR 11655, February 21, 1980, as amended, is hereby further amended as follows:

(1) In section 1(a)(4), by adding at the end thereof the following new subsection:

"(C) section 1540(b)(1)(A) of the Department of Defense Authorization Act, 1985, (Pub. L. 98-525), who shall exercise such function in consultation with the Secretary of Defense."

(2) In section 2, by striking out "The functions conferred" and inserting in lieu thereof "(a) The functions conferred" and by adding at the end thereof the following new subsection:

"(b) The functions conferred upon the President and upon the Secretary of State by section 1540 of the Department of Defense Authorization Act, 1985, (Pub. L. 98-525), not otherwise delegated herein, are hereby delegated to the Administrator of the Agency for International Development, who shall exercise such functions in consultation with the Secretary of Defense and with the Under Secretary of State for Security Assistance, Science and Technology."

Dated: February 19, 1986.

George P. Shultz,

Secretary of State.

[FR Doc. 86-5942 Filed 3-18-86; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Winston-Salem, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Winston-Salem, North Carolina.

FOR FURTHER INFORMATION CONTACT: J. M. Tate, District Engineer, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 856-4270.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposed Silas Creek Parkway Completion in Winston-Salem. The proposed action would be the construction of a four-lane divided, partially controlled highway on new location from existing Silas Creek Parkway near Reynolda Road to North Point Boulevard thereby providing a continuous inner loop facility. The proposed action also includes a short connector road from the proposed new facility to existing Reynolda Road. The proposed Silas Creek Parkway Completion is needed to complete an inner loop facility providing circumferential travel and will relieve traffic along existing Reynolda Road, Polo Road and Marshall Street. The proposed action is a part of the City of Winston-Salem's Thoroughfare Plan.

Alternatives under consideration include (1) the "no-build," (2) improving existing facilities, and (3) a partially controlled access highway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting and a meeting with local officials will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

J. M. Tate,

District Engineer, Raleigh, North Carolina.

[FR Doc. 86-5943 Filed 3-18-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: March 10, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Financial Management Service

OMB number: 1510-
Form Number: TFS Form 5805
Type of Review: New
Title: Request for Funds
Clearance Officer: Douglas Lewis (202) 287-4500, Financial Management Service, Room 163, Liberty Loan Building, 401 14th Street, N.W., Washington, D.C. 20228
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

John Poore,

Departmental Reports Management Office.

[FR Doc. 86-5952 Filed 3-18-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Services—No. 12-86]

Treasury Notes of March 31, 1988, Series X-1988

Washington, March 13, 1986.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31, of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of March 31, 1988, Series X-1988 (CUSIP No. 912827 TK 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described

below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Notes will be dated March 31, 1986, and will accrue interest from that date, payable on a semiannual basis on September 30, 1986, and each subsequent 6 months on March 31 and September 30 through the date that the principal becomes payable. They will mature March 31, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.4. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20939, prior to 1:00 pm., Eastern Standard time, Wednesday, March 19, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 18, 1986, and received no later than Monday, March 31, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimels, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.00 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, March 31, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the

tender was submitted, which must be received from institutional investors no later than Thursday, March 27, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes alloted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, March 31, 1986. When payment has been submitted with the tender and the purchase price of the Notes allocated is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

John Kilcoyne,

Acting Fiscal Assistant Secretary.

[FR Doc. 86-6097 Filed 3-17-86; 2:57 pm]

BILLING CODE 4810-40-M

[Number: 150-01]

Designation of Internal Revenue Districts

Dated: February 27, 1986.

Under the authority given to the President to establish and alter Internal Revenue Districts by section 7621 of the Internal Revenue Code of 1954, as amended, and vested in me as Secretary of the Treasury by Executive Order 10289, approved September 17, 1951, as made applicable to the Internal revenue Code of 1954 by Executive Order 10574, approved November 5, 1954, and pursuant to the authority vested in me by section 321(b) of 31 U.S.C., and Reorganization Plan No. 1 of 1952 as made applicable to the Internal Revenue Code of 1954 by section 7804(a) of such Code and by Executive Order 10574, the following Internal Revenue Districts continue as they existed prior to this order, with the changes noted below.

1. Designation of Internal Revenue Districts That Comprise an Entire State

Alabama, headquarters located in Birmingham, Alabama
Alaska, headquarters located in Anchorage, Alaska
Arizona, headquarters located in Phoenix, Arizona
Arkansas, headquarters located in Little Rock, Arkansas
Colorado, headquarters located in Denver, Colorado
Connecticut, headquarters located in Hartford, Connecticut
Delaware, headquarters located in Wilmington, Delaware
Florida, headquarters located in Jacksonville, Florida
Georgia, headquarters located in Atlanta, Georgia
Hawaii, headquarters located in Honolulu, Hawaii
Idaho, headquarters located in Boise, Idaho
Indiana, headquarters located in Indianapolis, Indiana
Iowa, headquarters located in Des Moines, Iowa
Kansas, headquarters located in Wichita, Kansas
Kentucky, headquarters located in Louisville, Kentucky
Louisiana, headquarters located in New Orleans, Louisiana
Maine, headquarters located in Augusta, Maine
Maryland (including the District of Columbia), with headquarters located in Baltimore, Maryland
Massachusetts, headquarters located in Boston, Massachusetts
Michigan, headquarters located in Detroit, Michigan
Minnesota, headquarters located in St. Paul, Minnesota
Mississippi, headquarters located in Jackson, Mississippi
Missouri, headquarters located in St. Louis, Missouri
Montana, headquarters located in Helena, Montana
Nebraska, headquarters located in Omaha, Nebraska
Nevada, headquarters located in Las Vegas, Nevada
New Hampshire, headquarters located in Portsmouth, New Hampshire
New Jersey, headquarters located in Newark, New Jersey
New Mexico, headquarters located in Albuquerque, New Mexico
North Dakota, headquarters located in Fargo, North Dakota
North Carolina, headquarters located in Greensboro, North Carolina
Oklahoma, headquarters located in Oklahoma City, Oklahoma
Oregon, headquarters located in Portland, Oregon
Rhode Island, headquarters located in Providence, Rhode Island
South Dakota, headquarters located in Aberdeen, South Dakota
South Carolina, headquarters located in Columbia, South Carolina
Tennessee, headquarters located in Nashville, Tennessee
Utah, headquarters located in Salt Lake City, Utah
Vermont, headquarters located in Burlington, Vermont
Virginia, headquarters located in Richmond, Virginia
Washington, headquarters located in Seattle, Washington
West Virginia, headquarters located in Parkersburg, West Virginia

Wisconsin, headquarters located in Milwaukee, Wisconsin
Wyoming, headquarters located in Cheyenne, Wyoming

2. Designation of Internal Revenue Districts Within Certain States

a. California

(1) *Laguna Niguel District.* Shall include the Counties of Imperial, Orange Riverside, San Bernardino, San Diego, and that portion of Los Angeles County serviced by the Carson post of duty, in the State of California, with the headquarters office located in Laguna Niguel, California. (The Carson post of duty services the area of Los Angeles County which is generally bordered by the Artesia Freeway on the north, the Pacific Ocean on the west and south, and the Orange County line on the east, and includes in total the following 1982 zip code areas: 90254, 90274, 90277, 90278, 90501, 90502, 90503, 90504, 90505, 90507, 90508, 90509, 90510, 90701, 90706, 90710, 90712, 90713, 90714, 90715, 90716, 90717, 90731, 90732, 9073, 90744, 90745, 90746, 90747, 90749, 90802, 90803, 90804, 90805, 90806, 90807, 90808, 90809, 90810, 90813, 90814, 90815, 90822 and 90840).

(2) *Los Angeles District.* Shall include the County of Los Angeles, except for that portion serviced by the Carson post of duty, in the State of California, with the headquarters office located in Los Angeles, California.

(3) *San Jose District.* Shall include the Counties of Fresno, Inyo, kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, in the State of California, with the headquarters office located in San Jose, California.

(4) *Sacramento District.* Shall include the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba in the State of California, with the headquarters office located in Sacramento, California.

(5) *San Francisco District.* Shall include the Counties of Alameda, San Francisco and San Mateo, in the State of California, with the headquarters office located in San Francisco, California.

b. Illinois

(1) *Chicago District.* Shall include the Counties of Boone, Bureau, Carroll, Cook, De Kalb, Du Page, Grundy, Henry, Jo Daviess, Kane, Kankakee, Kendall, Lake, La Salle, Lee, McHenry, Marshall, Mercer, Ogle Putnam, Rock Island, Stark, Stephenson, Whiteside, Will, and Winnebago wthin the State of Illinois, with the headquarters office located in Chicago, Illinois.

(2) *Springfield District.* Shall include the Counties of Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clerk, Clay, Clinton, Coles, Crawford, Cumberland, DeWitt, Doughlas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Knox, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Mason, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Williamson, and Woodford within the State of Illinois, with the headquarters office located in Springfield, Illinois.

c. New York

(1) *Brooklyn District.* Shall include the Counties of Kings, Nassau, Queens, and Suffolk within the State of New York, with the headquarters office located in Brooklyn, New York.

(2) *Manhattan District.* Shall include Blackwells Island, Manhattan Island, Staten Island, Randalls Island, and Wards Island; and the Counties of Bronx, Richmond, Rockland, and Westchester within the State of New York, with the headquarters office located in New York, New York.

(3) *Albany District.* Shall include the Counties of Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schenectady, Schohari, St. Lawrence, Sullivan, Ulster, Warren, and Washington within the State of New York, with the headquarters office located in Albany, New York.

(4) *Buffalo District.* Shall include the Counties of Allegany, Broome, Cattaraugus, Cayuga, Chautaugua, Chemung, Chenango, Cortland, Delaware, Erie, Genesee, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates, within the State of New York with the headquarters office located in Buffalo, New York.

d. Ohio

(1) *Cleveland District.* Shall include the Counties of Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Champaign, Columbiana, Crawford, Cuyahoga, Darke, Defiance, Erie, Fulton, Geauga, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Lake, Logan, Lorain, Lucas, Mahoning, Medina, Mercer, Monroe, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Van Wert, Wayne, Williams, Wood, and Wyandot within the State of Ohio, with the headquarters office located in Cleveland, Ohio.

(2) *Cincinnati District.* Shall include the Counties of Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Miami, Montgomery, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Union, Vinton, Warren, and Washington within the State of Ohio, with the headquarters office located in Cincinnati, Ohio.

e. Pennsylvania

(1) *Philadelphia District.* Shall include the Counties of Adams, Berks, Bradford, Bucks, Carbon, Chester, Columbia, Cumberland, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monore, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York within the State of Pennsylvania, with the headquarters office located in Philadelphia, Pennsylvania.

(2) *Pittsburgh District.* Shall include the Counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, and Westmoreland within the State of Pennsylvania, with the headquarters office located in Pittsburgh, Pennsylvania.

f. Texas

(1) *Austin District.* Shall include the Counties of Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Bosque, Brazos, Brewster, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Colorado, Comal,

Coryell, Culberson, DeWitt, Dimmitt, Duval, Edwards, El Paso, Falls, Fayette, Freestone, Frio, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hamilton, Hays, Hidalgo, Hill, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, Lampasas, LaSalle, Lavaca, Lee, Leon, Limestone, Live Oak, Llano, McCulloch, McLennan, McMullen, Madison, Mason, Matagorda, Maverick, Medina, Milam, Nueces, Pecos, Presidio, Real, Reeves, Refugio, Robertson, San Patricio, San Saba, Somervell, Starr, Terrell, Travis, Uvalde, Val Verde, Victoria, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala within the State of Texas, with the headquarters office located in Austin, Texas.

(2) *Dallas District.* Shall include the Counties of Anderson, Andrews, Angelina, Archer, Armstrong, Bailey, Baylor, Borden, Bowie, Briscoe, Brown, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lipscomb, Loving, Lubbock, Lynn, Marion, Martin, Menard, Midland, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Randall, Reagan, Red River, Roberts, Rockwall, Runnels, Rusk, Sabine, San Augustine, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Upshur, Upton, Van Zandt, Ward, Wheeler, Wichita, Wilbarger, Winkler, Wise, Wood, Yoakum, and Young within the State of Texas, with the headquarters office located in Dallas, Texas.

(3) *Houston District.* Shall include the Counties of Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker within the State of Texas, with the headquarters office located in Houston, Texas.

3. The Foreign Operations District is abolished and the functions transferred primarily to the newly established Assistant Commissioner (International). This change shall be implemented upon such date as the Commissioner of Internal Revenue may determine. Effective immediately, the Commissioner of Internal Revenue is authorized to effect, at appropriate times and in an orderly manner, such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this order.

4. *Internal Revenue Districts.* Each district established pursuant to Section 7621 of the Internal Revenue Code of 1954, as amended, shall be known as an internal revenue district and shall be identified by the name of the city or subdivision thereof in which the headquarters office of the District Director of Internal Revenue is located.

5. *District Director of Internal Revenue.* The title of each District office shall bear the title "District Director of Internal Revenue" identified by the name of the city or subdivision thereof, in which the headquarters office is located.

6. *U.S. Territories and Insular Possessions.* The Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the U.S. territories and insular possessions and other authorized areas of the world.

7. *Effect on Prior Treasury Department Orders.* This order supersedes Treasury Department Orders: 150–105, January 24, 1985, and 150–106, February 8, 1985.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 86–5999 Filed 3–18–86; 8:45 am]

BILLING CODE 4810–25–M

[Number: 150–02]

Establishment of Certain Offices in the National Office of the Internal Revenue Service

Dated: February 27, 1986.

By the authority vested in me as Secretary of the Treasury by section 1002 of 31 U.S.C.; section 7801(a) and 7803 of the Internal Revenue Code of 1954, as amended; section 321(b) of 31 U.S.C., and Reorganization Plan No. 1 of 1952 as made applicable to the Internal Revenue Code of 1954 by section 7804(a) of such Code and by Executive Order No. 10574, approved November 5, 1954; and as provided by section 7802(b) of the Internal Revenue Code of 1954, the following offices continue uninterrupted as they existed prior to this order, with the changes noted below:

1. Establishment and Continuation.

a. Office of the Associate Commissioner (Operations)

The Associate Commissioner (Operations) is the principal advisor to the Commissioner on policy matters affecting operations.

(1) The Associate Commissioner (Operations) is responsible for the following activities:

(a) Serves as the spokesperson for the operating functions, which are: Collection of delinquent accounts and securing of delinquent returns; investigation of criminal fraud involving any internal revenue laws (except those concerning alcohol, tobacco, or firearms); examination of tax returns; approval and subsequent examination of Employee Plans and Exempt Organizations. With this order, also provides guidance on tax treaty administration, international compliance, and foreign tax administration assistance.

(b) Provides policy guidance and direction to the Assistant Commissioner (Collection), Assistant Commissioner (Examination), Assistant Commissioner (Criminal Investigation), Assistant Commissioner (Employee Plans and Exempt Organizations) and, with this order, the Assistant Commissioner (International).

(c) Represents the Service, as designated by the Commissioner, to the Department of the Treasury, Office of Management and Budget, Congress, foreign tax authorities and the public on major cross-functional issues and discusses or explains the Service's policy formulation and long-term plans.

(2) Under the supervision of the Associate Commissioner (Operations) are the following organizations:

(a) Office of the Assistant Commissioner (Collection)

(b) Office of the Assistant Commissioner (Examination)

(c) Office of the Assistant Commissioner (Criminal Investigation)

(d) Office of the Assistant Commissioner (Employee Plans and Exempt Organizations)

(e) Office of the Assistant Commissioner (International), established with this Order.

b. Office of Associate Commissioner (Policy and Management)

The Associate Commissioner (Policy and Management) is the principal advisor to the Commissioner on policy matters affecting agency administration.

(1) The Associate Commissioner (Policy and Management) is responsible for the following activities:

(a) Serves as the spokesperson for the management functions, which are: Personnel administration; financial management; planning; research; training and employee development; management information systems; management of the Service's physical plant, equipment, property, and support services; disclosure and security; tax forms and publication design, printing, and distribution; and operation of the IRS Data Center (payroll and non-tax data processing).

(b) Provides policy guidance and direction to the Assistant Commissioner (Support and Services), the Assistant Commissioner (Human Resources), and the Assistant Commissioner (Planning, Finance, and Research).

(c) Represents the Service, as designated by the Commissioner, to the Department of the Treasury, Office of Management and Budget, Congress, and the public on major policy and management issues, and discusses or explains the Service's policy formulation and long-term plans.

(2) Under the supervision of the Associate Commissioner (Policy and Management) are the following organizations:

(a) Office of the Assistant Commissioner (Support and Services)

(b) Office of the Assistant Commissioner (Human Resources)

(c) Office of the Assistant Commissioner (Planning, Finance, and Research)

c. Office of Associate Commissioner (Data Processing)

The Associate Commissioner (Data Processing) is the principal advisor to the Commissioner on policy matters affecting data processing.

(1) The Associate Commissioner (Data Processing) is responsible for the following activities:

(a) Serves as the spokesperson for the data processing functions, which are: processing of tax returns and information documents; accounting for all revenues collected by the Service; maintaining master files of all taxpayer accounts; managing all large-scale tax-processing computers in the Service; the tax information program; and, designing, developing, testing, and maintaining computer software used on large-scale tax-processing computers in the Service.

(b) Provides policy guidance and direction to the Assistant Commissioner (Computer Services), the Assistant Commissioner (Returns and Information Processing), and the Assistant Commissioner (Tax System Redesign).

(c) Represents the Service, as designated by the Commissioner, to the Department of the Treasury, Office of Management and Budget, Congress, and the public on major data processing issues, and discusses or explains the Service's policy formulation and long-term plans.

(2) Under the supervision of the Associate Commissioner (Data Processing) are the following organizations:

(a) Office of the Assistant Commissioner (Computer Services)

(b) Office of the Assistant Commissioner (Returns and Information Processing)

(c) Office of the Assistant Commissioner (Tax System Redesign)

d. Office of Assistant to the Commissioner (Legislative Liaison)

The assistant to the Commissioner (Legislative Liaison) is the principal advisor to the Commissioner, Deputy Commissioner, and top executives of the Service on all Congressional and legislative matters except those involving appropriation hearings, and is responsible for planning, developing, directing, and evaluating the Congressional Affairs program and activities of the Service.

e. The Assistant Commissioner (Inspection) and the Deputy Assistant Commissioner (Inspection)

The Assistant Commissioner (Inspection) and the Deputy Assistant Commissioner (Inspection) will, to ensure objectivity and integrity, continue to report directly to the Commissioner and Deputy Commissioner.

2. The Appeals Division is transferred to the Chief Counsel, and the Commissioner of Internal Revenue will exercise line supervision over the Chief Counsel for this function. The transfer of such personnel, records, equipment and funds will be determined by the Commissioner of Internal Revenue and Chief Counsel, as appropriate.

3. The Corporation Tax and Individual Tax Divisions are transferred to the Chief Counsel, with the authority to supervise and evaluate the work of all officers and employees of the functions transferred. The transfer of such personnel, records, equipment and funds will be determined by the Commissioner of Internal Revenue and Chief Counsel, as appropriate.

4. The Chief Counsel, pursuant to delegated authority from the General Counsel, is authorized to take necessary action on all personnel and administrative matters pertaining to the Office of Chief Counsel, including but not limited to those for the appointment, classification, promotion, demotion, reassignment, transfer or separation of officers or employees; however, all personnel and administrative matters concerning Senior Executive Service or Performance Management Recognition System employees in the Office of Associate Chief Counsel (International) whose primary duties do not involve litigation or in the Office of Associate Chief Counsel (Technical), shall be approved by the Commissioner of Internal Revenue prior to implementation.

5. The Commissioner will exercise the Service's final authority concerning substantive interpretation of the tax laws as reflected in legislative and regulatory proposals, revenue rulings, letter rulings, and technical advice memoranda.

6. The Office of the Commissioner shall consist of the Commissioner, Deputy Commissioner, Assistants to the Commissioner, Assistant to the Commissioner (Public Affairs), Assistant to the Commissioner (Legislative Liaison), Assistant to the Commissioner (Taxpayer Ombudsman), the Assistant to the Commissioner (Equal Opportunity), and the Assistant to the Deputy Commissioner.

7. Except for the specific positions and titles in Sections 1 and 6 of this order, the Commissioner, Internal Revenue Service, may create, abolish, or modify offices and positions within the Internal Revenue Service as may be necessary to effectively and efficiently provide for the administration of tax laws or other responsibilities assigned to the Internal Revenue Service. The authority of the Commissioner, Internal Revenue Service, to create, abolish, or modify offices under this delegation is subject only to limitations that exist by law or Department of the Treasury rules and regulations.

8. The above changes shall be implemented upon such date as the Commissioner of Internal Revenue may determine. Effective immediately, the Commissioner of Internal Revenue is authorized to effect, at appropriate times and in an orderly manner, such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this order.

9. All offices in existence within the Internal Revenue Service but not mentioned in this order are continued without interruption.

10. *Effect on Other Treasury Department Orders.* This order

supersedes Treasury Department Order: 150–103, October 3, 1985.

James A. Baker;

Secretary of the Treasury.

[FR Doc. 86–6000 Filed 3–18–86; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Implementation of the Balanced Budget and Emergency Deficit Control Act of 1985

AGENCY: Veterans Administration.

ACTION: Notice of benefit reductions.

SUMMARY: The Veterans Administration (VA) is giving notice of reductions in payments which will be made for certain benefits and is giving notice of other actions the agency will take in order to comply with the Balanced Budget and Emergency Deficit Control Act of 1985. The nonrecurring benefits affected are grants for specially adapted housing and special housing adaptations for certain severely disabled veterans, the service-connected and nonservice-connected burial allowances, the plot allowance, the headstone or marker allowance, and the automobile allowance. The affected recurring benefits include the subsistence allowance payable to disabled veterans undergoing training in the vocational rehabilitation program, educational assistance allowance payable to eligible persons in the Dependents' Educational Assistance program, training allowance payable to eligible children in that program who are undergoing special restorative training, educational assistance allowance payable to veterans training under the Vietnam Era GI Bill, and tutorial assistance payable to these veterans.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Individuals who wish additional information about adjustments in education benefits should contact June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 389–2092.

Individuals who wish further information about adjustments in the vocational rehabilitation program should contact Dr. Karen Boies, (202) 389–2886.

Individuals who wish additional information about adjustments in specially adapated housing grants should contact Walter N. Burke, Assistant Director for Construction and Valuation, Loan Guaranty Service, Department of Veterans Benefits, (202) 389–2691.

Individuals who wish further information about adjustments in the other programs mentioned in this notice should contact Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 389–3005.

SUPPLEMENTARY INFORMATION: When certain targeted Federal budget deficits are not met for a fiscal year, section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 requires the President to issue an order sequestering a portion of the monies appropriated for payment of various benefits to eligible persons. This order has been issued on February 1, 1986. It is effective March 1, 1986.

As a result of the order the VA must reduce payments of certain benefits. The agency could either have paid benefits at the statutory rate until the monies available to pay those benefits were exhausted, or the agency could have made a percentage reduction in all payments of those benefits which were obligated after the effective date of the order. The VA has chosen the latter alternative. The VA thinks it is more equitable to provide each eligible person with a reduced payment than it would be to pay some eligible persons at the statutory rate while paying nothing to people who become eligible later in the fiscal year.

A 4.3% reduction in payments during this fiscal year is necessary to meet the Federal budget deficit target imposed as a result of the Balanced Budget and Emergency Deficit Control Act. However, the reader will notice that none of the reductions contained in this notice is 4.3%. The VA is unable by law to reduce the obligations which had already been made before the effective date of the order. Consequently, the entire reduction has to be made to unobligated funds. The amount of unobligated funds available on March 1, 1986, varies from program to program. Hence, the amount that the payments to individuals have to be reduced in order to achieve an overall 4.3% reduction for the fiscal year varies from program to program.

The Balanced Budget and Emergency Deficit Control Act also contains Federal budget deficit targets for the fiscal years 1987 through 1991. As a result of the provisions of this Act, it may become necessary to make percentage reductions during those fiscal years to the programs mentioned in this notice. Any reductions which may be made will be the subject of a separate notice.

Effective March 1, 1986, through September 30, 1986, as a result of the order issued on February 1, 1986, each payment the VA will make during this period for each of the benefits specified below will be made at 92.25% of the amount otherwise payable (or in the case of the automobile or other conveyance allowance 92% of the amount otherwise payable), but will not exceed the maximum payment shown below. The new maximum payment for automobile or other conveyance allowance represents an 8% reduction from the rate found in title 38, U.S. Code. Similar items furnished under authority of 38 U.S.C. 612 and 617 will be reduced by a like amount.

The new maximum payments for the burial benefits represent a 7.75% reduction from the rates found in title 38, U.S. Code. The new maximum payments for the headstone or marker allowance represents a 7.75% reduction from the rate specified in 38 CFR 3.1612.

Benefit	Maximum payment
Nonservice-connected burial allowance (38 U.S.C. 902(a) and 903(a)	$276
Plot allowance (38 U.S.C. 903(b))	138
Service-connected burial allowance (38 U.S.C. 907)	1,014
Headstone or marker allowance (38 U.S.C. 906)	65
Automobile or other conveyance allowance (38 U.S.C. 1902)	4,600

Furthermore, for payments authorized during the period beginning on March 1, 1986, and ending on September 30, 1986, the VA will pay 92% of the cost of providing, repairing, replacing, or reinstalling adaptive equipment for automobiles or other conveyances (38 U.S.C. 1902 (b) and (c)).

For applications approved during the period beginning on March 1, 1986, and ending on September 30, 1986, the VA will reduce by 8% the amount of the grant otherwise computed for specially adapted housing or special housing adaptations for severely disabled veterans (38 U.S.C. 801 (a) and (b)).

The monthly subsistence allowance payable to veterans training in the vocational rehabilitation program (38 U.S.C. ch. 31) are reduced by 13.1% for payments obligated during the period beginning on March 1, 1986, and ending on September 30, 1986.

This reduction will affect both retroactive payment authorizations and recurring payment obligations. If a veteran's enrollment period overlaps March 1, 1986, and the VA approves an award of benefits during the period beginning on March 1, 1986, and ending on September 30, 1986, the veteran would receive reduced payments for all

training completed before the award action as well as that due for future months included in the authorization, not beyond September 30, 1986.

If the VA approves an award before March 1, 1986, in the same situation, only those payments due the veteran for training completed during the period beginning on March 1, 1986, and ending on the last day of the award, not beyond September 30, 1986, will be reduced 13.1 percent.

During the period beginning on March 1, 1986, and ending on September 30, 1986, if the VA authorizes a retroactive increase in monthly payments for training completed before March 1, 1986, as a result of an increase in the number of the veteran's dependents or an increase in the veteran's training time, or for other reasons, the amount of the increase will be reduced by 13.1 percent.

The maximum amount which may be authorized during the period beginning on March 1, 1986, and ending on September 30, 1986, to be advanced from the Vocational Rehabilitation Fund Revolving Loan is reduced 13.1%. The two-month payment of employment adjustment allowance provided to veterans who successfully complete their training is reduced 13.1% when payment of this allowance is authorized during the period beginning on March 1, 1986, and ending on September 30, 1986. There is also a 13.1% reduction in the maximum amount which may be paid as a special transportation allowance when the special transportation allowance is authorized during the period beginning on March 1, 1986, and ending on September 30, 1986.

The allowance payable to a veteran who elects payment at the educational assistance rate paid under 38 U.S.C. ch. 34 in lieu of subsistence allowance and training costs under 38 U.S.C. ch. 31, is reduced by 8.7% for payments obligated during the period beginning on March 1, 1986, and ending on September 30, 1986. As is the case with payments of subsistence allowance, this may result in reductions for training completed before March 1, 1986, if the payment for this training is authorized during the period beginning on March 1, 1986, and ending on September 30, 1986.

During the period beginning on March 1, 1986, and ending on September 30, 1986, monies for payments which the VA obligates for many of the other education programs which the VA administers will be 8.7 percent below the rate stated in title 38, U.S.C. This reduction applies to those receiving educational assistance allowance in the Dependents' Educational Assistance program (38 U.S.C. ch. 35); those receiving special training allowance while undergoing special restorative training in that program; and those receiving educational assistance allowance while training under the Vietnam Era GI Bill (38 U.S.C. ch. 34). This reduction will affect both retroactive payment authorizations and recurring payment obligations.

If the VA approves an award after February 28, 1986, to a veteran or eligible person who is pursuing a standard college degree, and whose enrollment period begins after February 28, 1986, those payments due the veteran or eligible person for training completed during the period beginning on the first date of the enrollment period, but not before March 1, 1986, and ending on the last date of the award, but not beyond September 30, 1986, will be reduced 8.7 percent.

If during the period beginning on March 1, 1986, and ending on September 30, 1986, the VA approves an award of benefits to a veteran or eligible person who is enrolled in courses leading to a standard college degree, and whose enrollment period overlaps March 1, 1986, the veteran or eligible person would receive reduced payments for all training completed before the award action, as well as that due for any future months included in the authorization, not beyond September 30, 1986.

If the VA approved an award before March 1, 1986, for a veteran or eligible person who is pursuing a standard college degree, and whose enrollment period overlaps March 1, 1986, those payments due the veteran or eligible person for training completed during the period beginning on March 1, 1986, and ending on the last date of the award, not beyond September 30, 1986, will be reduced 8.7 percent.

For a veteran or eligible person who is enrolled in a course not leading to a standard college degree payments will be reduced 8.7 percent for all periods of training for which the veteran's or eligible person's certified attendance is processed by the VA during the period beginning on March 1, 1986, and ending on September 30, 1986. This reduction will apply regardless of when the veteran or eligible person trained or when the VA authorized the award of benefits.

During the period beginning on March 1, 1986, and ending on September 30, 1986, if the VA authorizes a retroactive increase in monthly payments for training completed before March 1, 1986, as a result of an increase in the number of a veteran's dependents or an increase in a veteran's or eligible person's training time, or for other reasons, the amount of the increase will be reduced by 8.7 percent.

In addition there is an 8.7% reduction applied to the cost of tutorial assistance for which payment may be obligated during the period beginning on March 1, 1986, and ending on September 30, 1986, for those training under the Vietnam Era GI Bill. This payment may not exceed $77 per month for a maximum of 12 months. The ceiling on the total amount of tutorial assistance payable to any individual veteran or servicemember is $924, including any amount paid or authorized before March 1, 1986.

Those in flight training under the Vietnam Era GI Bill who would otherwise be eligible to be reimbursed for 90% of the cost of their flight lessons will, if benefit payment is obligated during the period beginning on March 1, 1986, and ending on September 30, 1986, instead be reimbursed for 82% of the cost of the flight lessons. Those for whom benefit payment is obligated during the same period and who would otherwise be eligible to be reimbursed for 60% of the cost of their flight lessons, will instead be reimbursed for 55% of the cost of their flight lessons. The reduction to 55% of the cost of flight lessons will have no effect on the requirements for entitlement to an education loan.

Educational assistance obligated during the period beginning on March 1, 1986, and ending on September 30, 1986, for those people pursuing correspondence courses under the Vietnam Era GI Bill or the Dependents' Educational Assistance program who otherwise would be eligible to be paid for 90% of the cost of the lessons they complete, will instead be paid for 82% of the cost of the lessons completed. For those otherwise eligible to be paid for 55% of the cost of the lessons they complete, payments will be for 50% of the cost of the lessons completed.

If any of the reductions in either vocational rehabilitation benefits or educational benefits do not result in an even dollar, the amount will be rounded to the nearest dollar.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this notice are 64.013, 64.100, 64.101, 64.106, 64.111, 64.116, and 64.117.

Approved: March 14, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

[FR Doc. 86-6033 Filed 3-18-86; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a

meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held in room 119 on April 10, 1986, and in the Omar Bradley Conference Room on April 11, 1986, of Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Both meetings will begin at 8:45 a.m. and conclude at 4:30 p.m.

These meetings will be open to the public to the seating capacity of the room. Anyone having questions concerning the meetings may contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office, (phone number 202-389-3317/3303).

Dated: March 11, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-5977 Filed 3-18-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 53
Wednesday, March 19, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 24, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Legislative recommendations for the Annual Report.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 14, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-6046 Filed 3-17-86; 9:52 am]

BILLING CODE 6210-01-M

2

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 17, 24, 31, and April 7, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 17

Monday, March 17

1:30 p.m.
Executive Branch Briefing (Closed—Ex. 1)

Tuesday, March 18

10:00 a.m.
Briefing by Southern California Edison Co. on San Onofre-1 (Public Meeting)

Wednesday, March 19

10:00 a.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 20

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

3:30 p.m.
Affirmative/Discussion and Vote (Public Meeting)
a. Final Rule to Modify General Design Criterion 4 of Appendix A, 10 CFR 50 (Tentative) (postponed from March 13)
b. Review of ALAB-823 (In the Matter of Philadelphia Electric Company) (Tentative) (postponed from March 13)
c. Review of ALAB-819 (In the Matter of Philadelphia Electric Company) (Tentative) (postponed from March 13)

Week of March 24—Tentative

Wednesday, March 26

10:00 a.m.
Quarterly Source Term Briefing (Public Meeting)

2:00 p.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 27

10:00 a.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 28

10:00 a.m.
Advisory Committee on Reactor Safeguards (ACRS) Meeting on Safety Goals (Public Meeting) (Tentative)

Week of March 31—Tentative

Tuesday, April 1

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Staff Briefing on TVA (Public Meeting)

Wednesday, April 2

2:00 p.m.
Discussion/Possible Vote on Palo Verde-2 Full Power Operating License (Public Meeting)

4:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 7—Tentative

Thursday, April 10

10:00 a.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, April 11

10:00 a.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

ADDITIONAL INFORMATION: Status of Pending Investigations (Closed—Ex. 5 & 7) was held on March 10. Affirmation of "Procedural Amendments to 10 CFR 60 Dealing with Site Characterization and the Participation of States and Indian Tribes" (Public Meeting) was held on March 13.

Periodic Meeting with Advisory Committee on Reactor Safeguards scheduled for March 14, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,
Office of the Secretary.
March 13, 1986.

[FR Doc. 86-6036 Filed 3-14-86; 4:54 p.m.]

BILLING CODE 7590-01-M

3

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 meeting during the week of March 17, 1986.

A closed meeting will be held on Thursday, March 20, 1986, at 10:000 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, 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), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, March 20, 1986, at 10:00 a.m., will be:

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injuctive actions.

Opinion.

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: Douglas Michael at (202) 272-2467.

John Wheeler,

Secretary.

March 13, 1986.

[FR Doc. 86-6017 Filed 3-14-86; 4:18 pm]

BILLING CODE 8010-01-M

federal register

Wednesday,
March 19, 1986

Part II

Environmental Protection Agency

40 CFR Part 58

Ambient Air Quality Surveillance; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD-FRL 2949-1]

Ambient Air Quality Surveillance

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: Today's action promulgates revisions to Part 58 of Chapter 1 of Title 40 of the Code of Federal Regulations which are needed to meet changing air monitoring program requirements. These changes were identified by State and local air pollution control agencies through the Standing Air Monitoring Work Group (SAMWG) and through the individual operating experiences of State and local agencies and the EPA over the last 5 years. The revisions were proposed on March 8, 1985 and include provisions to: use the most current census population figures to estimate air monitoring network size, allow 120 days instead of 90 days to submit National Air Monitoring Stations (NAMS) quarterly data to the National Aerometric Data Bank (NADB), require reporting organizations to submit the results of each individual precision and accuracy test, and modify network design and siting requirements.

DATE: This regulation takes effect on April 18, 1986.

ADDRESS: Docket No. A-84-28 containing material relevant to this action is located in the Central Docket Section of the Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on week days, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Neil Berg or Stanley Sleva, Monitoring and Data Analysis Division (MD-14), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, N.C. 27711, phone: 919-541-5651 or (FTS) 629-5651.

Preamble

SUPPLEMENTARY INFORMATION:

Background

Section 110(a)(2)(C) of the Clean Air Act requires ambient air quality monitoring for purposes of State Implementation Plans (SIP's) and for reporting air quality data to EPA. Criteria to be followed when measuring air quality and provisions for daily air pollution index reporting are required by section 319 of the Act. To satisfy these requirements, on May 10, 1979 (44 FR 27558), EPA established 40 CFR Part 58, which provided detailed requirements for air quality monitoring, data reporting, and surveillance for all of the pollutants for which ambient air quality standards have been established (criteria pollutants) except lead (Pb). On September 3, 1981 (46 FR 44159), similar rules were promulgated for Pb. On March 20, 1984 (49 FR 10435), similar rules were proposed for particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 micrometers (PM_{10}) and for total suspended particulate matter (TSP) as a secondary standard.

Today's action deals with changes to the ambient air quality monitoring, data reporting, and surveillance requirements of 40 CFR 58 based on the experience of State and local agencies and the EPA, during the past 5 years. The regulations being promulgated today are, with the exception of changes made due to public comment, the same as those proposed on March 8, 1985 (50 FR 9538).

Public Comments

EPA received comments from a total of 23 respondents on the proposal of March 8, 1985. The respondents are categorized as follows: EPA Regional Offices, 1; State Air Pollution Control Agencies, 16; Local Air Pollution Control Agencies, 4; private citizens, one; and industrial concerns, one.

Difference Between the Final Rule and Proposal

The following paragraphs discuss the changes to the proposed regulation that are related to the comments received, the nature of the comments, and resulting modifications, if any, to the changes originally proposed.

Section 58.1, Definitions. Four commenters supported the change in the definition of urban area population to that of the most current decennial census figures. One commenter wanted the term "dripline" included in the definitions section. EPA believes that while it is important to define the term "dripline", it is more appropriate to define it in Appendix E of the regulation.

Section 58.26, Annual SLAMS Summary Report. The March 8, 1985 action contained no change to this section; however, the requirement in 58.26(b)(2) for submission of annual precision and accuracy information as part of the Annual State and Local Air Monitoring Stations (SLAMS) Summary Report has been deleted. This action is taken because the revision of Appendix A transfers the responsibility for the calculation of the reporting organization's annual precision and accuracy information from the State to EPA's Environmental Monitoring Systems Laboratory (EMSL). Consequently, EPA will already have the annual precision and accuracy information available for association with the summary air quality data required by the annual SLAMS report.

Section 58.35, NAMS data submittal. The change to allow 120 rather than 90 days after the end of each reporting period to report NAMS data to the NADB was endorsed by four respondents. One respondent requested the same 120 days to report SLAMS data, while another wanted to keep the date of July 1 of the year following the one in which the data were collected as the date for SLAMS reporting in order to throughly validate the SLAMS data. In the March 8 proposal, EPA proposed a change only in the NAMS quarterly reporting requirement. It was not EPA's intention to change the reporting requirements for SLAMS data. The existing requirements provide for an annual summary report to be submitted by July 1 of the year following data collection. Also, the report must be certified by the State as being correct to the best of its ability. The reporting of SLAMS raw data is optional and as such has no deadline. In practice, many agencies find it convenient to send both NAMS and SLAMS data together to the NADB on a monthly or quarterly basis. In this case the 120 days allowed for NAMS would be the constraining deadline.

Section 58.36—System Modification. In response to a request for a time period of 18 months to implement the changes to the NAMS network caused by the new census population figures, the issue of completion time requirements for NAMS network changes was investigated. In reviewing the regulations, it was found that the only NAMS completion time requirements specified in § 58.30 were for the initial 1980 NAMS network and subsequently for new criteria pollutants. There was no NAMS section analogous to § 58.25 (System Modifications) for SLAMS. EPA has decided to broaden the issue and create a new *Section 58.36—System Modification* to address not only network changes invoked by new census populations but also changes in the network due to changing air quality levels, emission sources, etc. The new section will provide for the changes to be identified by the EPA and/or proposed by the State during the annual SLAMS network evaluation. The State would then be given one year

(until the next annual SLAMS network evaluation) to implement the changes.

Section 58.40, Index Reporting. Three commenters supported the use of the current census figures to determine the requirements for air quality index reporting while one commenter suggested that specific language be added in *Appendix G—Uniform Air Quality Index and Daily Reporting* to permit less than the previous 24 hours of data to be considered in an attempt to make the index more current. For the pollutants TSP and sulfur dioxide (SO_2), a 24-hour averaging time is necessary; for carbon monoxide (CO) and ozone (O_3), EPA feels that the existing wording in Appendix G, which states that the report should "coincide to the extent practicable with the reporting day," expresses EPA's intent adequately.

Revisions to Appendix A—Quality Assurance Requirements for SLAMS

Appendix A prescribes minimum quality assurance and specific quality assessment requirements applicable to SLAMS air monitoring data submitted to EPA. Several changes were proposed to the requirements of Appendix A (50 FR 9538). These changes and the rationale for them were discussed in the preamble associated with the proposed amendments. The final amendments to Appendix A being promulgated today are very similar to the proposed amendments, with the differences being confined largely to simplification or clarification of the proposed amendments. Although the amendments are not extensive and most of the provisions of Appendix A remain unchanged, the entire text of Appendix A is being repromulgated to accommodate the many word changes and some reorganization of sections. Also, a new table (Table A-1) is added to summarize the minimum quality assessment requirements of Appendix A.

The most significant change to Appendix A is in the requirements for reporting assessments of the quality of ambient air pollutant monitoring data collected from NAMS and SLAMS. These monitoring data are used by State and local air pollution control agencies, EPA and other governmental and private agencies for a variety of purposes including determining compliance with air quality standards, developing State implementation plans for achieving and maintaining air quality, reviewing new sources, estimating health risks, re-evaluating the national air quality standards, developing new regulations, and studying air quality trends.

Assessments of the quality of the NAMS and SLAMS air monitoring data provide the data users with essential estimates of the accuracy (degree of bias) and precision (variability) of the monitoring data so that the data can be appropriately and meaningfully utilized for the various purposes. Under the previous Appendix A requirements, data quality (precision and accuracy) measurements have been combined and reported on an integrated basis for an entire "reporting organization". These reporting organizations are State level agencies or subordinate organizations within a State for which pooled precision and accuracy assessments serve to characterize the overall data quality being achieved by the reporting organization as a whole. This reporting system thus does not provide information concerning the quality of data from individual sites or site categories or from specific types of monitoring methods or analyzers.

To allow EPA to produce site specific assessments and thereby improve and expand the application and usefulness of the data quality estimates associated with the NAMS and SLAMS monitoring data, the revised provisions of Appendix A require reporting organizations to submit to EPA the actual test results from each individual precision and accuracy test carried out. EPA will then calculate and report the same type of integrated precision and accuracy assessments representative of each reporting organization as have been previously calculated and reported by the States. In addition, the detailed precision and accuracy information for each individual monitoring site will also be available. Access to these individual precision and accuracy test results will allow EPA to analyze data quality at specific sites, in specific areas, for specific types of methods or analyzers, under specific conditions, etc. This additional information will greatly augment the the description of the quality of specific blocks of the NAMS and SLAMS monitoring data and allow more detailed analysis and utilization of the data. The more detailed information will also be useful for monitoring the performance or adequacy of specific methods or types of monitoring instruments.

Nine comments were received regarding this change, most of which were fully or generally supportive of the change and the rationale for it. Three agencies opposed the change in the reporting requirements, citing reasons such as insufficient justification of need, possible misuse of the individual data, and (in the case of accuracy data) too few data to be meaninful except in the aggregate. Other negative comments suggested alternative data quality assessment procedures or the comments related to other provisions of Appendix A that were not proposed to be changed. Overall, however, the negative comments were in the minority, and the reasons given for opposition were judged insufficient to outweight EPA's need for the more detailed site-specific data.

Under the revised Appendix A, reporting organizations will report the individual results of all precision tests and accuracy audits conducted during each quarter, as specified in Appendix A, directly to EPA. The reporting organizations or States will no longer need to calculate the pooled precision and accuracy probability limits, as these calculations will now be carried out by EPA. However, the calculation procedures are still provided (in section 5 of Appendix A) to indicate how the calculations are to be made and to allow reporting organizations to continue to calculate pooled precision and accuracy estimates for their own use if desired, although these pooled agency-calculated estimates will not be reported to EPA. Reporting of the individual precision and accuracy test results under the new reporting system must begin not later than for the quarterly report corresponding to the first calendar quarter (January to March) of 1987; this report is due 120 calendar days after the end of that quarter. The new type quarterly report will be accepted earlier, however, beginning with the report for the third calendar quarter (July to September) of 1986.

To facilitate the new individual data reporting requirements, new data quality reporting forms have been prepared—one for precision and one for accuracy. Instructions for the forms are provided in Section 4. Fifteen comments were received concerning these forms, indicating various preferences for general, site-specific, and method-specific forms and suggesting various minor improvements. The revised forms incorporate most of the suggested improvements and are designed with a "universal" format: data quality test results for different methods or from different sites may be reported on the same form, or either form may be used as a site-specific or method-specific form (or both) by entering common site or method information in special boxes located in the upper left corner of the forms.

Four agencies commented that provisions should be made to submit the precision and accuracy data on

magnetic tape or in other machine-generated form, pointing out that for large agencies the amount of data to be submitted would be substantial. Such provisions are being made. The data may be reported in any of three ways: (1) Via magnetic computer tape (contact the approipriate EPA Regional Office for the data format specifications), (2) by direct, interactive computer entry via a data terminal and the PARS data entry system, or (3) via the Data Quality Assessment Reporting Forms. The first two methods are preferable and are strongly encouraged. If the forms are used, they may be modified slightly to facilitate local use, or computer-generated (facsimile) forms may be used, provided that such modified forms follow the same general format and use the same block numbers as the suggested forms and are clear and completely legible.

Another provision of Appendix A proposed to be changed was the number of collocated sites required to assess the precision of data collected by networks of manual methods (TSP and Pb). Since the new provision may require an additional collocated sampler for large networks, one comment opposed the change on the basis of the increased cost to install and operate the additional sampler and the lack of perceived benefits from the additional collocated site. However, EPA believes that the change is needed to adequately assess the precision of manual methods, and that the cost impact of the change is quite small. Also, two comments indicated support for the change. The new provision requires 1, 2, or 3 collocated sites for each manual method network depending on the size of the network: 1 collocated site for networks of 1 to 5 sites, 2 collocated sites for networks of 6 to 20 sites, and 3 collocated sites for networks having over 20 sites.

An associated modification specifies that the amended collocation requirements also apply to Pb measurement networks, replacing the previous requirement for analysis of duplicate filter strips. Three comments opposed this change, citing (1) lack of continuity with previous lead precision measurements because of the change in procedure, (2) additional cost of purchasing, installing, and operating additional Pb samplers needed for collocation, and (3) lack of perceived benefit. However, seven monitoring agencies supported the change, and EPA believes that the collocation requirement for Pb networks is necessary to adequately assess the precision of the overall Pb measurement rather than just the Pb analytical procedure.

Since many TSP and Pb monitoring networks often share the same high-volume samplers, three of the comments indicated (1) some confusion as to whether TSP and Pb networks should be treated separately or jointly in determining the number of collocated sites needed, and (2) a desire that a common collocated sampler site could serve for both TSP and Pb networks. In response to these comments, the language of this provision was changed slightly to (1) indicate clearly that TSP and Pb networks must be considered separately in determining the number of collocated sites needed for each, and (2) allow a common collocated sampler pair to serve as a collocation site for both TSP and Pb networks, provided that the site meets the collocation requirements of both networks. Also, the TSP network collocation requirements were changed slightly to allow the selection of any site at which the annual average TSP is among the upper 25 percent of the annual averages at all the sites in the TSP network.

A final change concerning assessment of precision from collocated measurements specifies that the percent difference between the two measurements is to be referenced to the average of the two measurements rather than the measurement from the primary sampler. Seven of eight comments supported this change.

Nine comments were received on the proposed provision to require that nitrogen dioxide (NO_2) audit gas standards used in assessing the accuracy of automated (NO_2) analyzers contain $0.1 \pm .02$ ppm nitrogen oxide (NO). Two agencies supported this change even though they recognized that the requirement would make the (NO_2) audits somewhat more difficult. However, the majority of comments, (seven), although acknowledging the need for some level of NO in the NO_2 audit gas, indicated that the $0.1 \pm .02$ ppm specification was too restrictive, too arbitrary, too difficult and costly to obtain, or not adequately justified; and that more flexibility in this requirement was needed. Many of the comments suggested that the provision specify a minimum concentration of NO such as 0.1 or 0.08 ppm, without an upper limit, to allow continued, convenient use of the commonly employed gas phase titration (GPT) audit procedure.

In response to these comments, the provision has been changed to require that NO_2 audit gas concentrations contain at least 0.08 ppm NO, with no upper limit. However, the language of the provision has been augmented to indicate that substantially higher concentrations of NO in the NO_2 audit gas—as may occur when using some GPT techniques—may lead to non-representative audit errors, and that such errors may be minimized by modifying the GPT technique to lower the NO concentrations to levels more typical of the NO concentrations prevalent at the monitoring site.

A few other modifications have been made to the proposed Appendix A amendments in response to comments received. The language in Section 3.2 has been clarified to indicate that audits of automated analyzers are required only for quarters during which the analyzers are operated.

Section 3.3 has been augmented to indicate that although collocated samplers are required to be operated at least once per week, the every-sixth-day schedule widely used by many monitoring agencies is recommended. And minor changes in the language of section 4 clarify (1) that quarterly estimates of precision and accuracy calculated by EPA will be available to the reporting organizations within 120 days after the end of the quarterly reporting period (i.e., 240 days after the end of the quarter) and (2) that annual precision and accuracy limits will be properly weighted to reflect the actual test data over the entire year and will not merely be averages of the quarterly limits.

On March 8, 1985 when these amendments were proposed, it was noted that other amendments to Appendix A which had been proposed on March 20, 1984 (49 FR 10435) for the purpose of incorporating provisions applicable to methods for monitoring size-specific particulate matter (PM_{10}) were still pending. Most of the (PM_{10}) provisions proposed on March 20, 1984 have now been incorporated into the revised Appendix A, being promulgated today, by use of generic terms such as "particulate matter method" or "particulate matter sampler," which are intended to refer to methods for either TSP or PM_{10}. Specific references to PM_{10}, originally contained in brackets in the amendments proposed on March 8, 1985, do not appear in the final revised Appendix A. Those specific PM_{10} provisions will be promulgated as part of the entire PM_{10} amendment package, which is still pending at this time.

Another Appendix A issue under current consideration by EPA is a potential requirement that would increase the auditing frequency of automated analyzers to quarterly from the current once-per-year requirement.

The amendments proposed on March 8, 1985 did not include provisions for increased auditing frequency but raised the issue for consideration. No Provisions were proposed because of strong preliminary comments from numerous monitoring agencies indicating that the cost to implement the increased auditing would be prohibitive or would substantially divert resources from other quality assurance functions. However, equally numerous preliminary comments from many other agencies strongly supported EPA's belief that the increased auditing frequency is needed to adequately assess the accuracy of automated methods.

Fourteen comments on this issue were received, with five supporting EPA's contention that the increased auditing frequency is needed and nine opposing the increased requirement due to cost, equipment, and personnel considerations or claimed lack of convincing justification. Many of the comments suggested potential alternative or compromise audit requirements that might improve the accuracy assessment at a lower cost or using fewer resources. In view of this dichotomy of opinion, the revised Appendix A contains no change in the current annual audit frequency requirement. However, the issue of improved accuracy assessment of automated analyzers will continue to be studied by EPA.

Revisions to Appendix B—Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Monitoring

Appendix B prescribes minimum quality assurance and quality assessment requirements applicable to air monitoring data submitted to EPA in connection with the regulations for Prevention of Significant Deterioration (PSD). Of the three comments received on the proposed amendments to Appendix B, two related to provisions that were not proposed to be changed. Accordingly, the amendments to Appendix B are being promulgated almost exactly as proposed. The only significant difference from the proposed amendments to Appendix B is that NO_2 audit gases used to assess the accuracy of automated analyzers will be required to contain at least 0.08 ppm of NO, instead of $0.1 \pm .02$ ppm as proposed. Also, a recommendation was added to indicate that the NO concentration contained in the NO_2 audit gas should not be substantially higher than typical NO concentrations at the site to minimize audit error. The nature of this change and the reasons for it are the same as for the identical change made to Appendix A.

Revisions to Appendix C—Ambient Air Quality Monitoring Methodology

Amendments to Appendix C are very minor and are nearly the same as proposed. The proposed revisions concerning methods for measuring PM_{10} has been deleted because that revision will be considered in connection with the other PM_{10} amendments proposed on March 20, 1984 (49 FR 10435). No comments pertaining to Appendix C were received.

Revisions to Appendix D—Network Design for SLAMS and NAMS

Two respondents supported the concept of monitoring for O_3 only during the proposed O_3 season. One respondent suggested auditing O_3 monitors only during the O_3 season as well. The language in Appendix A, section 3.2 has been clarified to indicate that audits of automated analyzers are required only for quarters in which the analyzers are operated. One respondent wanted the regulation to explicitly state that NAMS as well as SLAMS O_3 monitoring could be turned off during the non-ozone season. This was EPA's intent and the language in Appendix D, section 2.5 is modified to reflect this. Two comments were received questioning the length of the published O_3 season. One comment inferred that the season was too long in some areas and should not be designated on a State-wide basis but should consider geography, climatology and population density. Another respondent wanted to rely on historical data to document that the O_3 season was indeed long enough. All of these factors are important and were considered in the original consideration of defining O_3 seasons on a State-wide basis. Although there may be some such regions of a given State that may logically have a different, i.e., shorter O_3 season than the rest of the State, EPA believes that considering the general large scale coverage of O_3, State-wide uniformity is more appropriate than providing parts of some States with 15 to 30 extra days of monitoring relief.

Three respondents supported the March 8, 1985 proposed additional scales or representativeness for NAMS monitoring for CO, SO_2, NO_2, and Pb. Thus, these additional scales are included in today's promulgation. Appendix D did not address any general changes to PM_{10} or TSP because they were addressed in the March 20, 1984 proposed regulations for the PM_{10} primary standards and TSP secondary standard. Nevertheless, one reviewer commented that he did not support the March 1984 proposed microscale monitoring for PM_{10} or TSP. Since these regulations are still pending, all references to PM_{10} are being eliminated in the final revised Appendices D, E, F, and G. Similarly, in section 4, Table 4, the TSP microscale for SLAMS and TSP microscale and middle scale for NAMS have been deleted in this rulemaking, but are being considered as part of the entire PM_{10} rulemaking package. However, the March 20, 1984 proposed changes to Table 2, Appendix D, concerning the number of TSP NAMS per urban area, are being promulgated. EPA believes that these revised numbers will provide for sufficient TSP NAMS to adequately meet the national TSP data needs of the Agency. These revised numbers are similar to the March 8, 1985 proposed revisions to the number of SO_2 NAMS per urban area (Table 3, Appendix D).

Revisions to Appendix E—Probe Siting Criteria for Ambient Air Quality Monitoring

In the March 8, 1985, proposal, EPA solicited data and/or monitoring experiences in situations where trees may or may not bias air quality data. EPA also proposed two changes with respect to monitoring in the vicinity of trees as possible examples. The first change defined a specific point to measure the sampler or probe setback distance from trees rather than leaving it ambiguous. This resulted in the setback distances being measured anywhere from the tree trunk to the outermost branch tip. The second change proposed a required minimum setback distance from trees. This was done by proposing that the wording "the inlet probe should be 20 meters from trees" be changed to "the sampler must be placed at least 10 meters from the dripline of the obstructing tree."

Although EPA did not receive any additional information concerning the impact of trees on air quality data, the proposed change concerning trees were generally well received.

Two reviewers supported the change that would require the minimum setback from trees if the trees also acted as an obstruction to wind flow. The reviewer also endorsed the specificity in the setback distance being measured "from the dripline." One commenter wanted the setback distance from trees to remain a guideline rather than a requirement. Another wanted an automatic waiver for those sites which were approved under the current regulation. Another respondent expressed the view that EPA was over-

emphasizing the distance of sampling devices from trees to the point of absurdity.

One of the driving forces behind the development of the Part 58 monitoring regulations was the desire to promote uniformity in air monitoring throughout the country. The generic revisions to Part 58 were to further promote this uniformity making use of the 5 years of experience obtained from the use of the regulation. One of the EPA Air Program's responsibilities and accomplishments over the last 5 years was to physically visit every NAMS and a fair sampling of SLAMS monitors in the Nation. On these visits, it was observed that some monitoring sites totally disregarded the suggested guideline with respect to trees. Continuous monitoring instrument probes were observed to be within the tree canopy, some hi-vols were found sitting on the ground under trees whose branches were so low that one needs to stoop over to service the sampler; and on one occasion, a wind speed and direction instrument was observed among the branches of a tree. EPA feels that complying with a minimum setback of 10 meters from the dripline when the tree is at least 5 meters above the height of the sampling inlet is a reasonable alternative to the existing situation.

Also in Appendix E, one commentor took strong exception to the provision in section 4.3 of Appendix E which states that the preferred location of the inlet probe of a street canyon/corridor (microscale) CO site is midblock. One of the major reasons given by the respondent for opposing this provision is that the midblock location does not, in many instances, satisfy the monitoring objective in the regulation, that requires establishing monitoring stations in areas of expected maximum concentrations. The Agency agrees that the regulations do require the establishment of peak concentration stations (Appendix D, sections 2.4, 3, 3.3 and Appendix E, section 4). The use of the phrase "preferably at a midblock" instead of "must" was used to give some flexibility in the siting of the monitor. However, the final siting of the monitor must meet the objectives and intent of Appendix D, sections 2.4, 3, 3.3 and Appendix E, section 4. Accordingly, wording has been added to section 4.3 of Appendix E to clarify this intent.

Revisions to Appendix F—Annual SLAMS Air Quality Information

Although no changes were proposed nor formal comments received on the items in Appendix F, it has been pointed out that in situations when the concentration level (hourly average, 24-hour average, etc.) falls in the gap between two ranges, it is not clear to which range the level should be assigned. Therefore, wording is being added to Appendix F to specify the rounding convention to be used to resolve the problem.

Revisions to Appendix G—Uniform Air Quality Index and Daily Reporting

The only comment on Appendix G was that in an effort to make the Pollutant Standard Index (PSI) more current, language should be added to allow for the use of less than a 24-hour period for index reporting. Since there is a 24-hour measurement period required for TSP and SO_2 and an 8-hour period for CO, EPA feels the current wording in the regulation, which states "that to the extent practicable the measurements should be from the reporting day", is sufficient to express EPA's concern over the timeliness of the reported index.

Impact on Small Entities

The Regulatory Flexibility Act requires that all federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601 et seq.). EPA's consideration pursuant to this Act indicates that no small entity group would be significantly affected in an adverse way by the rulemaking. Therefore, pursuant to 5 U.S.C. 605(b), the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Other Reviews

Since this revision is classified as minor, no additional reviews are required.

This is not a "major" rule under E.O. 12291 because it does not meet any of the criteria defined in the Executive Order. The revisions to Part 58 were submitted to the Office of Management and Budget (OMB) for review (under Executive Order 12291).

The information collection requirements in this final rule has been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. This rulemaking is promulgated under authority of section 110, 301(a) and 319 of the Clean Air Act, 42 U.S.C. 7410, 7601(a), 7619.

List of Subjects in 40 CFR Part 58

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Pollutant standard index, and Ambient air quality monitoring network.

Dated: February 21, 1986.

Lee M. Thomas,

Administrator.

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

For the reasons set forth in the Preamble, Part 58 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7619.

2. Section 58.1 is amended by revising paragraph (s) to read as follows:

§ 58.1 Definitions.

* * * * *

(s) "Urban area population" means the population defined in the most recent decennial U.S. Census of Population Report.

§ 58.26 [Amended]

3. Section 58.26 is amended by removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2).

4. Paragraph (c)(1) of § 58.35 is revised to read as follows:

§ 58.35 NAMS data submittal.

* * * * *

(c) * * *

(1) Be received by the National Aerometric Data Bank within 120 days of the end of each reporting period, after being submitted by the States to the Regional Offices for review.

* * * * *

5. A new § 58.36 is added to subpart D to read as follows:

§ 58.36 System modification.

During the annual SLAMS Network Review specified in § 58.20, any changes to the NAMS network identified by the EPA and/or proposed by the State and agreed to by the EPA will be evaluated. These modifications should address changes invoked by a new census and changes to the network due to changing air quality levels, emission patterns, etc. The State shall be given one year (until the next annual evaluation) to implement the appropriate changes to the NAMS network.

6. Section 58.40 is amended by revising paragraph (c) to read as follows:

§ 58.40 Index reporting.

* * * * *

(c) The population of an urban area for purposes of index reporting is the

most recent U.S. census population figure as defined in § 58.1 paragraph (s).

7. Appendix A to part 58 is revised to read as follows:

Appendix A—Quality Assurance Requirements for State and Local Air Monitoring Stations (SLAMS)

1. General Information.

This Appendix specifies the minimum quality assurance requirements applicable to SLAMS air monitoring data submitted to EPA. States are encouraged to develop and maintain quality assurance programs more extensive than the required minimum.

Quality assurance of air monitoring systems includes two distinct and important interrelated functions. One function is the control of the measurement process through the implementation of policies, procedures, and corrective actions. The other function is the assessment of the quality of the monitoring data (the product of the measurement process). In general, the greater the effort effectiveness of the control of a given monitoring system, the better will be the resulting quality of the monitoring data. The results of data quality assessments indicate whether the control efforts need to be increased.

Documentation of the quality assessments of the monitoring data is important to data users, who can then consider the impact of the data quality in specific applications (see Reference 1). Accordingly, assessments of SLAMS data quality are required to be reported to EPA periodically.

To provide national uniformity in this assessment and reporting of data quality for all SLAMS networks, specific assessment and reporting procedures are prescribed in detail in sections 3, 4, and 5 of this Appendix.

In contrast, the control function encompasses a variety of policies, procedures, specifications, standards, and corrective measures which affect the quality of the resulting data. The selection and extent of the quality control activities—as well as additional quality assessment activities—used by a monitoring agency depend on a number of local factors such as the field and laboratory conditions, the objectives of the monitoring, the level of the data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etc. Therefore, the quality assurance requirements, in section 2 of this Appendix, are specified in general terms to allow each State to develop a quality assurance system that is most efficient and effective for its own circumstances.

2. Quality assurance requirements

2.1 Each State must develop and implement a quality assurance program consisting of policies, procedures, specifications, standards and documentation necessary to:

(1) Provide data of adequate quality to meet monitoring objectives, and

(2) Minimize loss of air quality data due to malfunctions or out-of-control conditions.

This quality assurance program must be described in detail, suitably documented, and approved by the appropriate Regional Administrator, or his designee. The Quality Assurance Program will be reviewed during the annual system audit described in section 2.4.

2.2 Primary guidance for developing the quality assurance program is contained in References 2 and 3, which also contain many suggested procedures, checks, and control specifications. Section 2.0.9 of Reference 3 describes specific guidance for the development of a Quality Assurance Program for SLAMS automated analyzers. Many specific quality control checks and specifications for manual methods are included in the respective reference methods described in Part 50 of this chapter or in the respective equivalent method descriptions available from EPA (see Reference 4). Similarly, quality control procedures related to specifically designated reference and equivalent analyzers are contained in the respective operation and instruction manuals associated with those analyzers. This guidance, and any other pertinent information from appropriate sources, should be used by the States in developing their quality assurance programs.

As a minimum, each quality assurance program must include operational procedures for each of the following activities:

(1) Selection of methods, analyzers, or samplers;

(2) Training;

(3) Installation of equipment;

(4) Selection and control of calibration standards;

(5) Calibration;

(6) Zero/span checks and adjustments of automated analyzers;

(7) Control checks and their frequency;

(8) Control limits for zero, span and other control checks, and respective corrective actions when such limits are surpassed;

(9) Calibration and zero/span checks for multiple range analyzers (see Section 2.6 of Appendix C of this part);

(10) Preventive and remedial maintenance;

(11) Quality control procedures for air pollution episode monitoring;

(12) Recording and validating data;

(13) Data quality assessment (precision and accuracy);

(14) Documentation of quality control information.

2.3 *Pollutant Concentration and Flow Rate Standards.*

2.3.1 Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) used to obtain test concentration for CO, SO_2, and NO_2 must be traceable to either a National Bureau of Standards (NBS) Standard Reference Material (SRM) or an NBS/EPA-approved commercially available Certified Reference Material (CRM). CRM's are described in Reference 5, and a list of CRM sources is available from the Quality Assurance Division (MD-77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

General guidance and recommended techniques for certifying gaseous working standards against an SRM or CRM are provided in section 2.0.7 of Reference 3. Direct use of a CRM as a working standard is acceptable, but direct use of an NBS SRM as a working standard is discouraged because of the limited supply and expense of SRMs.

2.3.2 Test concentrations for O_3 must be obtained in accordance with the UV photometric calibration procedure specified in Appendix D of Part 50 of this chapter, or by means of a certified ozone transfer standard. Consult References 6 and 7 for guidance on primary and transfer standards for O_3.

2.3.3 Flow rate measurements must be made by a flow measuring instrument that is traceable to an authoritative volume or other standard. Guidance for certifying some types of flowmeters is provided in Reference 3.

2.4 National Performance and System Audit Programs

Agencies operating SLAMS network stations shall be subject to annual EPA systems audits of their ambient air monitoring program and are required to participate in EPA's National Performance Audit Program. These audits are described in section 1.4.16 of Reference 2 and section 2.0.11 of Reference 3. For instructions, agencies should contact either the appropriate EPA Regional Quality Assurance Coordinator or the Quality Assurance Division (MD-77B), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

3. Data quality assessment requirements

All ambient monitoring methods or analyzers used in SLAMS shall be tested periodically, as described in this section 3, to quantitatively assess the quality of the SLAMS data being routinely produced. Measurement accuracy and precision are estimated for both automated and manual methods. The individual results of these tests for each method or analyzer shall be reported to EPA as specified in section 4. EPA will then calculate quarterly integrated estimates of precision and accuracy applicable to the SLAMS data as described in section 5. Data assessment results should be reported to EPA only for methods and analyzers approved for use in SLAMS monitoring under Appendix C of this Part.

The integrated data quality assessment estimates will be calculated on the basis of "reporting organizations." A reporting organization is defined as a State, subordinate organization within a State, or other organization that is responsible for a set of stations that monitor the same pollutant and for which precision or accuracy assessments can be pooled. States must define one or more reporting organizations for each pollutant such that each monitoring station in the State SLAMS network is included in one, and only one, reporting organization.

Each reporting organization shall be defined such that precision or accuracy among all stations in the organization can be expected to be reasonably homogeneous, as a result of common factors. Common factors that should be considered by States in defining reporting organizations include: (1) operation by a common team of field operators, (2) common calibration facilities

and (3) support by a common laboratory or headquarters. Where there is uncertainty in defining the reporting organizations or in assigning specific sites to reporting organizations, States shall consult with the appropriate EPA Regional Office for guidance. All definitions of reporting organizations shall be subject to final approval by the appropriate EPA Regional Office.

Assessment results shall be reported as specified in section 4. Concentration and flow standards must be as specified in sections 2.3 or 3.4. In addition, working standards and equipment used for accuracy audits must not be the same standards and equipment used for routine calibration. Concentration measurements reported from analyzers or analytical systems (indicated concentrations) should be based on stable readings and must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data (see Reference 1, page 62, and Reference 3, section 2.0.9.1.3(d)). Table A-1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following sections.

3.1 Precision of Automated Methods. A one-point precision check must be carried out at least once every two weeks on each automated analyzer used to measure SO_2, NO_2, O_3 and CO. The precision check is made by challenging the analyzer with a precision check gas of known concentration between 0.08 and 0.10 ppm for SO_2, NO_2, and O_3 analyzers, and between 8 and 10 ppm for CO analyzers. To check the precision of SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm SO_2, NO_2, and O_3, or 0 to 100 ppm for CO, use precision check gases of appropriately higher concentration as approved by the appropriate Regional Administrator or his designee. However, the results of precision checks at concentration levels other than those shown above need not be reported to EPA. The standards from which precision check test concentrations are obtained must meet the specifications of section 2.3.

Except for certain CO analyzers described below, analyzers must operate in their normal sampling mode during the precision check, and the test atmosphere must pass through all filters, scrubbers, conditioners and other components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. If permitted by the associated operation or instruction manual, a CO analyzer may be temporarily modified during the precision check to reduce vent or purge flows, or the test atmosphere may enter the analyzer at a point other than the normal sample inlet, *provided that* the analyzer's response is not likely to be altered by these deviations from the normal operational mode. If a precision check is made in conjunction with a zero or span adjustment, it must be made prior to such zero or span adjustments. Randomization of the precision check with respect to time of day, day of week, and routine service and adjustments is encouraged where possible.

Report the actual concentrations of the precision check gas and the corresponding concentrations indicated by the analyzer. The percent differences between these concentrations are used to assess the precision of the monitoring data as described in section 5.1.

3.2 Accuracy of Automated Methods. Each calendar quarter (during which analyzers are operated), audit at least 25 percent of the SLAMS analyzers that monitor for SO_2, NO_2, O_3, or CO such that each analyzer is audited at least once per year. If there are fewer than four analyzers for a pollutant within a reporting organization, randomly reaudit one or more analyzers so that at least one analyzer for that pollutant is audited each calendar quarter. Where possible, EPA strongly encourages more frequent auditing, up to an audit frequency of once per quarter for each SLAMS analyzer.

The audit is made by challenging the analyzer with at least one audit gas of known concentration from each of the following ranges that fall within the measurement range of the analyzer being audited:

Audit level	Concentration range, ppm		CO
	SO_2, O_3	NO_2	
1	0.03–0.08	0.03–0.08	3–8
2	0.15–0.20	0.15–0.20	15–20
3	0.35–0.45	0.35–0.45	35–45
4	0.80–0.90		80–90

NO_2 audit gas for chemiluminescence-type NO_2 analyzers must also contain at least 0.08 ppm NO. **Note.** NO concentrations substantially higher than 0.08 ppm, as may occur when using some gas phase titration (GPT) techniques, may lead to audit errors in chemiluminescence analyzers due to inevitable minor NO–NO_x channel imbalance. Such errors may be atypical of routine monitoring errors to the extent that such NO concentrations exceed typical ambient NO concentrations at the site. These errors may be minimized by modifying the GPT technique to lower the NO concentrations remaining in the NO_2 audit gas to levels closer to typical ambient NO concentrations at the site.

To audit SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm for SO_2, NO_2, and O_3 or 0 to 100 ppm for CO, use audit gases of appropriately higher concentration as approved by the appropriate Regional Administrator or his designee. The results of audits at concentration levels other than those shown in the above table need not be reported to EPA.

The standards from which audit gas test concentrations are obtained must meet the specifications of section 2.3. Working or transfer standards and equipment used for auditing must not be the same as the standards and equipment used for calibration and spanning, but may be referenced to the same NBS SRM, CRM, or primary UV photometer. The auditor should not be the operator or analyst who conducts the routine monitoring, calibration, and analysis.

The audit shall be carried out by allowing the analyzer to analyze the audit test atmosphere in its normal sampling mode such that the test atmosphere passes through all filters, scrubbers, conditioners, and other sample inlet components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. The exception given in section 3.1 for certain CO analyzers does not apply for audits.

Report both the audit test concentrations and the corresponding concentration measurements indicated or produced by the analyzer being tested. The percent differences between these concentrations are used to assess the accuracy of the monitoring data as described in section 5.2.

3.3 Precision of Manual Methods. For networks of manual methods, select one or more monitoring sites within the reporting organization for duplicate, collocated sampling as follows: for 1 to 5 sites, select 1 site; for 6 to 20 sites, select 2 sites; and for over 20 sites, select 3 sites. Where possible, additional collocated sampling is encouraged. Sites having annual mean particulate matter concentrations among the highest 25 percent of the annual mean concentrations for all the sites in the network must be selected or, if such sites are impractical, alternate sites approved by the Regional Administrator may be selected.

In determining the number of collocated sites required, monitoring networks for Pb should be treated independently from networks for particulate matter, even though the separate networks may share one or more common samplers. However, a single pair of samplers collocated at a common-sampler monitoring site that meets the requirements for both a collocated lead site and a collocated particulate matter site may serve as a collocated site for both networks.

The two collocated samplers must be within 4 meters of each other, and particulate matter samplers must be at least 2 meters apart to preclude airflow interference. Calibration, sampling and analysis must be the same for both collocated samplers and the same as for all other samplers in the network.

For each pair of collocated samplers, designate one sampler as the primary sampler whose samples will be used to report air quality for the site, and designate the other as the duplicate sampler. Each duplicate sampler must be operated concurrently with its associated routine sampler at least once per week. The operation schedule should be selected so that the sampling days are distributed evenly over the year and over the seven days of the week. The every-6-day schedule used by many monitoring agencies is recommended. Report the measurements from both samplers at each collocated sampling site, including measurements falling below the limits specified in 5.3.1. The percent differences in measured concentration ($\mu g/m^3$) between the two collocated samplers are used to calculate precision as described in section 5.3.

3.4 Accuracy of Manual Methods. The accuracy of manual sampling methods is assessed by auditing a portion of the measurement process. For particulate matter methods, the flow rate during sample collection is audited. For SO_2 and NO_2 methods, the analytical measurement is audited. For Pb methods, the flow rate and analytical measurement are audited.

3.4.1 Particulate matter methods. Each calendar quarter, audit the flow rate of at least 25 percent of the samplers such that each sampler is audited at least once per year. If there are fewer than four samplers within a reporting organization, randomly reaudit one or more samplers so that one sampler is audited each calendar quarter. Audit each sampler at its normal operating flow rate, using a flow rate transfer standard as described in section 2.3.3. The flow rate standard used for auditing must not be the same flow rate standard used to calibrate the sampler. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate standard. The flow audit should be scheduled so as to avoid interference with a scheduled sampling period. Report the audit flow rates and the corresponding flow rates indicated by the sampler's normally used flow indicator. The percent differences between these flow rates are used to calculate accuracy as described in section 5.4.1.

Great care must be used in auditing high-volume particulate matter samplers having flow regulators because the introduction of resistance plates in the audit flow standard device can cause abnormal flow patterns at the point of flow sensing. For this reason, the flow audit standard should be used with a normal filter in place and without resistance plates in auditing flow-regulated high-volume samplers, or other steps should be taken to assure that flow patterns are not perturbed at the point of flow sensing.

3.4.2 SO_2 Methods. Prepare audit solutions from a working sulfite-tetrachloromercurate (TCM) solution as described in section 10.2 of the SO_2 Reference Method (Appendix A of Part 50 of this chapter). These audit samples must be prepared independently from the standardized sulfite solutions used in the routine calibration procedure. Sulfite-TCM audit samples must be stored between 0 and 5 °C and expire 30 days after preparation.

Prepare audit samples in each of the concentration ranges of 0.2–0.3, 0.5–0.6, and 0.8–0.9 μg SO_2/ml. Analyze an audit sample in each of the three ranges at least once each day that samples are analyzed and at least twice per calendar quarter. Report the audit concentrations (in μg SO_2/ml) and the corresponding indicated concentrations (in μg SO_2/ml). The percent differences between these concentrations are used to calculate accuracy as described in section 5.4.2.

3.4.3 NO_2 Methods. Prepare audit solutions from a working sodium nitrite solution as described in the appropriate equivalent method (see Reference 4). These audit samples must be prepared independently from the standardized nitrite solutions used in the routine calibration procedure. Sodium nitrite audit samples expire in 3 months after preparation. Prepare audit samples in each of the concentration ranges of 0.2–0.3, 0.5–0.6, and 0.8–0.9 μg NO_2/ml. Analyze an audit sample in each of the three ranges at least once each day that samples are analyzed and at least twice per calendar quarter. Report the audit concentrations (in μg NO_2/ml) and the corresponding indicated concentrations (in μg NO_2/ml). The percent differences between these concentrations are used to calculate accuracy as described in section 5.4.2.

3.4.4 Pb Methods. For the Pb Reference Method (Appendix G of Part 50 of this chapter), the flow rates of the high-volume Pb samplers shall be audited as part of the TSP network using the same procedures described in Section 3.4.1. For agencies operating both TSP and Pb networks, 25 percent of the total number of high-volume samplers are to be audited each quarter.

Each calendar quarter, audit the Pb Reference Method analytical procedure using glass fiber filter strips containing a known quantity of Pb. These audit sample strips are prepared by depositing a Pb solution on 1.9 cm by 20.3 cm (¾ inch by 8 inch) unexposed glass fiber filter strips and allowing them to dry thoroughly. The audit samples must be prepared using batches of reagents different from those used to calibrate the Pb analytical equipment being audited. Prepare audit samples in the following concentration ranges:

Range	Pb concentration, μg/strip	Equivalent ambient Pb concentration,[1] $\mu g/m^3$
1	100–300	0.5–1.5
2	600–1000	3.0–5.0

[1] Equivalent ambient Pb concentration in $\mu g/m^3$ is based on sampling at 1.7 m^3/min for 24 hours on a 20.3 cm×25.4 cm (8 inch×10 inch) glass fiber filter.

Audit samples must be extracted using the same extraction procedure used for exposed filters.

Analyze three audit samples in each of the two ranges each quarter samples are analyzed. The audit sample analyses shall be distributed as much as possible over the entire calendar quarter. Report the audit concentrations (in μg Pb/strip) and the corresponding measured concentrations (in μg Pb/strip) using unit code 77. The percent differences between the concentrations are used to calculate analytical accuracy as described in section 5.4.2.

The accuracy of an equivalent Pb method is assessed in the same manner as for the reference method. The flow auditing device and Pb analysis audit samples must be compatible with the specific requirements of the equivalent method.

4. Reporting Requirements

For each pollutant, prepare a list of all monitoring sites and their SAROAD site identification codes in each reporting organization and submit the list to the appropriate EPA Regional Office, with a copy to the Environmental Monitoring Systems Laboratory (MD–75), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (EMSL/RTP). Whenever there is a change in this list of monitoring sites in a reporting organization, report this change to the Regional Office and to EMSL/RTP.

4.1 Quarterly Reports. Within 120 calendar days after the end of each calendar quarter, each reporting organization shall report to EMSL/RTP via the appropriate EPA Regional Office the results of all valid precision and accuracy tests it has carried out during the quarter. Report all collocated measurements including those falling below the levels specified in section 5.3.1. Do not report results from invalid tests, from tests carried out during a time period for which ambient data immediately prior or subsequent to the tests were invalidated for appropriate reasons, or from tests of methods or analyzers not approved for use in SLAMS monitoring networks under Appendix C of this Part.

Quarterly reports as specified herein shall commence not later than the report pertaining to the first calendar quarter of 1987, although such reports will be accepted beginning with the report pertaining to the third calendar quarter of 1986.

The information should be reported in a format similar to that shown in Figures A–1 and A–2. The data may be reported (1) via magnetic computer tape according to data format specifications provided by the Regional Offices, (2) by direct, interactive computer entry via a data terminal and the PARS data entry system, or (3) on the forms illustrated in Figures A–1 and A–2. Minor variations of these forms (to facilitate local use) or computer-generated (facsimile) forms may also be used, provided they follow the same general format, use the same block numbers, and are clear and completely legible. Instructions for using these forms are provided in section 4.3.

Within 240 days after the end of the reporting quarter, EPA will calculate integrated precision and accuracy assessments for each reporting organization as specified in section 5 and return, through the Regional Offices, reports of the respective assessments to each reporting organization.

4.2 Annual Reports. When precision and accuracy estimates for a reporting organization have been calculated for all four quarters of the calendar year, EPA will calculate the properly weighted probability limits for precision and accuracy for the entire calendar year. These limits will then be associated with the data submitted in the annual SLAMS report required by § 58.26.

Each reporting organization shall submit, along with its annual SLAMS report, a listing by pollutant of all monitoring sites in the reporting organization.

4.3 Instructions for Using Data Quality Assessment Reporting Forms. Suggested forms for reporting data quality assessment information are provided in Figure A–1 (for reporting accuracy data) and Figure A–2 (for reporting precision data). The forms may be used in a "universal" way to report data for different pollutants and for different sites on the same form. Or, either form may be used as a site-specific or pollutant-specific form (where all entries on the form are for a common site, a common pollutant, or both) by filling in the site or pollutant information in the appropriate box in the upper left corner of the form. Detailed instructions for individual blocks are as follows:

Instructions common to both forms:

Block No.	Description
1-2	State: The two digit SAROAD State code.
3-5	Reporting Organization: A unique 3-digit code assigned by each State to each of its respective reporting organizations.
6-7	Year: Last two digits of the calendar year corresponding to the quarter specified in block 8.
8	Quarter: Enter 1, 2, 3, or 4 to refer to the calendar quarter during which the data quality assessments were obtained.
9	Enter "1" for original assessment data, "2" to revise assessment data previously submitted, or "3" to delete previously submitted assessment data. When a "3" is entered, only blocks 1 to 28 need be completed.

Also enter the name of the reporting organization, the date the form is submitted, and (optionally) the name of the person who prepared the form on the blanks provided.

Block No.	Description
10-18	Site: Enter the SAROAD site identification code (first 9 digits only). If all entries on the form are for the same site, enter the site code and site identification in the upper left corner of the form. Also check the block in the corner of the box and leave the other blocks 10 to 18 on the form blank.
21-23	Method Code: Enter the measurement method code from the back of the form. Also enter the pollutant symbol (e.g., SO_2, CO, TSP, etc.) on the blank to the left of block No. 21 If all entries on the form are for the same method, enter the code, symbol, and method identification in the lower box in the upper left corner of the form. Also check the block in the corner of the box and leave the other blocks 21 to 23 on the form blank.
24	Precoded with an "A" or a "P".
25-28	Date: Enter the month and day of the test.

Additional instructions for Accuracy form (Figure A-1):

Block No.	Description
29	T: Enter "1" if the reporting organization conducted the audit and also certified the audit standard used; enter "2" if the reporting organization conducted the audit but did not certify the audit standard used; enter "3" if the audit was not conducted by the reporting organization.
30	S: Enter the code letter of the source of the local primary standard used, from the list on the form.
31-32	Unit code: Enter the unit code number from the unit code list on the form (use only the codes listed). Also write in the unit on the blank to the left of block 31.
33	Precoded with a "0" or a "1."
34-40	Level 1 Actual: Enter the actual concentration determined from the audit standard in the appropriate blocks with respect to the precoded decimal point.
41-47	Level 1 Indicated: Enter the concentration indicated by the analyzer, sampler, or method being audited in the appropriate blocks with respect to the precoded decimal point.
48-61	Level 2: Enter the actual and indicated concentrations for audit level 2, if applicable.
34-61	Levels 3 and 4 (if applicable): On the second line, enter the actual and indicated concentrations for audit level 3 and, if used, audit level 4.

Additional instructions for Precision form (Figure A-2):

Block No.	Description
31-32	Unit Code: Enter the unit code number from the unit code list on the form (use only the codes listed). Also write in the unit on the blank to the left of block 31.
34-40	Actual or Primary: Enter the value of the known test concentration or the concentration measurement associated with the sampler designated as the primary sampler in the appropriate blocks with respect to the precoded decimal point.
41-47	Indicated or Duplicate: Enter the value of the concentration measurement from the analyzer or the duplicate collected sampler in the appropriate blocks with respect to the precoded decimal point.

5. Calculations for Data Quality Assessment

Calculation of estimates of integrated precision and accuracy are carried out by EPA according to the following procedures. Reporting organizations should report the results of individual precision and accuracy tests as specified in sections 3 and 4 even though they may elect to carry out some or all of the calculations in this section on their own.

5.1 Precision of Automated Methods. Estimates of the precision of automated methods are calculated from the results of biweekly precision checks as specified in section 3.1. At the end of each calendar quarter, an integrated precision probability interval for all SLAMS analyzers in the organization is calculated for each pollutant.

5.1.1 Single Analyzer Precision. The percentage difference (d_i) for each precision check is calculated using equation 1, where Y_i is the concentration indicated by the analyzer for the i-th precision check and X_i is the known concentration for the i-th precision check.

$$d_i = \frac{Y_i - X_i}{X_i} \times 100 \qquad (1)$$

For each analyzer, the quarterly average (d_j) is calculated with equation 2, and the standard deviation (S_j) with equation 3, where n is the number of precision checks on the instrument made during the calendar quarter. For example, n should be 6 or 7 if precision checks are made biweekly during a quarter.

$$d_j = \frac{1}{n} \sum_{i=1}^{n} d_i \qquad (2)$$

$$S_j = \sqrt{\frac{1}{n-1}\left[\sum_{i=1}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} d_i\right)^2\right]} \qquad (3)$$

5.1.2 Precision for Reporting Organization. For each pollutant, the average of averages (D) and the pooled standard deviation (S_a) are calculated for all analyzers audited for the pollutant during the quarter, using either equations 4 and 5 or 4a and 5a, where k is the number of analyzers audited within the reporting organization for a single pollutant.

$$D = \frac{1}{k} \sum_{j=1}^{k} d_j \qquad (4)$$

$$D = \frac{n_1 d_1 + n_2 d_2 + \ldots + n_j d_j + \ldots + n_k d_k}{n_1 + n_2 + \ldots + n_j + \ldots + n_k} \qquad (4a)$$

$$S_a = \sqrt{\frac{1}{k} \sum_{j=1}^{k} S_j^2} \qquad (5)$$

$$S_a = \sqrt{\frac{(n_1 - 1)S_1^2 + (n_2 - 1)S_2^2 + \ldots + (n_j - 1)S_j^2 + \ldots + (n_k - 1)S_k^2}{n_1 + n_2 + \ldots + n_j + \ldots + n_k - k}} \qquad (5a)$$

Equations 4 and 5 are used when the same number of precision checks are made for each analyzer. Equations 4a and 5a are used to obtain a weighted average and a weighted standard deviation when different numbers of precision checks are made for the analyzers.

For each pollutant, the 95 Percent Probability Limits for the precision of a reporting organization are calculated using equations 6 and 7.

Upper 95 Percent Probability Limit $= D + 1.96\ S_a$ ..... (6)

Lower 95 Percent Probability Limit $= D - 1.96\ S_a$ ..... (7)

5.2 Accuracy of Automated Methods. Estimates of the accuracy of automated methods are calculated from the results of independent audits as described in section

3.2 At the end of each calendar quarter, an integrated accuracy probability interval for all SLAMS analyzers audited in the reporting organization is calculated for each pollutant. Separate probability limits are calculated for each audit concentration level in section 3.2.

5.2.1 Single Analyzer Accuracy. The percentage difference (d_i) for each audit concentration is calculated using equation 1, where Y_i is the analyzer's indicated concentration measurement from the i-th audit check and X_i is the actual concentration of the audit gas used for the i-th audit check.

5.2.2 Accuracy for Reporting Organization. For each audit concentration level, the average (D) of the individual percentage differences (d_i) for all n analyzers measuring a given pollutant audited during the quarter is calculated using equation 8.

$$D = \frac{1}{n} \sum_{i=1}^{n} d_i \qquad (8)$$

For each concentration level, the standard deviation (S_a) of all the individual percentage differences for all analyzers audited during the quarter is calculated, for each pollutant, using equation 9.

$$S_a = \sqrt{\frac{1}{n-1}\left[\sum_{i=1}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} d_i\right)^2\right]} \qquad (9)$$

For reporting organizations having four or fewer analyzers for a particular pollutant, only one audit is required each quarter, and the average and standard deviation cannot be calculated. For such reporting organizations, the audit results of two consecutive quarters are required to calculate an average and a standard deviation, using equations 8 and 9. Therefore, the reporting of probability limits shall be on a semiannual (instead of a quarterly) basis.

For each pollutant, the 95 Percent Probability Limits for the accuracy of a reporting organization are calculated at each audit concentration level using equations 6 and 7.

5.3 Precision of Manual Methods. Estimates of precision of manual methods are calculated from the results obtained from collocated samplers as described in section 3.3. At the end of each calendar quarter, an integrated precision probability interval for all collocated samplers operating in the reporting organization is calculated for each manual method network.

5.3.1 Single Sampler Precision. At low concentrations, agreement between the measurements of collocated samplers, expressed as percent differences, may be relatively poor. For this reason, collocated measurement pairs are selected for use in the precision calculations only when both measurements are above the following limits:

TSP: 20 $\mu g/m^3$,
SO_2: 45 $\mu g/m^3$,
NO_2: 30 $\mu g/m^3$, and
Pb: 0.15 $\mu g/m^3$.

For each selected measurement pair, the percent difference (d_i) is calculated, using equation 10,

$$d_i = \frac{Y_i - X_i}{(Y_i + X_i)/2} \times 100 \qquad (10)$$

where y_i is the pollutant concentration measurement obtained from the duplicate sampler and X_i is the concentration measurement obtained from the primary sampler designated for reporting air quality for the site. For each site, the quarterly average percent difference (d_j) is calculated from equation 2 and the standard deviation (S_j) is calculated from equation 3, where n = the number of selected measurement pairs at the site.

5.3.2 Precision for Reporting Organization. For each pollutant, the average percentage difference (D) and the pooled standard deviation (S_a) are calculated, using equations 4 and 5, or using equations 4a and 5a if different numbers of paired measurements are obtained at the collocated sites. For these calculations, the k of equations 4, 4a, 5 and 5a is the number of collocated sites.

The 95 Percent Probability Limits for the integrated precision for a reporting organization are calculated using equations 11 and 12.

Upper 95 Percent Probability Limit $= D + 1.96\, S_a/\sqrt{2}$ ..... (11)

Lower 95 Percent Probability Limit $= D - 1.96\, S_a/\sqrt{2}$ ..... (12)

5.4 Accuracy of Manual Methods. Estimates of the accuracy of manual methods are calculated from the results of independent audits as described in Section 3.4. At the end of each calendar quarter, an integrated accuracy probability interval is calculated for each manual method network operated by the reporting organization.

5.4.1 Particulate Matter Samplers (including reference method Pb samplers).

(1) *Single Sampler Accuracy.* For the flow rate audit described in Section 3.4.1, the percentage difference (d_i) for each audit is calculated using equation 1, where X_i represents the known flow rate and Y_i represents the flow rate indicated by the sampler.

(b) *Accuracy for Reporting Organization.* For each type of particulate matter measured (e.g., TSP/Pb), the average (D) of the individual percent differences for all similar particulate matter samplers audited during the calendar quarter is calculated using equation 8. The standard deviation (S_a) of the percentage differences for all of the similar particulate matter samplers audited during the calendar quarter is calulated using equation 9. The 95 percent probability limits for the integrated accuracy for the reporting organization are calculated using equations 6 and 7. For reporting organizations having four or fewer particulate matter samplers of one type, only one audit is required each quarter, and the audit results of two consecutive quarters are required to calculate an average and a standard deviation. In that case, probability limits shall be reported semi-annually rather than quarterly.

5.4.2 Analytical Methods for SO_2, NO_2, and Pb.

(a) *Single Analysis-Day Accuracy.* For each of the audits of the analytical methods for SO_2, NO_2, and Pb described in section 3.4.2, 3.4.3, and 3.4.4, the percentage difference (d_i) at each concentration level is calculated using equation 1, where X_i represents the known value of the audit sample and Y_i represents the value of SO, NO_2, and Pb indicated by the analytical method.

(b) *Accuracy for Reporting Organization.* For each analytical method, the average (D) of the individual percent differences at each concentration level for all audits during the calendar quarter is calculated using equation 8. The standard deviation (S_a) of the percentage differences at each concentration level for all audits during the calendar quarter is calculated using equation 9. The 95 percent probability limits for the accuracy for the reporting organization are calculated using equations 6 and 7.

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TABLE A-1. MINIMUM DATA ASSESSMENT REQUIREMENTS

PRECISION

Method	Assessment Method	Coverage	Minimum Frequency	Parameters Reported
Automated methods for SO_2, NO_2, O_3, and CO	Response check at concentration between .08 and .10 ppm (8 & 10 ppm for CO)	Each analyzer	Once per 2 weeks	Actual concentration and measured concentration
Manual methods including lead	Collocated samplers	1 site for 1-5 sites 2 sites " 6-20 sites 3 sites " > 20 sites (sites with highest conc.)	Once per week	Two concentration measurements

ACCURACY

Automated methods for SO_2, NO_2, O_3 CO	Response check at .03-.08 ppm* .15-.20 ppm* .35-.45 ppm* .80-.90 ppm* (if applicable) *Conc. times 100 for CO	1. Each analyzer 2. 25% of analyzers (at least 1)	1. Once per year 2. Each calendar quarter	Actual concentration and measured (indicated) concentration for each level
Manual methods for SO_2 and NO_2	Check of analytical procedure with audit standard solutions	Analytical system	Each day samples are analyzed, at least twice per quarter	Actual concentration and measured (indicated) concentration for each audit solution
TSP	Check of sampler flow rate	1. Each sampler 2. 25% of samplers (at least 1)	1. Once per year 2. Each calendar quarter	Actual flow rate and flow rate indicated by the sampler
Lead	1. Check sample flow rate as for TSP 2. Check analytical system with Pb audit strips	1. Each sampler 2. Analytical system	1. Include with TSP 2. Each quarter	1. Same as for TSP 2. Actual concentration and measured (indicated) concentration of audit samples (μg Pb/strip)

DATA QUALITY ASSESSMENT REPORTING FORM

ACCURACY

Check box and complete only if all entries are for a single site and or method

SAROAD SITE CODE (10-18) _____ SITE

POLLUTANT _____ METHOD CODE (21 23) _____ METHOD

STATE (1 2) REPORTING ORGANIZATION (3 4 5) YEAR (6 7) QUARTER (8) (9) 1 = ORIGINAL 2 = REVISION 3 = DELETION

UNIT CODES	
µg/m³	01
ppm	07
µg/mL	64
CFM	72
L/min	73
m³/min	83
µg	77

NAME OF REPORTING ORGANIZATION _____

DATE SUBMITTED _____ MO./DAY/YR PREPARED BY _____

SAROAD SITE CODE (10-18)	POLLUTANT	METHOD CODE (21-23)	(24)	DATE MON. DAY (25-28)	T[1] (29)	S[2] (30)	UNIT	UNIT CODE (31 32)	(33)	LEVEL 1 ACTUAL (34-37)	LEVEL 1 INDICATED (38-40)	LEVEL 2 ACTUAL (41-44)	LEVEL 2 INDICATED (45-47)	LEVEL 3 ACTUAL (48-51)	LEVEL 3 INDICATED (52 54)	LEVEL 4 ACTUAL (55-58)	LEVEL 4 INDICATED (59-61)
			A						O								
									1								
			A						O								
									1								
			A						O								
									1								
			A						O								
									1								
			A						O								
									1								

[1] Type of audit

1 Audit conducted by reporting organization, audit standard certified by reporting organization
2 Audit conducted by reporting organization, audit standard certified by another organization
3 Audit conducted by other than reporting organization

[2] Source of local primary standard

A NBS SRM
B EMSL reference gas
C Commercial CRM
D Photometer
E Other, specify _____

SEND COMPLETED FORM TO REGIONAL OFFICE

DATA QUALITY ASSESSMENT REPORTING FORM

PRECISION

Check box and complete only if all entries are for a single site and/or method

SAROAD SITE CODE (10-18) _____ SITE

POLLUTANT _____ METHOD CODE (21-23) _____ METHOD

STATE (1-2) REPORTING ORGANIZATION (3-5) YEAR (6-7) QUARTER (8) (9) 1 ORIGINAL 2 REVISION 3 DELETION

UNIT CODES	
$\mu g/m^3$	01
ppm	07
$\mu g/mL$	64
CFM	72
L/min	73
m^3/min	83
μg	77

NAME OF REPORTING ORGANIZATION _____

DATE SUBMITTED _____ MO./DAY/YR PREPARED BY _____

SAROAD SITE CODE 10-18	POLLUTANT	METHOD CODE 21-23	24	DATE MON. 25-26	DATE DAY 27-28	UNIT	UNIT CODE 31-32	ACTUAL OR DESIGNATED 34-37	38-40	INDICATED OR COLLOCATED 41-44	45-47
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								
			P								

METHOD	DESIGNATION NUMBER	METHOD CODE
SO_2 Manual Methods		
Ref. method (pararosaniline)	--	801
Technicon I (pararosaniline)	EQS-0775-001	001
Technicon II (Pararosaniline)	EQS-0775-002	002
SO_2 Analyzers		
Asarco 500	EQSA-0877-024	024
Beckman 953	EQSA-0678-029	029
Bendix 8303	EQSA-1078-030	030
Lear Siegler AM2020	EQSA-1280-049	049
Lear Siegler SM1000	EQSA-1275-005	005
Meloy SA185-2A	EQSA-1275-006	006
Meloy SA285E	EQSA-1078-032	032
Meloy SA700	EQSA-0580-046	046
Monitor Labs 8450	EQSA-0876-013	013
Monitor Labs 8850	EQSA-0779-039	039
Philips PW9700	EQSA-0876-011	011
Philips PW9755	EQSA-0676-010	010
Thermo Electron 43	EQSA-0276-009	009
O_3 Analyzers		
Beckman 950A	RFOA-0577-020	020
Bendix 8002	RFOA-0176-007	007
CSI 2000	RFOA-0279-036	036
Dasibi 1003-AH,-PC,-RS	EQOA-0577-019	019
Dasibi 1008-AH	EQOA-0383-056	056
McMillan 1100-1	RFOA-1076-014	014
McMillan 1100-2	RFOA-1076-015	015
McMillan 1100-3	RFOA-1076-016	016
Meloy OA325-2R	RFOA-1075-003	003
Meloy OA350-2R	RFOA-1075-004	004
Monitor Labs 8410E	RFOA-1176-017	017
Monitor Labs 8810	EQOA-0881-053	053
PCI Ozone Corp. LC-12	EQOA-0382-055	055
Philips PW9771	EQOA-0777-023	023
Thermo Electron 49	EQOA-0880-047	047
TSP Manual Method		
Reference method (high-volume)	--	802

BILLING CODE 6560-50-C

METHOD	DESIGNATION NUMBER	METHOD CODE
NO_2 Manual Methods		
Sodium arsenite	EQN-1277-026	026
Sodium arsenite/Technicon II	EQN-1277-027	027
TGS-ANSA	EQN-1277-028	028
NO_2 Analyzers		
Beckman 952A	RFNA-0179-034	034
Bendix 8101-B	RFNA-0479-038	038
Bendix 8101-C	RFNA-0777-022	022
CSI 1600	RFNA-0977-025	025
Meloy NA530R	RFNA-1078-031	031
Monitor Labs 8440E	RFNA-0677-021	021
Monitor Labs 8840	RFNA-0280-042	042
Philips PW9762/02	RFNA-0879-040	040
Thermo Electron 14B/E	RFNA-0179-035	035
Thermo Electron 14D/E	RFNA-0279-037	037
Pb Manual Methods		
Ref. method (hi-vol/AA spect.)	--	803
Hi-vol/AA spect. (alt. extr.)	EQL-0380-043	043
Hi-vol/Flameless AA (EMSL/EPA)	EQL-0380-044	044
Hi-vol/ICAP spect. (EMSL/EPA)	EQL-0380-045	045
Hi-vol/Wavelength disp. XRF	EQL-0581-052	052
Hi-vol/ICAP spect. (Montana)	EQL-0483-057	057
Hi-vol/Energy-disp. XRF	EQL-0783-058	058
Hi-vol/Flameless AA (Omaha)	EQL-0785-059	059
CO Analyzers		
Beckman 866	RFCA-0876-012	012
Bendix 8501-5CA	RFCA-0276-008	008
Dasibi 3003	RFCA-0381-051	051
Horiba AQM-10, -11, -12	RFCA-1278-033	033
Horiba 300E/300SE	RFCA-1180-048	048
MASS - CO 1 (Massachusetts)	RFCA-1280-050	050
Monitor Labs 8310	RFCA-0979-041	041
MSA 202S	RFCA-0177-018	018
Thermo Electron 48	RFCA-0981-054	054

INFORMATION TO BE CONTAINED ON THE BACK OF THE DATA REPORTING FORMS

Appendix B—[Amended]

8. Appendix B to Part 58 is amended as follows:

a. Section 1 is revised to read as follows:

1. General Information

This Appendix specifies the minimum quality assurance requirements for the control and assessment of the quality of the PSD ambient air monitoring data submitted to EPA by an organization operating a network of PSD stations. Such organizations are encouraged to develop and maintain quality assurance programs more extensive than the required minimum.

Quality assurance of air monitoring systems includes two distinct and important interrelated functions. One function is the control of the measurement process through the implementation of policies, procedures, and corrective actions. The other function is the assessment of the quality of the monitoring data (the product of the measurement process). In general, the greater the effort and effectiveness of the control of a given monitoring system, the better will be the resulting quality of the monitoring data. The results of data quality assessments indicate whether the control efforts need to be increased.

Documentation of the quality assessments of the monitoring data is important to data users, who can then consider the impact of the data quality in specific applications (see Reference 1). Accordingly, assessments of PSD monitoring data quality are required to be made and reported periodically by the monitoring organization.

To provide national uniformity in the assessment and reporting of data quality among all PSD networks, specific assessment and reporting procedures are prescribed in detail in Sections 3, 4, 5, and 6 of this Appendix.

In contrast, the control function encompasses a variety of policies, procedures, specifications, standards, and corrective measures which affect the quality of the resulting data. The selection and extent of the quality control activities—as well as additional quality assessment activities—used by a monitoring organization depend on a number of local factors such as the field and laboratory conditions, the objectives of the monitoring, the level of the data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etc. Therefore, the quality assurance requirements, in Section 2 of this Appendix, are specified in general terms to allow each organization to develop a quality control system that is most efficient and effective for its own circumstances.

For purposes of this Appendix, "organization" is defined as a source owner/operator, a government agency, or their contractor that operates an ambient air pollution monitoring network for PSD purposes.

b. Sections 2.1 and 2.2 are revised to read as follows:

2. Quality Assurance Requirements

2.1 Each organization must develop and implement a quality assurance program consisting of policies, procedures, specifications, standards and documentation necessary to:

(1) Provide data of adequate quality to meet monitoring objectives and quality assurance requirements of the permit-granting authority, and

(2) Minimize loss of air quality data due to malfunctions or out-of-control conditions.

This quality assurance program must be described in detail, suitably documented, and approved by the permit-granting authority. The Quality Assurance Program will be reviewed during the system audits described in Section 2.4.

2.2 Primary guidance for developing the Quality Assurance Program is contained in References 2 and 3, which also contain many suggested procedures, checks, and control specifications. Section 2.0.9 of Reference 3 describes specific guidance for the development of a Quality Assurance Program for automated analyzers. Many specific quality control checks and specifications for manual methods are included in the respective reference methods described in Part 50 of this chapter or in the respective equivalent method descriptions available from EPA (see Reference 4). Similarly, quality control procedures related to specifically designated reference and equivalent analyzers are contained in their respective operation and instruction manuals. This guidance, and any other pertinent information from appropriate sources, should be used by the organization in developing its quality assurance program.

As a minimum, each quality assurance program must include operational procedures for each of the following activities:

(1) Selection of methods, analyzers, or samplers;

(2) Training;

(3) Installation of equipment;

(4) Selection and control of calibration standards;

(5) Calibration;

(6) Zero/span checks and adjustments of automated analyzers;

(7) Control checks and their frequency;

(8) Control limits for zero, span and other control checks, and respective corrective actions when such limits are surpassed;

(9) Calibration and zero/span checks for multiple range analyzers (see Section 2.6 of Appendix C of this part);

(10) Preventive and remedial maintenance;

(11) Recording and validating data;

(12) Date quality assessment (precision and accuracy);

(13) Documentation of quality control information.

* * * * *

(c) In Section 2.3.1, the phrase "in Reference 7" is changed to "in Reference 5" and the phrase "References 2 and 3" is changed to "Section 2.0.7 of Reference 3." Also, the phrase "the address shown in Reference 7." is changed to "Quality Assurance Division (MD-77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711."

d. Sections 2.3.2 and 2.3.3. are revised to read as follows:

2.3.2 Test concentrations for ozone must be obtained in accordance with the UV photometric calibration procedure specified in Appendix D of Part 50 of this chapter, or by means of a certified ozone transfer standard. Consult References 6 and 7 for guidance on primary and transfer standards for ozone.

2.3.3. Flow measurement must be made by a flow measuring instrument that is traceable to an authoritative volume or other standard. Guidance for certifying various types of flowmeters is provided in Reference 3.

e. In Section 2.4., the phrase "Section 1.4.16 of reference 1 and reference 6" is changed to "Section 1.4.16 of reference 2 and Section 2.0.11 of reference 3."

f. In Section 3, an introductory paragraph is added to precede section 3.1 to read as follows:

3. Data Quality Assessment Requirements

All ambient monitoring methods or analyzers used in PSD monitoring shall be tested periodically, as described in this Section 3, to quantitatively assess the quality of the data being routinely collected. The results of these tests shall be reported as specified in Section 6. Concentration standards used for the tests must be as specified in Section 2.3. Concentration measurements reported from analyzers or analytical systems must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data. Table B-1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following section.

* * * * *

g. The first paragraph of Section 3.2 is revised to read as follows:

3.2 Accuracy of Automated Methods. Each sampling quarter audit each analyzer that monitors for SO_2, NO_2, O_3, or CO at least once. The audit is made by challenging the analyzer with at least one audit gas of known concentration from each of the following ranges which fall within the measurement range of the analyzer being audited:

Audit level	Concentration range, ppm		CO
	SO_2, O_3,	NO_2,	
1	0.03-0.08	0.03-0.08	3-8
2	0.15-0.20	0.15-0.20	15-20
3	0.36-0.45	0.35-0.45	35-45
4	0.80-0.90		80-90

NO_2 audit gas for chemiluminescence-type NO_2 analyzers must also contain at least 0.08 ppm NO. **Note.**—NO concentrations substantially higher than 0.08 ppm, as may occur when using some gas phase titration (GPT) techniques, may lead to audit errors in chemiluminescence analyzers due to inevitable minor NO–NO_x channel imbalance. Such errors may be atypical of routine monitoring errors to the extent that such NO concentrations exceed typical ambient NO

concentrations. These errors may be minimized by modifying the GPT technique to lower the NO concentrations remaining in the NO_2 audit gas to levels closer to typical ambient NO concentrations at the site.

* * * *

h. In the second paragraph of section 5.1, the phrase "equation 1" is changed to "equation 1a," and equation 1a is added to read as follows:

$$d_i = \frac{Y_i - X_i}{(Y_i + X_i)/2} \times 100 \quad (1a)$$

i. The section entitled "REFERENCES" is revised to read as follows:

References

1. Rhodes, R.C. Guideline on the Meaning and Use of Precision and Accuracy Data Required by 40 CFR Part 58, Appendices A and B. EPA-600/4-83-023. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, June, 1983.

2. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I—Principles." EPA-600/9-76-005. March 1976. Available from U.S Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD-77), Research Triangle Park, NC 27711.

3. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II—Ambient Air Specific Methods." EPA-600/4-77-027a. May 1979. Available from U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD-77), Research Triangle Park, NC 27711.

4. "List of Designated Reference and Equivalent Methods." Available from U.S. Environmental Protection Agency, Department E (MD-77), Research Triangle Park, NC 27711.

5. Hughes, E.E. and J. Mandel. A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards SRM's. EPA-600/7-81-010. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, May, 1981. (Joint NBS/EPA Publication).

6. Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA-600/4-79-057. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD-77), Research Triangle Park, NC 27711, September, 1979.

7. McElroy, F.F. Transfer Standards for the Calibration of Ambient Air Monitoring Analyzers for Ozone. EPA-600/4-79-056. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD-77), Research Triangle Park, NC 27711, September, 1979.

j. Table B-1 is added to read as follows:

TABLE B-1. MINIMUM PSD DATA ASSESSMENT REQUIREMENTS

Method	Assessment method	Coverage	Frequency	Parameters reported
Precision				
Automated methods for SO_2, NO_2, O_3, CO.	Response check at concentrations between .08 and .10 ppm (8 and 10 ppm for CO).	Each analyzer	Once per 2 weeks	Actual concentration and measured concentration.
TSP, Lead	Collocated samplers	Highest concentration site in monitoring network.	Once per week or every 3rd day for continuous sampling.	Two concentration measurements.
Accuracy				
Automated methods for SO_2, NO_2, O_3, CO.	Response check at .03-.08 ppm*, .15-.20 ppm*, .35-.45 ppm*, .80-.90 ppm* (if applicable).	Each analyzer	Once per sampling quarter	Actual concentration and measured concentration for each level.
TSP	Sampler flow check	Each sampler	Once per sampling quarter	Actual flow rate and flow rate indicated by the sampler.
Lead	1. Sample flow rate check 2. Check of analytical systems with Pb audit strips.	1. Each sampler 2. Analytical system	1. Once/quarter 2. Each quarter Pb samples are analyzed.	1. Same as for TSP. 2. Actual concentration and measured concentration of audit samples (μg Pb/strip).

*Concentration shown times 100 for CO.

9. Appendix C is amended as follows:

a. Sections 2.4 and 2.5 are removed and reserved.

b. In Section 2.6, subsection 2.6.1 is removed and reserved, and the heading of Section 2.6 is revised to read as follows: 2.6 *Use of methods with higher, nonconforming ranges in certain geographical areas.*

Appendix D—[Amended]

10. Appendix D is amended as follows:

a. In Section 2.5, the following sentence is inserted after the first sentence in the "*Middle Scale*" discussion which appears after the third paragraph. *Middle Scale.* * * * Trees also may have a strong scavenging effect on O_3 and may tend to suppress O_3 concentrations in their immediate vicinity.

a-1. The first sentence in the last paragraph of Section 2.5 is revised to read as follows: "Since ozone levels decrease significantly in the colder parts of the year in many areas, ozone is required to be monitored at NAMS and SLAMS monitoring sites only during the "ozone season" as designated in the SAROAD files on a State by State basis and described below:

OZONE MONITORING SEASON BY STATE

State	Begin month	End month
Alabama	March	November.
Alaska	April	October.
Arizona	January	December.
Arkansas	March	November.
California	January	December.
Colorado	March	September.
Connecticut	April	October.
Delaware	April	October.
District of Columbia	April	October.
Florida	January	December.
Georgia	March	November.
Hawaii	January	December.
Idaho	April	October.
Illinois	April	October.
Indiana	April	October.
Iowa	April	October.

OZONE MONITORING SEASON BY STATE—Continued

State	Begin month	End month
Kansas	April	October.
Kentucky	April	October.
Louisiana	January	December.
Maine	April	October.
Maryland	April	October.
Massachusetts	April	October.
Michigan	April	October.
Minnesota	April	October.
Mississippi	March	November.
Missouri	April	October.
Montana	June	September.
Nebraska	April	October.
Nevada	January	December.
New Hampshire	April	October.
New Jersey	April	October.
New Mexico	January	December.
New York	April	October.
North Carolina	April	October.
North Dakota	May	September.
Ohio	April	October.
Oklahoma	March	November.
Oregon	April	October.
Pennsylvania	April	October.
Puerto Rico	January	December.
Rhode Island	April	October.
South Carolina	April	October.
South Dakota	June	September.

OZONE MONITORING SEASON BY STATE—Continued

State	Begin month	End month
Tennessee	April	October.
Texas	January	December.
Utah	May	September.
Vermont	April	October.
Virginia	April	October.
Washington	April	October.
West Virginia	April	October.
Wisconsin	April	October.
Wyoming	April	October.
American Samoa	January	December.
Guam	January	December.
Virgin Islands	January	December.

b. In Section 3.1 in the second sentence, "500,000" is replaced by "1,000,000", and the number "8" is replaced by the number "10." Table 2 is revised to read as follows:

TABLE 2.—TSP NATIONAL AIR MONITORING STATION CRITERIA

[Approximate number of stations per area [a]]

Population catyegory	High concentration [b]	Medium concentration [c]	Low concentration [d]
>1,000,000	6-10	4-6	2-4
500,000 to 1,000,000	4-8	2-4	1-2
250,000 to 500,000	3-4	1-2	0-1
100,000 to 250,000	1-2	0-1	0

[a] Selection of urban and actual number of stations per area will be jointly determined by EPA and the State agency.
[b] High concentration—exceeding level of the primary NAAQS by 20 percent or more.
[c] Medium concentration—exceeding secondary NAAQS.
[d] Low concentration—less than secondary NAAQS.

c. In Section 3.2 the third sentence, "500,000" is replaced by "1,000,000", and the number "8" is replaced by the number "10", and Table 3 is revised to read as follows:

TABLE 3.—SO_2 NATIONAL AIR MONITORING STATION CRITERIA

[Approximate number of stations per area] [a]

Population category	High concentration [b]	Medium concentration [c]	Low concentration [d]
>1,000,000	6-10	4-8	2-4
500,000 to 1,000,000	4-8	2-4	1-2
250,000 to 500,000	3-4	1-2	0-1
100,000 to 250,000	1-2	0-1	0

[a] Selection of urban areas and actual number of stations per area will be jointly determined by EPA and the State agency.
[b] High concentration—exceeding level of the primary NAAQS.
[c] Medium concentration—exceeding 60 percent of the level of the primary or 100% of the secondary NAAQS.
[d] Low concentration—less than 60 percent of the level of the primary or 100% of the secondary NAAQS.

d. In Section 3.3 the parenthetical expression "(neighborhood scale)" at the end of the last sentence in the 2nd paragraph is amended to read "(middle scale, neighborhood scale)". In the first sentence of the 4th paragraph the first use of the word "neighborhood" is removed and replaced by "category (b)" and the parenthetical expression "(neighborhood scale)" is replaced by "(middle scale or neighborhood scale)." In the 3rd sentence of the 4th paragraph the term "under the influence" is replaced by "unduly influenced by".

e. In Section 3.5 the first parenthetical expression in the second paragraph "(category (a) neighborhood scale)" is amended to read "(category (a), middle scale or neighborhood scale)."

f. Table 4 in Section 4 is revised as follows:

Table 4.—SUMMARY OF SPATIAL SCALES FOR SLAMS AND NAMS

Spatial scale	Scales applicable for SLAMS						Scales applicable for NAMS					
	TSP	SO_2	CO	O_3	NO_2	Pb	TSP	SO_2	CO	O_3	NO_2	Pb
Micro			X			X			X			X
Middle	X	X	X	X	X	X		X	X		X	X
Neighborhood	X	X	X	X	X	X	X	X	X	X	X	X
Urban	X	X		X	X	X				X	X	
Regional	X	X		X	X	X						

Appendix E—[Amended]

11. Appendix E is amended as follows:

a. In the table of contents, Section 2.4 is revised and sections 3.3, 4.4, 5.4, 6.4, and 7.4 are added in the appropriate places as follows:

* * * * *

2.4 Spacing from trees and other considerations.

* * * * *

3.3 Spacing from trees and other considerations.

* * * * *

4.4 Spacing from trees and other considerations.

* * * * *

5.4 Spacing from trees and other considerations.

* * * * *

6.4 Spacing from trees and other considerations.

* * * * *

7.4 Spacing from trees and other considerations.

* * * * *

b. In Section 2.2, the last two sentences in the second paragraph are removed.

c. In Section 2, a new Section 2.4 replaces the existing Section 2.4

2. Total Suspended Particulates (TSP).

* * * * *

2.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for particulate deposits or adsorption, act as a source of particulate in some cases (pollen), and obstruct normal wind flow pattern. To minimize the possible effects of trees on the measured TSP levels, the sampler should be placed at least 20 meters from the drip line of trees. For the purposes of this regulation the term *drip line* is defined as follows: If the tree were to act as a perfect umbrella, the drip line will be the circumference or line around the tree where the ground changes from predominantly wet to dry during a heavy rain. However, in situations where trees could be classified as an obstruction, i.e., the distance between the trees and the sampler is less than twice the height that the tree protrudes above the sampler, the sampler must be placed at least 10 meters from the drip line of the obstructing tree(s).

In order to minimize the impact of wind blown dusts, stations should not be located on barren ground. Additional information on TSP probe siting may be found in reference 10.*

d. In Section 3.2 the words "should be placed more than 20 meters from trees and" are removed from the first sentence of the second paragraph.

e. In Section 3, a new Section 3.3 is added.

3. *Sulfur Dioxide (SO_2).*

* * * * *

3.3 *Spacing from trees and other considerations.*

Trees can provide surfaces for SO_2 adsorption and act as an obstruction to normal wind flow patterns. To minimize the possible effects of trees on the measured SO_2 levels, the sampler should be placed at least 20 meters from the drip line of trees. However, in situations where trees could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than twice the height that the tree(s) protrudes above the sampler, the sampler must be placed at least 10 meters from the drip line of the obstructing tree(s).

f. In Section 4.3, the first word of the last sentence of the second paragraph is replaced with "Also" and the following sentence is added to the end of the second paragraph: "However, the final siting of the monitor must meet the objectives and intent of Appendix D, Section 2.4, 3, 3.3 and Appendix E, Section 4." " The next to last sentence in paragraph 3 is removed.

g. In Section 4, a new Section 4.4 is added.

4. Carbon Monoxide (CO)

* * * * *

4.4 *Spacing from trees and other considerations.*

Since CO is relatively non-reactive, the major factor concerned trees is as obstructions to normal wind flow patterns. For middle and neighborhood scale stations, trees should not be located between the major sources of CO, usually vehicles on a heavily traveled road, and the sampler. The sampler must be at least 10 meters from the drip line of a tree which is between the

sampler and the road and extends at least 5 meters above the sampler. For microscale stations, no trees or shrubs should be located between the sampling inlet probe and the road.

h. In Section 5.2, the second and third sentences in the first paragraph are removed.

i. In Section 5.3, the 6th and 7th sentences in the first paragraph are removed.

j. In Section 5, a new section 5.4 is added.

5. *Ozone (O_3)*

* * * * *

5.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for O_3 adsorption and/or reactions and obstruct normal wind flow patterns. To minimize the possible effect of trees on measured O_3 levels, the probe should be placed at least 20 meters from the drip line of trees. Since the scavenging effect of trees is greater for ozone than for the other criteria pollutants, strong consideration of this effect must be given in locating the O_3 inlet probe to avoid this problem. Therefore, the sampler must be at least 10 meters from the drip line of trees that are located between the urban city core area and the sampler along the predominant summer day-time wind direction.

k. In Section 6.2, the word "trees" is removed from the 1st sentence. The sixth sentence is also removed.

l. In Section 6.3, the next to last sentence is removed.

m. In Section 6, a new Section 6.4 is added.

6. *Nitrogen Dioxide (NO_2)*

* * * * *

6.4 *Spacing from trees and other considerations.*

* * * * *

Trees can provide surfaces for NO_2 adsorption and/or reactions and obstruct normal wind flow patterns. To minimize the possible scavenging effect of trees on the measured levels of NO_2 the probe should be placed at least 20 meters from the drip line. For trees that protrude above the height of the probe by 5 meters or more, the sampler must be at least 10 meters from the drip line of the trees.

n. In Section 7.2 the first sentence is removed.

o. In Section 7.2, a new Section 7.4 is added.

7. *(Lead (Pb)*

* * * * *

7.4. *Spacing from trees and other considerations.*

Trees can provide surfaces for deposition or adsorption of lead particles and obstruct normal wind flow patterns. For microscale and middle scale category (a) roadway sites there must not be any tree(s) between the source of the lead, i.e., the vehicles on the roadway, and the sampler. For neighborhood scale category (b) sites, the sampler should be at least 20 meters from the drip line of trees. The sampler must, however, be placed at least 10 meters from the drip line of trees which could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than the height that the tree protrudes above the sampler.

P. In Section 10, Table 5 is revised as follows:

TABLE 5.—SUMMARY OF PROBE SITING CRITERIA

Pollutant	Scale	Height above ground, meters	Distance from supporting structure, meters		Other spacing criteria
			Vertical	Horizontal[a]	
TSP	All	2-15		>2	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler.[b] 3. Must have unrestricted airflow 270° around the sampler. 4. No furnace or incineration flues should be nearby.[c] 5. Must have minimum spacing from roads. This varies with spatial scale (see Figure 1).
SO_2	All	3-15	>1	>1	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from inlet probe to obstracle, such as buildings, must be at least twice the height the obstacle protrudes above the inlet probe.[b] 3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 4. No furnace or incineration flues should be nearby.[c]
CO	Micro	3 ± ½	>1	>1	1. Must be >10 meters from street intersection and should be at a midblock location. 2. Must be 2-10 meters from edge of nearest traffic lane. 3. Must have unrestricted airflow 180° around the inlet probe.
	Middle Neighborhood.	3-15	>1	>1	1. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 2. Spacing from roads varies with traffic (see Table 1).
O_3	All	3-15	>1	>1	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from inlet probe to obstacle, such as buidings, must be at least twice the height the obstacle protrudes above the inlet probe.[b] 3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 4. Spacing from roads varies with traffic (see Table 2).
NO_2	All	3-15	>1	>1	1. Should be >20 meters from dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from inlet probe to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the inlet probe.[b] 3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 4. Spacing from roads varies with traffic (see Table 3).
Pb	Micro	2-7		>2	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler.[b] 3. Must have unrestricted airflow 270° around the sampler except for street canyon sites. 4. No furnace or incineration flues should be nearby.[c] 5. Must be 5 to 15 meters from major roadway.
	Middle, neighborhood, urban and regional.	2-15		>2	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler.[b] 3. Must have unrestricted airflow 270° around the sampler. 4. No furnace or incineration flues should be nearby.[c] 5. Spacing from roads varies with traffic (see Table 4).

[a] When probe is located on rooftop, this separation distance is in reference to walls, parapets, or penthouses located on the roof.
[b] Sites not meeting this criterion would be classified as middle scale (see text).
[c] Distance is dependent on height of furnace or incineration flues, type of fuel or waste burned, and of fuel (sulfur, ash, or lead content). This is to avoid undue influences from minor pollutant sources.

Appendix F—[Amended]

12. Appendix F is amended as follows:

a. the following is added to the end of Section 2: For the purposes of range assignments the following rounding convention will be used. The air quality concentration should be rounded to the number of significant digits used in specifying the concentration intervals. The digit to the right of the last significant digit determines the rounding process. If this digit is greater than or equal to 5, the last significant digit is rounded up. The insignificant digits are truncated. For example, 100.5 ug/m^3 rounds to 101 ug/m^3 and 0.1245 ppm rounds to 0.12 ppm.

Appendix G—[Amended]

13. Appendix G is amended as follows:

a. In Section 8, the following is added to the end of the first paragraph "Also, in situations where the PSI value has not exceeded 50, as calculated by the critical pollutant, for the previous calendar year, the requirement to measure and report the PSI will be left up to the discretion of the reporting agency.

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federal register

Wednesday
March 19, 1986

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Pork Promotion, Research, and Consumer Information Act of 1985 (Act), approved December 23, 1985 (7 U.S.C. 4801–4819), authorizes the establishment of a national, industry- funded and -operated pork promotion, research, and consumer information program. In response to an invitation to submit proposals published in the February 14, 1986, issue of the **Federal Register**, the Agricultural Marketing Service has received an industry proposal for a pork promotion, research, and consumer information order. That industry proposal on which comments are being requested is set forth below. All comments will be considered before issuing a final rule establishing a pork promotion, research, and consumer information order.

Additionally, notice is hereby given that a public meeting will be held during the comment period to facilitate a better understanding of the intent and application of the proposed order. The record of the meeting will also be considered in the development of a final rule. All interested persons are invited to attend.

DATES: Date of public meeting: The meeting will convene at 9:00 a.m., eastern standard time, on Monday, April 21, 1986.

Place of meeting: Jefferson Auditorium, 14th and Independence Avenue, S.W., South Agricultural Bldg., Washington, DC.

Date for comments: Comments must be received by May 5, 1986.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, P.O. Box 23762, Washington, D.C. 20026–3762. Comments will be available for public inspection during regular business hours, at the above office in Room 2610 South Agriculture Bldg., 14th and Independence Avenue, SW.; Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, (202–447–2650).

SUPPLEMENTARY INFORMATION:

Prior Documents in This Proceeding

Invitation to submit proposals—published February 14, 1986, (51 FR 5542).

Proposed Rule—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body, February 21, 1986, (51 FR 6255).

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1 and is hereby classified as a nonmajor rule. Accordingly, a regulatory impact analysis is not required.

This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is published to effectuate the declared purpose of the Act, to authorize the establishment of an orderly procedure for financing and carrying out a coordinated program of promotion, research, and consumer information designed to strengthen the pork industry's position in the marketplace and to maintain, develop, and expand markets for pork and pork products.

Comments and Public Meeting

Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Livestock and Seed Division's Marketing Programs and Procurement Branch and must make reference to the date and page number of this issue of the Federal Register. Comments submitted pursuant to this document will be made available for public inspection during regular business hours. Comments must be received by May 2, 1986.

Additionally, notice is given that a public meeting will be held beginning at 9:00 a.m., eastern standard time, on Monday, April 21, 1986, at the Jefferson Auditorium, 14th and Independence Avenue,. SW., South Agricultural Bldg., Washington, DC.

The meeting will be conducted by a presiding officer chosen by the Department. The proceedings of such meeting will be transcribed and considered in the development of a final rule. The purpose of the meeting is to provide an opportunity for a full discussion on the proposal to facilitate a better understanding of the intent and application of the proposed rule.

Anyone wishing to present data, views, or arguments concerning the proposed rule should do so through exhibits, written statements, or an oral presentation. All those making oral presentations are encouraged to submit their presentations in writing. An original and three copies of written statements must be provided for the record. Persons attending the meeting will be allowed to direct questions to participants making oral presentations. It is anticipated that the proponents of this proposal will attend the meeting to explain its various provisions and to answer questions.

Any interested person shall be given an opportunity to appear and be heard with respect to matters relevant and material to the proposed pork promotion, research, and consumer information order. However, the presiding officer may limit the number of times and the amount of time that any one person may be heard and, insofar as practicable, exclude views and data which are immaterial, irrelevant or unduly repetitious. Such action will be intended to limit the amount of corroborative or cumulative material presented and prevent undue prolongation of the meeting.

Copies of the transcript of the meeting will not be available for distribution through the Hearing Clerk's office. However, the transcript will be available for public inspection during normal business hours at the previously stated address. Anyone wishing to purchase a copy of the transcript should make arrangements with the reporter at the meeting.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35), the forms, reporting, and recordkeeping included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They will not become effective prior to OMB approval.

Background

The Pork Promotion, Research, and Consumer Information Act (Title XVI, Subtitle B, of the Food Security Act of 1985) approved December 23, 1985, authorizes the Secretary of Agriculture to establish a national pork promotion, research, and consumer information program. The program will be funded initially by an assessment of up to .25 percent of market value on all hogs sold in the United States, and an equivalent

assessment on imported hogs, pork, and pork products.

The Act provides for submission of proposals for a pork promotion, research, and consumer information order by industry organizations or any interested persons. The Act requires that such order provide for the establishment of a National Pork Producers Delegate Body. The Delegate Body would be comprised of pork producers nominated through statewide elections for appointment to the Delegate Body by the Secretary. Importers would be appointed to the Delegate Body by the Secretary from nominations submitted by importer organizations.

The Agricultural Marketing Service issued an invitation to submit proposals for an initial order in the February 14, 1986, issue of the Federal Register. The Agency also issued for comment a proposed rule; "Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the initial National Pork Producers Delegate Body" in the February 21, 1986, issue of the **Federal Register.** The proposed rule was published so that State associations, organizations, and others who may select nominees for the Delgate Body may begin planning for the nomination process as soon as possible. Nomination procedures may take considerable time to complete, and early establishment of such procedures should prevent unnecessary delay in selecting and appointing a Delegate Body in the event an order is issued.

In response to the in vitation to submit proposals, one proposed order was received from the National Pork Producers Council. As provided in the Act, the Agricultural Marketing Service is publishing this proposed order for comment. The Agricultural Marketing Service will consider all comment received in issuing a final rule.

List of Subjects in 7 CFR Part 1230

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

The proposal, set forth below, has not received the approval of the Secretary of Agriculture.

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

Authority: 7 U.S.C. 4801–4819

2. It is hereby proposed by the National Pork Producers Council that Title 7 of the Code of Federal Regulation be amended by adding the following sections:

Part 1230—Pork Promotion, Research, and Consumer Information Order

Section 1230.1 Act.

"Act" means Title XVI, Subtitle B, of the Food Security Act of 1985, Pub. L. 99–198, 99 Stat. ———, as approved December 23, 1985, and any amendments thereto.

Section 1230.2 Department.

"Department" means the United States Department of Agriculture.

Section 1230.3 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

Section 1230.4 Board.

"Board" means the National Pork Board established pursuant to section 1230.50.

Section 1230.5 Consumer Information.

"Consumer Information" means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

Section 1230.6 Council.

"Council" means the National Pork Producers Council, a nonprofit corporation of the type described in § 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

Section 1230.7 Delegate Body.

"Delegate Body" means the National Pork Producers Delegate Body established pursuant to section 1230.30.

Section 1230.8 Equivalent Value.

"Equivalent value of the live porcine animal" means 70 per centum of the dollar market value determined by multiplying the weight of imported pork and pork products.

Section 1230.9 Fiscal Period.

"Fiscal Period" means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

Section 1230.10 Imported.

"Imported" means entered or withdrawn from a warehouse for consumption in the customs territory of the United States.

Section 1230.11 Importer.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

Section 1230.12 Market Value.

"Market value" means, for porcine animals, the price at which they are sold and, for imported pork and pork products listed in part 2 of Schedule 1 of the Tariff Schedules of the United States Annotated (1985), excluding the other meats and edible meat offal, prepared or preserved category, the price at which they are sold to the importer.

Section 1230.13 Part.

"Part" means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a "supbart" of such part.

Section 1230.14 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

Section 1230.15 Plans and Projects.

"Plans and projects" means promotion, research, and consumer information plans, studies, or projects pursuant to section 1230.60.

Section 1230.16 Porcine Animal.

"Porcine animal" means a swine that is raised as (a) a feeder pig, that is a young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

Section 1230.17 Pork.

"Pork" means the flesh of a porcine animal.

Section 1230.18 Pork Product.

"Pork product" means a product produced or processed in whole or in part from pork.

Section 1230.19 Produced in.

"Produced in" means, with respect to a State and in the case of a porcine animal raised as a feeder pig under §1230.16(a) or for breeding purposes as seed stock under § 1230.16(b), the State in which that swine was born, and in the case of a swine that is raised as a market hog under § 1230.16(c), the State in which that porcine animal was fed for market.

Section 1230.20 Producer.

"Producer" means a person who produces porcine animals in the United States for sale in commerce.

Section 1230.21 Promotion.

"Promotion" means any action, including paid advertising and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

Section 1230.22 Research.

"Research" means research designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, or dissemination to a person of the results of such research.

Section 1230.23 State.

"State" means each of the 50 States.

Section 1230.24 State Association.

"State association means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may refuse to continue to recognize a State association and instead recognize another organization of producers in a State as that State's State association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

Section 1230.25 To Market.

"To market" means to sell or otherwise dispose of a porcine animal, pork, or pork products in commerce.

National Pork Producers Delegate Body

Section 1230.30 Establishment and Membership.

(a) There is hereby established a National Pork Producers Delegate Body which will consist of a number of producers determined in accordance with (b)(1) and a number of importers determined in accordance with (c)(1). The number of producer members from each State and the number of importers are determined by first assigning a number of shares to each State and to importers on the basis of the dollar volumes of collected assessments that are attributable to producers in such State and to importers, and, second, applying a formula to translate the shares assigned each State and importers into an equivalent, but smaller number of members of the Delegate Body. The shares assigned each State and importers also represent the total number of votes that may be cast by producer members representing such State and by importers at a meeting of the Delegate Body if all the members are present at a meeting. Each member is entitled to vote only that member's percentage of a State's or the importers' total shares.

(b)(1) At least two producer members shall be allocated to each State, but any State that, during any fiscal period, has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) In fiscal period 1986, shares shall be assigned each State on the basis of one share for each $400,000 of market value (rounded to the nearest $400,000) attributable to porcine animals produced in such State (as determined by the Secretary based on the annual average of market value in the most recent three calendar years preceding 1986 for which data are available).

(3) In each fiscal period thereafter, shares shall be assigned each State on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the aggregate amount of assessments collected from producers for porcine animals produced in such State less refunds under section 1230.77 to producers for porcine animals produced in such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 importer-assigned shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) In fiscal period 1986, shares shall be assigned importers on the basis of one share for each $575,000 (rounded to the nearest $575,000) of the market value of imported porcine animals, pork, or pork products (as determined by the Secretary, based on the most recent calendar year preceding 1986 for which data is available).

(3) In each fiscal period thereafter, shares shall be assigned importers on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the aggregate amount of assessments collected from importers less refunds under §1230.77 to importers.

Section 1230.31 Nominations for Producer Members.

Nominations for producer members of the Delegate Body shall be submitted to the Secretary in the appropriate number as follows:

(a) In the case of each Delegate Body after the initial one, by each State association either (1) after an election conducted in accordance with section 1230.32 and by nominating the producers who receive the highest number of votes in such State, or (2) by way of selection by such State association, pursuant to a process (i) that is approved by the Secretary, (ii) is publicly noticed at least one week in advance by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and (iii) provides complete and equal access to every producer who has paid all assessments pursuant to §1230.71 and who has not demanded any refund of an assessment pursuant to section 1230.77 in the period since the election or selection of the previous Delegate Body;

(b) If a State either has a State association that does not submit nominations or has no State association, the Secretary shall select producers from such State to represent that State on the Delegate Body after consultation with representatives of the pork industry in such State.

Section 1230.32 Conduct of Election.

Elections shall be conducted in the manner prescribed in sections 1230.33–39.

Section 1230.33 Nomination of Candidates for Election.

(a) In the case of elections for each Delegate Body after the initial one, the nomination process of candidates for election as producer members of each such Body shall begin on a date in each State that is established by each State association announced in advance by the Board and occurs on or after October 1 of each year after 1986 but before January 1 of the following year. The nomination process shall be closed 30 days after it begins.

(b) Persons who may be nominated as candidates for election as producer members of the Delegate Body shall be, at the time of their nomination and subsequent election, (1) either individual producers or representatives of producers who are other than individuals and (2) residents of the State from which they are nominated.

(c) Nominations in a State of candidates for election as producer members of each Delegate Body after the initial one shall be made by a nominating committee of persons who are (1) either individual producers or representatives of producers who are other than individuals and (2) residents of that State and who are appointed by the Board prior to the commencement date of that State's nomination process in each year. Nominations of such candidates may be made as well by written petition signed by 100 persons who are producers in that State as of the time of signing such petition or by 5 percent of the producers in that State (as determinated by the Board in light of the most recent available data), whichever number is less.

(d) Written petition for submitting nominations in a State of candidates for election as producer members of each Delegate Body after the initial one shall be made available by the Board as of the commencement date of that State's nominations process in each year.

(e) Written petitions for submitting nominations of candidates for election as producer members of the Delegate Body as well as the nominations made by State associations or State nominating committees shall be filed with the Secretary on or before the date of closing of the nominating process pursuant to (a). Such petitions shall contain the requisite number of signatures and a certification by each person signing them that such person is a producer in such State or a representative of such a producer if that producer is other than an individual.

(f) The Board shall give public notice of these nomination procedures and the time and place of filing petitions by:

(1) Furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities);

(2) Publishing the information in a newspaper or newspapers of general circulation in each State;

(3) Publishing the information in pork production and agriculture trade publications; and

(4) By such other means as the Board determines to be advisable.

Section 1230.34 Who May Vote.

(a) Each producer shall be entitled to only one vote in each election. No person who may claim to be a producer shall be refused a ballot. Any producer casting more than one ballot shall thereby invalidate all ballots cast by such producer in such election. No ballot may be cast until the person casting the ballot separately certifies that such person is currently a producer and a resident of the State in which such election is taking place, and has paid all assessments due pursuant to section 1230.71 and has not demanded any refund of an assessment pursuant to section 1230.77.

(b) Voting by proxy or agent will not be permitted. However, a producer who is other than an individual may cast its ballot by a person who is duly authorized. No such ballot shall be cast until the person casting the ballot separately certifies that the person on whose behalf the ballot is cast is currently a producer and a resident of the State in which such election is taking place and that the person on whose behalf the ballot is cast has paid all assessments due pursuant to section 1230.71 and has not demanded any refund of an assessment pursuant to section 1230.77.

Section 1230.35 Board Conduct of Elections.

The Board, in addition to any other duties imposed by this subpart, shall:

(a) Verify the eligibility of all producers to vote in the election by reviewing:

(1) All ballots cast to ensure that each ballot, if mailed, is mailed within the prescribed time; and

(2) All the certifications required pursuant to section 1230.34 (a) and (b) to ensure that they meet the requirements.

(b) Further verify ballots to avoid a duplication of votes. The following criteria shall serve as a guide:

(1) In the case of a producer that is other than an individual, the business unit shall be regarded as a producer;

(2) No person may vote more than once even though such person may operate more than one farm producing porcine animals.

Section 1230.36 Date of Election.

(a) Election for appointment of producer members to each Delegate Body after the initial one shall be held during a 5-day period in each State that commences no earlier than 30 days after the cutoff for nominations under section 1230.33(a) and terminates no later than the last day of February of each year in 1987 and thereafter. The dates and periods for voting in each State shall be established and announced in advance by the Board.

(b) Voting shall occur during a 5-day period either in person or by mail (postmarked within that same period) or both as determined by the Board. No ballot cast outside of these time periods shall be valid.

Section 1230.37 Notice of Election.

(a) The Board shall provide notice of election for appointment of producer members to each Delegate Body after the initial one at least 1 week prior to the election by:

(1) Generally making material and information widely available to producers through the Department and other means. Such information shall include a notice of the election and:

(A) Instructions for completing the ballot;

(B) A statement as to the time within which ballots must be cast in person or within which ballots must be mailed to the Board;

(C) A ballot containing a list of the producers nominated as candidates in the election in each State;

(D) A description of the eligibility requirements for producers to vote; and

(E) A description of the separate certifications that must be made by a producer to cast a valid ballot.

(2) Giving public notice of the election by:

(A) Furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) announcing the time within which ballots must be cast or mailed; the manner of casting ballots; eligibility requirements; required certifications to cast a valid ballot; where additional information, ballots, and instructions may be obtained; and other pertinent information.

(B) Publishing the information described in (A) in a newspaper or newspapers of general circulation in each State;

(C) Publishing the information described in (A) in pork production and agriculture trade publications; and

(D) By such other means as the Board determines to be advisable.

Section 1230.38 Tabulation of Ballots.

(a) The election Board shall verify the validity of all ballots cast in accordance with the instructions and requirements specified in sections 1230.34 and 1230.36. Invalid ballots shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification.

(b) The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of ballots cast for each candidate shall also be ascertained.

(c) Announcement of the results of the election will be made by the Board.

Section 1230.39 Confidential Information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the election agent shall be regarded as confidential.

Section 1230.40 Appointment of Producer and Importer Members.

(a) The Secretary shall appoint the producer members of each Delegate Body from the nominations submitted in accordance with section 1230.31 and in the number specified in section 1230.30.

(b) The Secretary shall appoint the importer members of each Delegate Body after consultation with importers and in the number specified in section 1230.30.

Section 1230.41 Supplementary Instructions.

The Board is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of elections by election agents.

Section 1230.42 Term of Office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve until the completion of the nomination and appointment process of the succeeding Delegate Body pursuant to section 1230.31 and section 1230.40.

(b) Each member of the Delegate Body shall serve until that member's term expires, or until a successor is appointed in accordance with section 1230.40, whichever occurs later.

Section 1230.43 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the relevant State association or by importers, depending upon whether the vacancy occurs with respect to producer or importer members.

Section 1230.44 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is the concurring votes of a majority of the shares cast on that action. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

Section 1230.45 Officers.

The Delegate Body shall elect its Chairman by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairman.

Section 1230.46 Compensation and Reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to section 1230.72.

1230.47 Powers and Duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate pursuant to section 1230.71(D)(E);

(c) To determine the percentage of the aggregate amount of assessments attributable to porcine animals produced in a State by producers that each State association shall receive; and

(d) To nominate no less than 23 persons, including producers or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for each vacancy in the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with section 1230.44(a).

National Pork Board

Section 1230.50 Establishment and Membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to section 1230.47(d). The Board shall be deemed to be constituted once the Secretary makes the appointments to the Board.

Section 1230.51 Term of Office.

(a) The members of the Board shall serve for terms of 3 years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for 1-year terms; one-third shall serve for 2-year terms; and the remaining one-third shall serve for 3-year terms.

(b) Each member of the Board shall serve until that's member's term expires, except if the Secretary acts pursuant to section 1230.55(b) and except that a retiring member may serve until a successor is appointed pursuant to section 1230.54.

(c) No member shall serve more than two consecutive terms of 3 years, *provided* that those members serving an initial term of 1 year are eligible to serve two additional conservative terms, but in no event, more than seven years in total.

(d) The term of office for the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

Section 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with section 1230.47(d).

Section 1230.53 Nominee's Agreement to Serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed.

(b) Disclose any relationship with the Council of a State association or any organization that has a contract with the Board and thereafter disclose, at any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters where paragraph (b) applies if such nominee is an officer or member of the executive committee of the entities referred to in paragraph (b).

Section 1230.54 Appointment.

From the nominations submitted pursuant to section 1230.47(d), the Secretary shall appoint the 15 producer or importer members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

Section 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office.

Section 1230.56 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of it meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

Section 1230.57 Compensation and Reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to section 1230.72.

Section 1230.58 Powers and Duties of the Board.

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented: (1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and (2) the budget, plans, or projects for which State associations are to receive funds under section 1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to section 1230.71. Any such contract or agreement shall provide that

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(g) To appoint or employ such persons as staff as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers of State associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To elect committees and subcommittees of Board members and to adopt such rules and bylaws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To make rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest pending disbursement pursuant to a plan or project, funds collected through assessments authorized under section 1230.71 in, and only in, an obligation of the United States, in a general obligation of any State of any political subdivision thereof, in an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at

the end of each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

Promotion, Research and Consumer Information

Section 1230.60 Promotion, Research, and Consumer Information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

(c) No plan and project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan and project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

Expenses and Assessments

Section 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to § 1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body for the conduct of referenda.

Section 1230.71 Assessments.

(a)(1) Each producer producing in the United States a swine raised as a feeder pig that is sold shall pay an assessment on that swine, unless such producer proves to the Board by appropriate documentation that an assessment was previously paid by a person for such swine raised as a feeder pig.

(2) Each producer producing in the United States a swine raised for slaughter that is sold shall pay an assessment on that swine, unless such producer proves to the Board by appropriate documentation that an assessment was previously paid by a person for such swine raised for slaughter.

(3) Each producer producing in the United States a swine raised for slaughter that such producer slaughters for sale shall pay an assessment on that swine.

(4) Each producer producing in the United States a swine raised for seed stock that is sold shall pay an assessment on that swine, unless such producer proves to the Board by appropriate documentation that an assessment was previously paid by a person for such swine raised for seed stock.

(5) Each importer importing a porcine animal, pork, or pork products into the United States shall pay an assessment on that porcine animal, pork, or pork products, unless such importer proves to the Board by appropriate documentation that an assessment was previously paid by a person for such porcine animal, pork, or pork product.

(b) Each purchaser of a swine raised by a producer as a feeder pig or raised for slaughter and then sold or slaughtered for sale, each producer of a swine raised for seed stock that is sold, and each importer of each porcine animal, pork, or pork product that is imported into the United States shall collect an assessment on such porcine animal, pork, or pork product and remit that assessment to the Secretary until the Board is constituted and to the Board, once it is constituted. For the purposes of collection and remittance of assessments, any person engaged as a commission merchant, auction market, or livestock market in the business of receiving such swine for sale on commission or for or on behalf of producer shall be deemed to be a purchaser.

(c) The initial rate of assessment to be paid, collected, and remitted on porcine animals sold or imported shall be 0.25 percent of the market value of the porcine animal sold or imported or an amount established by the Secretary upon recommendation of the Delegate Body, if such amount is lower.

(d) The initial rate of assessment to be paid, collected, and remitted on pork or pork products imported into the United States shall be 0.25 percent of the equivalent value of the live porcine animal from which such pork or pork products were produced, or an amount established by the Secretary upon recommendation of the Delegate Body if such amount is lower *provided* that the Secretary may waive the collection of such assessments on types of imported pork or pork products if the Secretary determines that such collection is not practicable or the amount of assessment that could be collected is too small to warrant such collection.

(e) The initial rates of assessment described in (c) and (d) may be increased by the Secretary by no more than 0.1 percent of such market value per fiscal period on recommendation of the Delegate Body, but the rate cannot exceed 0.50 percent of such market value upon recommendation of the Delegate Body until after the referendum is approved and the increase in excess of 0.50 percent of such market value is itself approved in a referendum.

(f) The collection of assessments pursuant to section 1230.71 shall begin with respect to porcine animals, pork, and pork products sold not later than 30 days after the effective date of this subpart and shall continue until

terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive and distribute the assessments on behalf of the Board either directly or through a collecting agent. The Secretary shall require the assessments remaining after such distribution to be placed in escrow and to be remitted to the Board when it is constituted.

(g) Each person responsible for the remittance of the assessment pursuant to section 1230.71(b) shall remit the assessment to the Board (or, until the Board is constituted, to the Secretary) not later than the 10th day of the month following the month in which the porcine animal, pork, or pork products were marketed.

(h) Money remitted to the Board shall be in the form of a negotiable instrument made payable to "National Pork Board." Remittances and reports specified in section 1230.80 shall be mailed to the location designated by the Board, but, until the Board is constituted, by the Secretary.

Section 1230.72 Distribution of Assessments.

(a) Assessments remitted to the Secretary pursuant to section 1230.71(g) after the commencement of assessment and until the first day of the month after the Board is constituted shall be distributed at the end of each month by the Secretary directly or through an agent by distributing (1) 37.5 percent of the monthly aggregate amount of such assessments to the Council, less the Council's share of refunds under (f), and (2) to each State association, an amount of such assessments equal to the product of the monthly aggregate amount of assessments attributable to porcine animals produced in such State, less such State's share of refunds under (f) times the percentage applicable to such State association determined by the Delegate Body or 16.5 percent, whichever is higher, or an amount determined in accordance with (e). The remainder of the monthly aggregate amount of such assessments less refunds shall be held in escrow by the Secretary for distribution to the Board once it is constituted.

(b) Assessments remitted to the Board pursuant to section 1230.71(g) after the Board is constituted and until the referendum is conducted shall be distributed at the end of each month by the Board by distributing (1) 35 percent of the monthly aggregate amount of such assessments to the Council, less the Council's share of refunds under (f), and (2) to each State association, an amount of such assessments determined in accordance with (a)(2) or (e). The remainder of the monthly aggregate amount of such assessments less refunds shall be retained by the Board for its own use.

(c) Assessments remitted to the Board pursuant to section 1230.71(g) from the date of the referendum and for 12 months thereafter shall be distributed at the end of each month by the Board by distributing (1) 25 percent of the monthly aggregate amount of such assessments to the Council, and (2) to each State association, an amount of such assessments determined in accordance with (a)(2) or (e). The remainder of the monthly aggregate amount of such assessments shall be retained by the Board for its own use.

(d) Assessments remitted to the Board pursuant to section 1230.71(g) after 12 months after the referendum has been conducted shall be distributed to each State association in accordance with (a)(2) or (e), with the remainder of the monthly aggregate amount of such assessments retained by the Board for its own use.

(e) If a State association was conducting a pork promotion program from July 1, 1984, to June 30, 1985, then such State association is entitled, in the monthly distribution of assessments by the Secretary or the Board, to either the amount determined in accordance with (a)(2) or, if greater, an amount equal to the product of the number of porcine animals produced in such State of which assessment was remitted to the Secretary or the Board less the number of porcine animals produced in such State on which refund was remitted by the Secretary or the Board times the average assessment rate in effect in such State from July 1, 1984, to June 30, 1985, less the average per porcine animal rate of return from such State from July 1, 1984, to June 30, 1985, to the Council and to other national entities involved in pork promotion, research, and consumer information.

(f)(1) Each State's share of refunds is equal to the product of the aggregate amount of refunds received by producers in such State in a given month times the percentage applicable to such State association determined by the Delegate Body or 16½ percent, whichever is higher.

(2) The Council's share of refunds is equal to the product of the Council's percentage of distribution of assessments under (a)(1) or (b)(1), whichever is applicable, times the sum of the aggregate amount of refunds received by producers pursuant to section 1230.77 less the aggregate amount of the States' share of refunds determined pursuant to (1) plus the aggregate amount of refunds received by importers pursuant to section 1230.77.

Section 1230.73 Uses of Distributed Assessments.

(a) Each State association shall use its distribution of assessments pursuant to section 1230.72(a)(2) as well as any proceeds from the investment of such funds pending their use for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to section 1230.72(a)(1), (b)(1), and (c)(1) as well as any proceeds from the investment of such funds pending their use for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to section 1230.72(a), (b), (c), and (d), as well as any proceeds from the investment of such funds pending their use, for: (1) Financing plans and projects; (2) the Board's expenses for the Board's administration, maintenance, and functioning as authorized by the Secretary; (3) accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and (4) the Secretary's administrative costs in carrying out this part pursuant to section 1230.70(a).

Section 1230.74 Prohibited Use of Distributed Assessments.

No funds collected by the Secretary or Board under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in § 4911(d) and (e)(2) of the Internal Revenue Code of 1954, which sections are hereby incorporated by reference.

Section 1230.75 Adjustment of Accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in section 1230.61(g). Overpayments shall be credited to the account of the person

remitting the overpayment and shall be applied against amounts due in succeeding months.

Section 1230.76 Charges.

Any unpaid assessments to the Board pursuant to section 1230.71 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

Section 1230.77 Refunds.

(a) Any producer or importer who is responsible for and pays an assessment under the authority of this subpart and does not support the pork promotion, research, and consumer information program established by this subpart shall have the right, prior to the approval of the continuation of this subpart pursuant to the referendum, to demand and receive from the Secretary until the Board is constituted and from the Board thereafter a refund of such an assessment upon submission of proof satisfactory to the Secretary or Board, as the case may be, that the producer or importer paid the assessment for which refund is sought and did not collect such assessment from another person.

(b) The producer or importer's demand shall be signed, if the producer or importer is an individual, by that producer or importer and, if other than an individual, by a person who is duly authorized, and within a time period prescribed by the Secretary or the Board and approved by the Secretary, as the case may be, but not later than 30 days after the end of the month in which the assessment was paid.

(c) Refunds properly demanded in accordance with (a) and (b) shall be made by the Board to the producer or importer not later than 30 days after demand is received by the Board.

(d) The name of any producer or importer demanding a refund shall be kept confidential by all persons, except that the Board may utilize such information in determining who is entitled to vote in elections for Delegate Body that are administered by the Board.

Reports, Books, and Records

Section 1230.80 Reports.

Each person responsible for collecting an assessment under section 1230.71(b) shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information will include, but shall not be limited to, the following:

(a) The quantity and value of porcine animals, pork, or pork products purchased, sold, or imported which are subject to the collection of the assessment;

(b) The amount of assessment collected;

(c) The date, month or period assessment was collected, and;

(d) The State in which any porcine animal purchased or sold was produced or the place of origin of an imported porcine animal, pork, or pork products.

Section 1230.81 Books and Records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any reports required and documentation of the State in which a purchased or sold porcine animal was produced or the place of origin of an imported porcine animal, pork, or pork product. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

Section 1230.82 Confidential Treatment.

All information obtained from the books, records or reports required to be maintained under sections 1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this subpart or of statistical data collected therefrom, which statements or data do not identify the information furnished by any person; or

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

Section 1130.85 Proceedings after Termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of, the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The aid trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to section 1230.47(f);

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the

Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

Section 1230.86 Effect of Termination or Amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

Section 1230.87 Personal Liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

Section 1230.88 Patents, Copyrights, Inventions, and Publications.

Except for a reasonable royalty paid to the inventor of a patented invention, any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, section 1230.75 shall apply to determine disposition of all such property.

Section 1230.89 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose such amendments to the Secretary.

Section 1230.90 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Section 1230.91 Paperwork Reduction Act Assigned Number.

The information collection and recordkeeping requirements contained in sections 1230.31, 1230.33, 1230.37, 1230.38, 1230.41, 1230.58, 1230.71, 1230.77, 1230.80, 1230.81, and 1230.82 of these regulations (7 CFR Part 1230) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0151.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From an Order

Section 1230.100 Words in Singular Form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

Section 1230.101 Definitions.

As used in this subpart:

(a) "Act" means Title 16, Subpart B of the Food Security Act of 1985, Pub. L. 99-198, 99 Stat. ———, as approved December 23, 1985, and any amendments thereto;

(b) "Department" means the United States Department of Agriculture;

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead;

(d) "Judge" means any administrative law judge in the Office of Administrative Law Judges, United States Department of Agriculture;

(e) "Administrator" means the Administrator of the Department's Agricultural Marketing Serivce, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Administrator's stead;

(f) "**Federal Register**" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501-1511), and acts supplementing and amending it;

(g) "Order" means any regulation or any amendment thereto which may be issued pursuant to the Act;

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) "Proceeding" means a proceeding before the Secretary arising under Section 1625 of the Act;

(j) "Hearing" means that part of the proceeding which involves the submission of evidence;

(k) "Party" includes the Department;

(l) "Hearing Clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.;

(m) "Presiding Officer" means the administrative law judge conducting a proceeding under the Act;

(n) "Presiding Officer's report" means the presiding officer's report to the Secretary and includes the presiding officer's proposed: (1) Findings of fact and conclusions with respect to all material issues of fact, law, or discretion as well as the reasons or basis therefor; (2) order; and (3) ruling on findings, conclusions and orders submitted by the parties; and

(o) "Petition" includes an amended petition.

Section 1230.102 Institution of Proceeding.

(a) *Filing and Service of Petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the Department's General Counsel, respectively.

(b) *Contents of Petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions

held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioners' business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which complained of;

(4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Request for the specific relief which the petitioner desires the Secretary to grant.

(c) *An Application to Dismiss Petition Filing, Contents, and Responses Thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply in form or content with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition or any portion thereof on one or more of the grounds stated in this paragraph. Such application shall specify the grounds of objection to the petition and if based in whole or in part on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk, not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the application to the Secretary for his/her consideration.

(d) *Further Proceeding.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceeding on Petitions to Modify or to be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However each reference to "marketing order" in the title shall mean "order."

Done at Washington, DC, on: March 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-6037 Filed 3-17-86; 8:45 am]

BILLING CODE 3410-02-M

federal register

Wednesday
March 19, 1986

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 544 and 551

Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing a final amendment to its rule on minimum standards for administration, interpretation, and use of education tests. The primary purpose for this amendment is to revise the language pertaining to newly committed inmates taking the Stanford Achievement Test within 30 days of their arrival at a Bureau institution.

EFFECTIVE DATE: March 19, 1986.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing amendments to its final rule on minimum standards for administration, interpretation, and use of education tests. Proposed amendments were published in the **Federal Register** October 1, 1985 (at 50 FR 40116 et seq.). Interested persons were invited to submit comments on the proposed amendments. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

The Bureau of Prisons has decided not to adopt proposed § 544.12(a)(3), which would have allowed an SAT to be given to an inmate whom the Adult Basic Education Teacher tentatively identified as able to function at the 6.0 academic grade level. The word "record" has been added to § 544.12(c). The existing rule states an inmate is not allowed to administer, score, or interpret tests, nor to be involved in the clerical handling of such tests. The prohibition against an inmate recording results is added to more fully encompass and explain the intent of existing paragraph (c). For this reason, the Bureau of Prisons finds good cause under 5 U.S.C. 553 to publish this amendment without notice of proposed rulemaking, and an opportunity for public comment. Similarly, because these amendments do not change the general intent of the existing rule, the Bureau of Prisons finds good cause under 5 U.S.C. 553(d), to publish these amendments without delay in the effective date.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR, 0.96(q), 28 CFR, Chapter V is amended by amending Subchapter C, Part 544, Subpart B, to read as set forth below.

Dated: March 12, 1986.

Norman A. Carlson,

Director, Bureau of Prisons.

In Subchapter C, amend Part 544 by amending Subpart B to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

Subpart B—Minimum Standards for Administration, Interpretation, and Use of Education Tests.

1. The authority citation for Part 544, is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 544.12, revise paragraphs (a)(1) and (c) to read as follows:

§ 544.12 Procedures.

(a) * * *

(1) Except as specified in § 544.11, a newly committed inmate shall be required to take the SAT within 30 days of the inmate's arrival at the institution. For the non-English-speaking inmate, another appropriate standardized test may be used to determine the inmate's current level of academic achievement.

* * * * *

(c) Staff may not allow inmates to administer, score, record, or interpet tests which are the subject of this rule. Staff may not assign the clerical handling of such tests to an inmate.

[FR. Doc. 86-5945 Filed 3-18-86; 8:45 am]

BILLING CODE 4410-05--M

28 CFR Part 551

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on smoking/no smoking areas. The rule sets forth the Bureau's policy on establishing smoking and no smoking areas within its institutions.

EFFECTIVE DATE: April 28, 1986.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing its final rule on smoking/no smoking areas. A proposed rule on this subject was published in the **Federal Register** June 20, 1985 (at 50 FR 25668 et seq.). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Comments

1. In the **Federal Register** publication of June 20, 1985, the Bureau of Prisons proposed rule was entitled Smoking/Non-Smoking Areas. For purpose of the final rule, the Bureau is changing the title to read Smoking/No Smoking Areas.

2. Section 551.160—Public comment suggests that the proposed restrictions [smoking/no smoking], to the extent they are based upon a perception of

health harm to non-smokers, are not justified on scientific grounds, and that imposing unnecessary smoking regulations "introduces a new potential source of discord among inmates". We do not agree. The Surgeon General of the United States has determined that smoking and passive inhalation of environmental tobacco smoke pose a health hazard. The Bureau of Prisons, in establishing its smoking/no smoking rule, is attempting to reduce potential hazards to individual health and safety, and to provide a more comfortable living and working environment for staff and inmates. By providing designated areas for smokers, as well as other areas where individuals are not exposed to smoke, the Bureau is eliminating a potential source of discord among inmates.

3. Section 551.162—Public comment stated that, where disciplinary action may be taken for failure to observe posted smoking restrictions, "the potential for selective enforcement will be considerable". The commenter suggested that smoking restrictions will introduce another potential source of tension between staff and inmates and "can only exacerbate existing problems" in prison. While a potential for selective enforcement exists for virtually any rule, Bureau staff are trained, and expected, to apply Bureau policy in an objective and sensible manner. We do not believe the rule will "exacerbate existing problems", but rather that it may help reduce tensions by clearly identifying smoking/no smoking areas within the institution.

List of Subjects in 28 CFR Part 551

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended by adding a new Subpart N to Part 551.

Dated: March 12, 1986.

Norman A. Carlson,

Director, Bureau of Prisons.

I. In Subchapter C, Part 551 is amended by adding a new Subpart N to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

* * * * *

Subpart N—Smoking/No Smoking Areas

Sec.
551.160 *Purpose and scope.*
551.161 *Definition.*
551.162 *Notice of "No Smoking" areas.*

Subpart N—Smoking/No Smoking Areas

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 551.160 Purpose and scope.

The Warden, as set forth in this rule, may establish smoking/no smoking areas within the institution.

(a) Smoking is prohibited in those areas where to allow smoking would pose a hazard to health or safety.

(b) Smoking/no smoking areas may be established in other areas of the institution, in the discretion of the Warden.

§ 551.161 Definition.

For purposes of this rule, smoking is defined as the use or carrying of any lit tobacco product.

§ 551.162 Notice of "No Smoking" areas.

The Warden shall ensure that "no smoking" areas are clearly identified. Disciplinary action may be taken for failure to observe posted smoking restrictions.

[FR Doc. 86–5944 Filed 2–18–86; 8:45 am]

BILLING CODE 4410–05–M

federal register

Wednesday
March 19, 1986

Part V

Environmental Protection Agency

40 CFR Part 467

Aluminum Forming Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 467

[OW-FRL-2942-2]

Aluminum Forming Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to amend 40 CFR Part 467 which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that form aluminum and aluminum alloys. EPA agreed to propose these amendments in a settlement agreement to resolve a lawsuit challenging the final aluminum forming regulation promulgated by EPA on October 24, 1983 (48 FR 49126).

After considering comments received in response to this proposal, EPA will take final action.

DATES: Comments on this proposal must be submitted on or before April 18, 1986.

ADDRESS: Send comments to Ms. Janet K. Goodwin, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, SW., Washington, D.C. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Background
III. Proposed Amendments to the Aluminum Forming Regulation
IV. Environmental Impact of the Proposed Amendments to the Aluminum Forming Regulation
V. Economic Impact of the Proposed Amendments
VI. Solicitation of Comments
VII. Executive Order 12291
VIII. Regulatory Flexibility Analysis
IX. OMB Review
X. List of Subjects in 40 CFR Part 467

I. Legal Authority

The regulation described in this notice is proposed under authority of sections 301, 304, 306, 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 92-217).

II. Background

A. Rulemaking and Settlement Agreement. On November 22, 1982, EPA proposed a regulation to establish effluent limitations guidelines for existing direct dischargers based on the best practicable control technology currently achievable ("BPT") and the best available technology economically achievable ("BAT"); new source performance standards ("NSPS") for new direct dischargers; and pretreatment standards for existing sources and new sources that are indirect discharges ("PSES" and "PSNS", respectively) for the aluminum forming point source category (47 FR 52626). EPA published final effluent limitations guidelines and standards for the aluminum forming category on October 24, 1983 (40 CFR Part 467; 48 FR 49126) and made technical corrections to the final rule on March 27, 1984 (49 FR 11629). This regulation applies to all wastewater discharges resulting from the forming of aluminum and aluminum alloys. See, 40 CFR 467.01. The preamble to the final aluminum forming effluent limitations guidelines and standards promulgated on October 24, 1983, contains a complete discussion of the development of the regulation.

Following promulgation of the aluminum forming regulation, The Aluminum Association Inc., et al., and the Aluminum Extruders Council, Inc., et al. filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Sixth Circuit (*The Aluminum Association, Inc., et al.* v. *EPA*, No. 84-3090; and *Aluminum Extruders Council, Inc., et al.* v. *EPA*, No. 84-3101.)

On April 1, 1985, EPA and the Petitioners executed a Settlement Agreement to resolve all issues raised with respect to the aluminum forming effluent limitations guidelines and standards. The parties to the litigation filed this agreement with the Court and requested a stay of the effectiveness of those portions of the aluminum forming regulation affected by the Settlement Agreement. On October 15, 1985 the Court granted a stay of the portions of the regulation that EPA agreed to propose to amend.

B. Effect of the Settlement Agreement. Under the Settlement Agreement, EPA has agreed to propose to amend portions of the aluminum forming regulation or to add preamble language relating to (1) nonscope waters (2) discharge allowance for hot water seal, (3) the BAT and PSES pollutant discharge allowances for the cleaning or etching rinse in the extrusion and forging subcategories (Subparts C and D, respectively); (4) the discharge allowance for the alternative monitoring parameter of oil and grease for PSES; (5) the BPT and NSPS requirement for pH in the direct chill casting contact cooling water ancillary operation; and (6) the addition of a definition for hot water seal to the general definitions of 40 CFR Part 467. If, after EPA has taken final action under the Settlement Agreement, the provisions of the aluminum forming amendments are consistent with the Settlement Agreement, the Petitioners will voluntarily dismiss their petitions for review. Petitioners have also agreed not to seek judicial review of any final amendments that are consistent with the Settlement Agreement.

The Settlement Agreement provides that the parties will treat each proposed amendment and preamble provision as the applicable effluent limitations guidelines and standards or interpretation after the stay of the existing provisions by the U.S. Court of Appeals.

III. Proposed Amendments to the Aluminum Forming Regulation

Below is a list of those sections of the aluminum forming regulation subject to the proposed amendments. All limitations and standards contained in the final aluminum forming regulation published on October 24, 1983 and corrected on March 27, 1984 which are not specifically listed below are not affected by the proposed amendments. EPA is not proposing to delete or amend any of the limitations and standards not specifically addressed in this proposal.

A. Sections 467.33 and 467.35 (Subpart C), and Section 467.45 (Subpart D), Flow Allowances for the Cleaning or Etching Rinse. EPA is proposing to revise the BAT and PSES flow bases for the limitations and standards for the Cleaning or Etching Rinse for the extrusion Subcategory (Subpart C) and the Forging Subcategory (Subpart D). Petitioners claimed that 90 percent flow reduction was not attainable for rinsing irregular shapes but that 72 percent flow reduction could be attained with two-stage countercurrent cascade rinse. The Agency has agreed to propose to revise the BAT flow allowance for cleaning or

etching rinses based on two-stage countercurrent cascade rinsing that achieves 72 percent flow reduction, instead of 90 percent, to ensure adequate rinsing for irregular shapes. This change will increase the limitations and standards for these waste streams.

B. Sections 467.15 (Subpart A), 467.25 (Subpart B), 467.35 (Subpart C), 467.45 (Subpart D), 467.55 (Subpart E) and 467.65 (Subpart F) "Oil and Grease (alternate monitoring parameter)". EPA is proposing to change the oil and grease alternate monitoring parameter for total toxic organics for PSES. The concentrations of oil and grease on which the alternate monitoring parameter for the promulgated PSES was based were 20 mg/l for the daily maximum and 12 mg/l for the monthly average. Petitioners asserted that EPA should amend these concentrations to 52 mg/l for the daily maximum and 26 mg/l for the monthly average. The Agency agreed to propose this revision because it will not change the TTO standard.

C. Sections 467.22, 467.24, 467.32 and 467.34 pH Limits for Direct Chill Casting Contact Cooling Water. EPA is proposing to change pH requirement from 7.0–10.0 to 6.0–10.0 when certain conditions are met for Direct Chill Casting Contact Cooling Water in each provision. The requirement which, at present, states that "the pH shall be within 7.0 to 10.0 at all times," is revised to state that "the pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times." The petitioners argued that the effluent limitations for the other pollutant parameters for this waste stream can be met when the pH is in the range of 6.0 to 10.0. The data the Agency collected from this waste stream indicates that it may sometimes be relatively clean and compliance with the BAT limitations may be possible without adjusting the pH. Accordingly, the Agency has agreed to propose a broader pH requirement for direct chill casting contact cooling water if it is discharged separately without commingling with any other wastewater.

D. Section 467.02 (Definitions). The Agency is proposing to add a definition of "hot water seal". A hot water seal is defined as a heated water bath (heated to approximately 180° F) used to seal the surface coating on formed aluminum which has been anodized and coated. In establishing an effluent allowance for this operation, the hot water seal shall be classified as a cleaning or etching rinse. This reflects the fact that the hot water seal bath has wastewater characteristics more similar to cleaning or etching rinses than to other baths.

E. Preamble Language to 40 CFR Part 467.—1. *Nonscope waters.* Waste streams not given flow allowances in the regulation (such as noncontact cooling water) do not warrant national effluent limitations or standards because they are generally not contaminated or occur at only one or two plants. EPA has agreed to include the following language clarifying the discussion of nonscope waters that was included in the final preamble (48 FR 49140).

"To account for site-specific wastewater sources for which the permit writer in his best professional judgment determines that co-treatment with process wastewater is appropriate, the permit writer must quantify the discharge rate of the waste stream. The mass allowance provided for the waste stream is then obtained from the product of the discharge rate and treatment performance of the technology basis of the promulgated regulation. For example, if the permit writer determines that contaminated ground water seepage requires treatment, he must determine the flow rate of contaminated water to be treated. He then can determine the appropriate model treatment technology by referring to the technical development document. Treatment effectiveness values are presented in Section VII of the Development Document. The product of the discharge rate and treatment performance is then the allowed mass discharge. This quantity can then be added to the other building blocks (i.e., mass discharge for the regulated streams) to determine total allowed mass discharge."

2. *Discharge Allowance for Hot Water Seal.* EPA is proposing to clarify the BPT discussion of miscellaneous waste streams (Section V. C. of the October 24, 1983 preamble) by adding a phrase to a sentence which appeared at the end of the bottom paragraph, middle column 48 FR 49131 of the final preamble. This sentence at present reads: "The miscellaneous nondescript wastewater flow allowance is production normalized to a plant's core production and covers waste streams generated by maintenance, clean-up, ultrasonic ingot scalping, processing area scrubbers, and dye solution baths and seal baths (along with any other cleaning or etching bath) when not followed by a rinse." The Agency proposes to clarify this sentence as follows: "The miscellaneous nondescript wastewater flow allowance is production normalized to a plant's core production and covers waste streams generated by maintenance, clean-up, ultrasonic testing, roll grinding of caster rolls, ingot scalping, processing area scrubbers, and dye solution baths and seal baths (along with any other cleaning or etching bath, except a hot water seal) when not followed by a rinse."

EPA also proposes to clarify the response to comment number 7 in section IX of the October 24, 1983 preamble (48 FR 49141) by including the following sentence in the preamble:

"The hot water seal bath has high flow and, therefore, is not included in the miscellaneous wastewater sources allowance, but is considered as an etch line rinse for the purpose of calculating pollutant discharge allowances."

IV. Environmental Impact of the Proposed Amendments to the Aluminum Forming Regulation

EPA estimates that 112 to 132 plants will be affected by this proposed rule. The Agency estimates that this amendment would result in the discharge of an additional 500 kg/yr of toxic metal pollutants and cyanide. This is an increase of 3 percent of the estimated mass that would be discharged by existing sources in accordance with the existing regulation.

V. Economic Impact of the Proposed Amendments

The proposed amendment will not alter the recommended technologies for complying with the aluminum forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 48 FR 49134). These proposed amendments will not alter the determinations with respect to the economic impact on aluminum formers.

VI. Solicitation of Comments

EPA invites public participation in this rulemaking and requests comments on the proposed amendments discussed or set out in this notice. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, like the regulation promulgated October 24, 1983, is not

major because it does not fall within the criteria for major regulations established in Executive Order 12291.

VIII. Regulatory Flexibility Analysis

Public Law 96-354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the October 24, 1983 final Aluminum forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (48 FR 49135). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments would not alter the economic impact of the regulation. The Agency is not, therefore, preparing a formal analysis for this regulation.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 467

Aluminum forming, Water pollution control, Waste treatment and disposal.

Dated: March 6, 1986.

Lee M. Thomas,

Administrator.

For the reasons stated above, EPA is proposing to amend 40 CFR Part 467 as follows:

PART 467—ALUMINUM FORMING POINT SOURCE CATEGORY

1. The authority citation continues to read as follows:

Authority: Sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), 308 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), 1318 and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

§ 467.02 [Amended]

2. Section 467.02; *general definitions,* is amended to add a definition of "hot water seal." Paragraphs (m) through (z) are redesignated (n) through (aa) respectively. A new Paragraph (m) is added to read as follows:

* * * * *

(m) Hot water seal is a heated water bath (heated to approximately 180 °F) used to seal the surface coating on formed aluminum which has been anodized and coated. In establishing an effluent allowance for this operation, the hot water seal shall be classified as a cleaning or etching rinse.

* * * * *

3. Section 467.15 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" in all of the following tables in this section to read as follows:

§ 467.15 Pretreatment standards for existing sources.

* * * * *

SUBPART A.—CORE WITH AN ANNEALING FURNACE SCRUBBER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rolled with neat oils	
* * *	*	*
Oil and grease (alternate monitoring parameter)	4.3	2.1

SUBPART A.— CORE WITHOUT AN ANNEALING FURNACE SCRUBBER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rolled with neat oils	
* * *	*	*
Oil and grease (alternate monitoring parameter)	2.9	1.5

SUBPART A.—CONTINUOUS SHEET CASTING LUBRICANT

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cast	
* * *	*	*
Oil and grease (alternate monitoring parameter)	0.10	0.052

* * * * *

§§ 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 [Amended]

4. Sections 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Solution Heat Treatment Contact Cooling Water" to read as follows:

* * * * *

SOLUTION HEAT TREATMENT CONTACT COOLING WATER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum quenched	
* * *	*	*
Oil and grease (alternate monitoring parameter)	110	53

§§ 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 [Amended]

* * * * *

5. Sections 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Cleaning or Etching Bath" to read as follows:

* * * * *

CLEANING OR ETCHING BATH

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
* * *	*	*
Oil and grease (alternate monitoring parameters)	9.3	4.7

* * * * *

§§ 467.15, 467.25, 467.55 and 467.65 [Amended]

6. Sections 467.15, 467.25, 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Cleaning or Etching Rinse" to read as follows:

* * * * *

CLEANING OR ETCHING RINSE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
* * *	*	*
Oil and grease (alternate monitoring parameters)	73	36

* * * * *

§§ 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 [Amended]

7. Sections 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Cleaning or Etching Scrubber Liquor" to read as follows:

* * * * *

CLEANING OR ETCHING SCRUBBER LIQUOR

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
* * *	*	*
Oil and grease (alternate monitoring parameter)	100	50

* * * * *

8. Section 467.22, is amended to revise the footnote for the table entitled "Direct Chill Casting Contact Cooling Water" to read as follows:

§ 467.22 Effluent Limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

* * * * *

SUBPART B.—DIRECT CHILL CASTING CONTACT COOLING WATER

* * * * *

[1] The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.

* * * * *

§ 467.24 [Amended]

9. Section 467.24, is amended to revise the footnote for the table entitled "Direct Chill Casting Contact Cooling Water" to read as follows:

* * * * *

[1] The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.

* * * * *

§ 467.25 [Amended]

10. Section 467.25 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" in the table titled "Core" in this section to read as follows:

* * * * *

SUBPART B.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rolled with emulsions	
* * *	*	*
Oil and grease (alternate monitoring parameter)	6.8	3.4

* * * * *

§§ 467.25 and 467.35 [Amended]

11. Sections 467.25 and 467.35 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" in the tables titled "Direct Chill Casting Contact Cooling Water" to read as follows:

* * * * *

DIRECT CHILL CASTING CONTACT COOLING WATER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cast	
* * *	*	*
Oil and grease (alternate monitoring parameters)	69	35

* * * * *

§ 467.32 [Amended]

12. Section 467.32, is amended to revise the footnote for the table entitled "Direct Chill Casting Contact Cooling Water" to read as follows:

* * * * *

[1] The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.

* * * * *

13. Section 467.33 is amended by revising the table entitled "Cleaning or Etching Rinse" to read as follows:

§ 467.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

SUBPART C.—CLEANING OR ETCHING RINSE

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
Chromium	1.7	0.7
Cyanide	1.2	0.5
Zinc	5.7	2.4
Aluminum	25	13

* * * * *

14. Section 467.34, is amended to revise the footnote for the table entitled "Direct Chill Casting Contact Cooling Water" to read as follows :

* * * * *

§ 467.34 New service performance standards, direct chill casting contact cooling water.

* * * * *

[1] The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.

* * * * *

15. Section 467.35 is amended by revising the table entitled "Cleaning or Etching Rinse" to read as follows:

§ 467.35 Pretreatment standards for existing sources.

* * * * *

SUBPART C.—CLEANING OR ETCHING RINSE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
Chromium	1.7	0.7
Cyanide	1.2	0.5
Zinc	5.7	2.4
TTO	2.7	.....
Oil and grease (alternate monitoring parameter)	200	100

* * * * *

16. Section 467.35 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the following tables to read as follows:

SUBPART C.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum extruded	
* * *	*	*
Oil and grease (alternate monitoring parameter)	18	8.8

SUBPART C.—EXTRUSION PRESS LEAKAGE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum extruded	
* * *	*	*
Oil and grease (alternate monitoring parameter)	77	39

SUBPART C.—PRESS HEAT TREATMENT CONTACT COOLING WATER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum quenched	
* * *	*	*
Oil and grease (alternate monitoring parameter)	110	53

* * * * *

§ 465.45 [Amended]

17. Section 465.45 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the following tables to read as follows:

SUBPART D.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum forged	
* * *	*	*
Oil and grease (alternate monitoring parameter)	2.6	1.3

SUBPART D.—FORGING SCRUBBER LIQUOR

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum forged	
* * *	*	*
Oil and grease (alternate monitoring parameter)	4.9	2.5

* * * * *

18. Section 467.45 is amended by revising the table entitled "Cleaning or Etching Rinse" to read as follows:

§ 467.45 Pretreatment Standards For Existing Sources.

* * * * *

SUBPART D.—CLEANING OR ETCHING RINSE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
Chromium	1.7	0.7
Cyanide	1.2	0.5
Zinc	5.7	2.4
TTO	2.7	.....
Oil and grease (alternate monitoring parameter)	200	100

* * * * *

§ 467.55 [Amended]

19. Section 467.55 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tabled titled "Core" to read as follows:

SUBPART E.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum drawn with neat oils	
* * *	*	*
Oil and grease (alternate monitoring parameter)	2.6	1.3

* * * * *

§§ 467.55 and 467.65 [Amended]

20. Section 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Continuous Rod Casting Lubricant" to read as follows:

* * * * *

CONTINUOUS ROD CASTING LUBRICANT

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rod cast	
* * *	*	*
Oil and grease (alternate monitoring parameter)	0.10	0.052

* * * * *

21. Sections 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Continuous Rod Casting Contact Cooling Water" to read as follows:

* * * * *

CONTINUOUS ROD CASTING CONTACT COOLING WATER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rod cast	
* * *	*	*
Oil and grease (alternate monitoring parameter)	10	5.1

* * * * *

§ 467.65 [Amended]

22. Section 467.65 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the table titled "Core" to read as follows:

SUBPART F.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum drawn with emulsions or soaps	
* * *	*	*
Oil and grease (alternate monitoring parameter)	25	12

* * * * *

[FR Doc. 86-5747 Filed 3-18-86; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Wednesday
March 19, 1986

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 273

Education Contracts Under Johnson-O'Malley Act; Run-Off Vote on Distribution Formula; Proposed Rules

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 273

Education Contracts Under Johnson-O'Malley Act; Run-Off Vote on Distribution Formula

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Run-off vote on distribution formula under the Johnson-O'Malley Act.

SUMMARY: This notice advises tribes recognized by the Secretary of Interior that the recent tribal vote on the Johnson-O'Malley program formula options did not result in any formula receiving a majority vote as required by Pub. L. 95-561. Therefore, the Bureau will conduct a run-off vote on the two formulas receiving the most votes for distribution of supplemental funds under the Johnson-O'Malley Act.

FOR FURTHER INFORMATION CONTACT: Maribel W. Printup, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Washington, DC 20240, telephone number (202) 343-6364.

SUPPLEMENTARY INFORMATION: On August 23, 1984, a notice was published in the **Federal Register** (49 FR 33585) advising tribes recognized by the Secretary of the Interior that the Bureau intended to amend the Johnson-O'Malley program distribution formula. Tribes were invited to comment on the four formula options included in the notice or to recommend additional formulas for prescribing equitable distribution of the Snyder Act funds to contractors.

Following the publication and during the sixty (60) day comment period, consultation meetings with tribes and tribal organizations were arranged and conducted by the Bureau's Area Education Program Administrators and/or Agency Superintendents for Education. The opportunity to comment and/or submit additional alternatives was provided. Sixty-seven (67) comments were received on the four formulas along with five additional alternatives. Two of the alternatives could not be used. One could not be utilized in a national formula format and the other could not accommodate a pro-rata procedure based on the actual appropriated funds. The seven formula options presented for tribal vote included the four published options and three of the additional options. The sixty (60) day vote period was from December 3, 1985 through January 31, 1986.

Pub. L. 95-561, section 1102(b) requires that the formula receiving a majority of tribal votes, as evidenced by a vote count certified to the Secretary, will be adopted for distribution of funds.

Tribes, recognized by the Secretary of Interior, had one vote each. The votes were counted on February 14, 1986 and the results were certified by an independent Certified Public Accountant. No formula received over 50 percent of the vote. The two formulas receiving the most votes are as follows: Formula 1 received 51 votes (31 percent of the 162 votes cast); Formula 4 received 65 votes (40 percent of the votes); and 17 votes were declared invalid.

A run-off vote on Formulas 1 and 4 will be open for a sixty (60) day period. The formula which receives more than 50 percent of the vote of the eligible voting tribes will be adopted for distribution of funds and published in the **Federal Register.**

List of Subjects in 25 CFR Part 273

Government Contracts, Indians—Education, Indian-Self Determination.

Distribution Formulas

The distribution formulas to be voted upon by tribes are as follows:

Formula 1 is the current formula used in the distribution of funds. This is based on the number of eligible Indian students to be served, the national average per pupil expenditure and a weighting factor which is intended to take into account the differences in education costs among the States. The weighting factor is the quotient obtained by dividing the State's cost of delivering educational services by the national average; except that for every State whose cost is at or below the national average, that State's cost will be based on the national average.

Formula 4 is the equal distribution of funds for all eligible students. The per pupil amount is the quotient obtained by dividing the appropriated amount by the total number of students served. (There is no weight factor).

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs under 209 DM8.

Hazel E. Elbert,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 86-6115 Filed 3-18-86; 8:45 am]

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Vol. 51, No. 53

Wednesday, March 19, 1986

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H.J. Res. 371/Pub. L. 99-257

To designate March 16, 1986, as "Freedom of Information Day." (Mar. 14, 1986; 100 Stat. 41; 1 page) Price: $1.00

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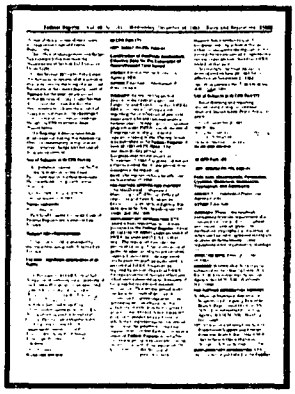

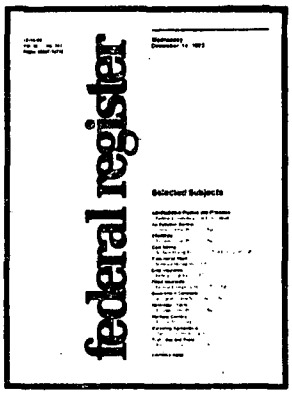

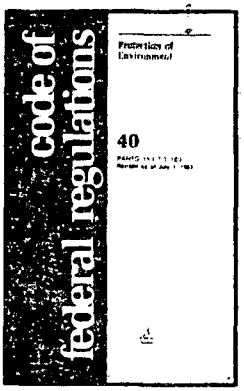

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