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federal register

Monday
March 24, 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

Administrative Practice and Procedure
Internal Revenue Service

Air Pollution Control
Environmental Protection Agency

Chemicals
Environmental Protection Agency

Computer Technology
General Services Administration

Education
Veterans Administration

Fisheries
National Oceanic and Atmospheric Administration

Government Procurement
Agriculture Department

Hazardous Waste
Environmental Protection Agency

Income Taxes
Internal Revenue Service

Loan Programs—Agriculture
Commodity Credit Corporation

Marketing Agreements
Agricultural Marketing Service

Radio and Television Broadcasting
Federal Communications Commission

CONTINUED INSIDE

Selected Subjects

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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

Space Transportation and Exploration
National Oceanic and Atmospheric Administration

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

Presidential Determination No. 86-7 of March 11, 1986

Economic Support Fund and Military Assistance

Memorandum for the Honorable George P. Shultz, Secretary of State

By virtue of the authority vested in me by Section 614(a)(1) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that it is important to the security interests of the United States to furnish up to $50 million for recipients of unearmarked Economic Support Fund assistance under Chapter 4 of Part II of the Act from funds earmarked for a Tied Aid Credit Program under section 206 of the ISDCA without regard to such earmark; and

I hereby authorize the furnishing of such assistance.

You are requested to report this determination to the Congress immediately. None of the assistance provided for herein shall be furnished until after such report has been made.

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

Ronald Reagan

THE WHITE HOUSE,
Washington, March 11, 1986.

[FR Doc. 86-6507
Filed 3-20-86; 3:28 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 86-6 of March 13, 1986

Determination To Authorize the Furnishing of Immediate Military Assistance to Chad

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 506(a) of the Foreign Assistance Act, as amended ("the Act"), I hereby determine that:

1) an unforeseen emergency exists which requires immediate military assistance to Chad; and

2) the aforementioned emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except Section 506(a) of the Act.

Therefore, I hereby authorize the furnishing of up to $10,000,000 in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training to Chad under the provisions of Chapters 2 and 5 of Part II of the Act.

This determination shall be reported to Congress immediately and published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, March 13, 1986.

[FR Doc. 86-6508
Filed 3-20-86; 3:29 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5449 of March 20, 1986

National Agriculture Day, 1986

By the President of the United States of America

A Proclamation

For more than a century, American agriculture has led the world in the development and use of technological advances that raise our standard of living. In fact, the production of food and fiber is our largest and most basic industry.

Our farms, ranches, orchards, vineyards, and nurseries; the businesses that supply them; and those who transform and transport their raw commodities or sell the final products, provide us with the world's most abundant and varied supply of food and clothing. American agriculture also helps feed tens of millions of people in other countries. Moreover, the activities of the 23 million Americans employed in agriculture generate one-fifth of our gross national product and one-fifth of our Nation's jobs.

Maintaining such production—nearly one-twelfth of the world's output of major agriculture commodities—requires careful stewardship of natural resources and capital, flexibility in responding to the vagaries of weather and the vicissitudes of the international marketplace, unparalleled mastery of many skills, and the continuous support of research institutions.

To honor the immense and varied contributions made to our economy and our national life by the men and women working in American agriculture, and to foster a greater understanding of the importance of this sector of our economy, the Congress of the United States, by Public Law 99-207 approved December 23, 1985, has designated March 20, 1986, as "National Agriculture Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 20, 1986, as National Agriculture Day, and I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th 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. 86-6563
Filed 3-21-86; 10:56 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 86-302]

Movement of Fruits and Vegetables From Hawaii to Alaska

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of enforcement of regulations.

SUMMARY: Certain fruits and vegetables have been allowed on occasion to move from Hawaii to Alaska contrary to the Hawaiian fruits and vegetables regulations. This document gives notice that the provisions of the regulations applicable to these fruits and vegetables will now be enforced.

EFFECTIVE DATE: March 15, 1986.

FOR FURTHER INFORMATION CONTACT: William Forster, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 638, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION: The following fruits and vegetables have been allowed on occasion to move from Hawaii to Alaska contrary to the provisions of the Hawaiian fruits and vegetables regulations (contained in 7 CFR 318.13 *et seq.* and referred to below as the regulations):

avocado
bittermelon
bittermelon shoots
breadfruit
cacao fruit
cantaloupe
chayote shoots
cherimoya
cherry
citrus
eggplant
grapes
guava
loquat
lufa
lychee
mangoes
mountain apple
nectarine
ohelo berrie
papaya
passion fruit
peaches
pepper
plums
pumpkin shoots
sand pear
soursop
squash shoots
star apple
stringbean shoots
tomato
unchoy
yardlong bean shoots

Under the regulations, mangoes with seeds are prohibited from moving from Hawaii into or through Alaska. Also, under the regulations, mangoes without seeds and the other articles listed above are allowed to be moved from Hawaii into or through Alaska only if they meet certain treatment requirements and are in compliance with other provisions of the regulations. These requirements have been established to help prevent the spread of the Mediterranean fruit fly, the oriental fruit fly, the melon fly, the sweetpotato scarabee, the sweetpotato stem borer, and the mango seed weevil.

This document gives notice that the applicable provisions of the regulations will now be enforced. Consequently, mangoes with seeds may no longer be moved from Hawaii into or through Alaska. Also, mangoes without seeds and the other articles listed above may no longer be moved from Hawaii into or through Alaska, unless in accordance with the regulations.

The Department has determined that unless compliance with the regulations is achieved, movement of these articles from Hawaii to Alaska, and from there to other parts of the continental United States, could cause infestations of the pests specified above.

Done at Washington, D.C., this 14th day of March, 1986.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-6384 Filed 3-21-86; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8079]

Illegal Activity Cash

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to illegal activity cash. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations affect certain persons subject to jeopardy or termination assessments and provide the guidance necessary for Internal Revenue Service personnel who must administer the Act.

DATE: The regulations are effective March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Ewan D. Purkiss of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under section 6867 of the Internal Revenue Code of 1954, as added by section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register.**

Under section 6867, if an individual in physical possession of cash in excess of $10,000 does not claim the cash as the individual's or as that of another person whose identity is readily ascertainable (and who acknowledges ownership of the cash), then for purposes of section 6851 (relating to termination assessments) and section 6861 (relating to jeopardy assessments) it will be presumed that the cash represents gross income of an individual for the taxable year in which the possession occurs, and that the collection of tax will be jeopardized by delay.

Section 6867(d) provides that cash includes cash equivalents. The term "cash equivalents" means foreign currency, any bearer obligation, and any medium of exchange that is of a type frequently used in illegal activities and that is specified in regulations prescribed by the Commissioner. The temporary regulations specify that coins, precious metals, jewelry, precious stones, and postage stamps are cash equivalents.

Executive Order 12291; Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this

temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

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

Drafting Information

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

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sec. 301.6867-1T also issued under 26 U.S.C. 6867(d)(2)(C)(ii).

Par. 2. A new § 301.6867-1T is added to read as follows:

§ 301.6867-1T Illegal activity cash (temporary).

For purposes of section 6867—

(a) *Cash.* The term "cash" includes any cash equivalents.

(b) *Cash equivalent*—(1) *In general.* The term "cash equivalent" includes foreign currency, any bearer obligation, and any medium of exchange that is of a type that has been frequently used in illegal activities and that is listed in paragraph (b)(2) of this section.

(2) *Specific cash equivalents.* The following are also cash equivalents:

(i) Coins,

(ii) Precious metals,

(iii) Jewelry,

(iv) Precious stones, and

(v) Postage stamps.

(3) *Value of cash equivalents.* Any cash equivalent will be taken into account at its fair market value except in the case of a bearer obligation, which will be taken into account at its face amount.

(c) *Effective date.* The provisions of this section are effective March 24, 1986.

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

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: March 6, 1986.

J. Roger Mentz,

Acting Assistant Secretary of the Treasury.

March 6, 1986.

[FR Doc. 86-6403 Filed 3-21-86; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[T.D. 8080]

Classification of Investment Trusts With Multiple Classes of Ownership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on Procedure and Administration relating to the classification for federal tax purposes of investment trusts with multiple classes of ownership. The regulations are designed to clarify the application of the classification rules to an investment trust with multiple classes of ownership interests. These regulations provide guidance to taxpayers and Internal Revenue Service personnel.

DATE: The regulations are effective on April 28, 1984, and with respect to trusts, any interests in which are initially issued on or after April 28, 1984.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1984, the **Federal Register** published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7701 of the Internal Revenue Code of 1954 (49 FR 18741). The proposed amendments related to the definition of the term "trust" for federal tax purposes. A public hearing was held on July 31, 1984. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 301.7701-4(c) of the Regulations on Procedure and Administration provides guidance as to the classification for federal tax purposes of certain "investment" trusts. Before its amendment by this Treasury decision, those regulations (the "prior regulations") classified an entity of the type known as a "fixed investment trust" as a trust or as an association (taxable as a corporation), depending upon whether the governing instrument created a power to vary the investment of the certificate holders. The prior regulations did not address whether an investment trust that permitted investors to choose among different classes of ownership interests with varying investment attributes would be classified as a trust for federal tax purposes.

In general, a trust for federal tax purposes is limited to a trust created simply to conserve or protect property for the trust beneficiaries. Ordinarily, the beneficiaries of the trust do no more than accept its benefits and are not its creators or voluntary planners. Certain "investment" trusts, however, are recognized as serving the traditional custodial purposes of an ordinary trust even though interests therein are voluntarily acquired by the beneficiaries. Thus, investment trusts have been treated as trusts for federal tax purposes where employed simply to hold investment assets, albeit for the benefit of voluntary investors. *Commissioner* v. *Chase National Bank,* 122 F. 2d 450 (2d Cir. 1941).

Historically, the issue of whether an investment trust serves the mere custodial purpose of holding investment assets has focused on whether the beneficiaries' investment was fixed or could instead be varied under the terms of the trust agreement. The existence of a power to vary the beneficiaries' investment, even though only contingent in form, is sufficient to "turn the venture into a 'business.' " *Commissioner* v. *North American Bond Trust,* 122 F. 2d 545, 546 (2d Cir. 1941), *cert. denied,* 314 U.S. 701 (1942). Thus, the prior regulations limited trust classification to

"fixed investment trusts" where there was no power under the trust agreement to vary the investment of the certificate holders.

Recently, new forms of investment trusts have been created that involve not only voluntary acquisition of interests by investors but also different classes of beneficial interests with varying investment attributes. These so-called "multiple class trusts" vest no discretionary power in the trustee over investment of the trust assets and thus assertedly satisfy the fixed investment requirement of the prior regulations. At the time the prior regulations were first promulgated, however, the entities commonly known as fixed investment trusts had only one class of investment certificates. The certificates represented undivided interests in the trust property, and were, in form, receipts for the securities held by the trust.[1] Thus, where the trustee had no power to vary investment, fixed investment trust was little more than a depository arrangement, formed to hold a pool of specific investment assets. Although the trust device permitted individual investors to diversify investment risk, the arrangement in substance provided a form of direct, if common, ownership of the trust assets. This use of a trust to hold investment assets and thereby facilitate direct investment by a pool of investors is consistent with the custodial purposes that have traditionally limited trust classification.

Multiple class trusts depart from the traditional form of fixed investment trust in that the interest of the beneficiaries are not undivided, but diverse. The existence of varied beneficial interests may indicate that the trust is not employed simply to hold investment assets, but serves a significant additional purpose of providing investors with economic and legal interests that could not be acquired through direct investment in the trust assets. Such use of an investment trust introduces the potential for complex allocations of trust income among investors, with correspondingly difficult issues of how such income is to be allocated for tax purposes. These issues are properly foreign to the taxation of trust income, where rules have not developed to accommodate the varied forms of commercial investment, and no comprehensive economic substance requirement governs the allocation of income for tax purposes.

Based on the above considerations, proposed amendments to prior § 301.7701-4 would have denied trust classification to investment trusts with multiple classes of ownership. Generally, the final regulations retain this rule. However, in response to public comment, the proposed regulations have been modified to provide that trust classification may be appropriate for a multiple class trust if the trust is formed to serve the traditional custodial purposes of a fixed investment trust and the existence of multiple classes of beneficial interests is incidental to such purposes.

Thus, under the standard contained in the final regulations, the classification of multiple class trusts depends on the purposes for which the trust is formed, and the significance of multiple classes of ownership interests in relation to those purposes. A fixed investment trust with multiple classes of ownership interests, that otherwise possesses the characteristics of a trust, would be classified as a trust if the trust is employed to facilitate direct investment in the assets of the trust, and the existence of multiple classes of ownership interests is incidental to such purpose. Whether the existence of multiple classes of ownership interests is incidental to the use of an investment trust as a vehicle to facilitate direct investment, or instead reflects a purpose to provide investors with diverse interests in the trust assets, generally depends on the extent to which the investment attributes of interests in the trust diverge from direct ownership of the trust assets. The extent of such divergency may, in turn, be reflected by the extent to which the interests of the investors in a multiple class trust could be reproduced without resort to multiple classes of ownership. For example, the creation of a subordinated and preferred class of interests in a trust holding real estate mortgages may be incidental to the purpose of the trust to facilitate direct investment in the mortgages, where the subordinated interest is retained as a security device by the originator of the mortgages, and is in lieu of a direct guarantee to investors. The final regulations provide additional examples of the classification of investment trusts with multiple classes of ownership interests. Further guidance as to the application of the new standard will be provided through the administrative rulings process.

The final regulations apply only to investment trusts, and hence have no applicability to trusts that would be classified as "ordinary trusts" under existing § 301.7701-4(a) or "business to trusts" under existing § 301.7701-4(b). Moreover, the final regulations are not intended to affect existing standards for classification of fixed investment trusts with a single class of ownership interests.

On May 17, 1984, the Internal Revenue Service announced that the final regulations would not apply to certain state and local government financing arrangements the substance of which is the issuance of a series of separate debt obligations directly by the governmental unit (Announcement 84-62, 1984-24 I.R.B. 29). The Internal Revenue Service will treat those financing arrangements in accordance with that announcement.

One commentator suggested that the proposed amendments to the regulations constituted legislative regulations for which the Service was required to prepare a Regulatory Flexibility Analysis and a Regulatory Impact Analysis. The Service, however, has concluded that these regulations are interpretative regulations not subject to those requirements.

Finally, certain commentators raised other issues that the Service considers to be beyond the scope of the classification issues that these regulations address.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this final rule is not subject to Executive Order 12291 and the Treasury-OMB implementation of that Order, dated April 29, 1983, because the final rule is not a major legislative rule. Accordingly, a Regulatory Impact Analysis is not required.

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Stuart G. Wessler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing

[1] "The investor [in a fixed trust] . . . has a beneficial undivided interest in specific deposited securities or property. . . . In the fixed trust . . . only one class of security is issued—the certificate of beneficial interest which is, in form, a receipt issued by the trustee for the deposited property." Investment Trusts and Investment Companies, H.R. Doc. 567, 76th Cong., 3d Sess. 8-9 (1940) (footnote omitted).

the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 301.7701–4 is amended by revising paragraph (c) to read as follows:

§ 301.7701-4 Trusts.

* * * * *

(c) *Certain investment trusts*—(1) An "investment" trust will not be classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. *See Commissioner v. North American Bond Trust,* 122 F. 2d 545 (2d Cir. 1941), *cert. denied,* 314 U.S. 701 (1942). An investment trust with a single class of ownership interests, representing undivided beneficial interests in the assets of the trust, will be classified as a trust if there is no power under the trust agreement to vary the investment of the certificate holders. An investment trust with multiple classes of ownership interests will ordinarily be classified as an association or a partnership under § 301.7701–2; however, an investment trust with multiple classes of ownership interests, in which there is no power under the trust agreement to vary the investment of the certificate holders, will be classified as a trust if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes of ownership interests is incidental to that purpose.

(2) The provisions of paragraph (c)(1) of this section may be illustated by the following examples:

Example (1): A corporation purchases a portfolio of residential mortgages and transfers the mortgages to a bank under a trust agreement. At the same time, the bank as trustee delivers to the corporation certificates evidencing rights to payments from the pooled mortgages; the corporation sells the certificates to the public. The trustee holds legal title to the mortgages in the pool for the benefit of the certificate holders but has no power to reinvest proceeds attributable to the mortgages in the pool or to vary investments in the pool in any other manner. There are two classes of certificates. Holders of class A certificates are entitled to all payments of mortgage principal, both scheduled and prepaid, until their certificates are retired; holders of class B certificates receive payments of principal only after all class A certificates have been retired. The different rights of the class A and class B certificates serve to shift to the holders of the class A certificates, in addition to the earlier scheduled payments of principal, the risk that mortgages in the pool will be prepaid so that the holders of the class B certificates will have "call protection" (freedom from premature termination of their interests on account of prepayments). The trust thus serves to create investment interests with respect to the mortgages held by the trust that differ significantly from direct investment in the mortgages. As a consequence, the existence of multiple classes of trust ownership is not incidental to any purpose of the trust to facilitate direct investment, and accordingly, the trust is classified as an association or a partnershp under § 301.7701–2.

Example (2): Corporation M is the originator of a portfolio of residential mortgages and transfers the mortgages to a bank under a trust agreement. At the same time, the bank as trustee delivers to M certificates evidencing rights to payments from the pooled mortgages. The trustee holds legal title to the mortgages in the pool for the benefit of the certificate holders, but has no power to reinvest proceeds attributable to the mortgages in the pool or to vary investments in the pool in any other manner. There are two classes of certificates. Holders of class C certificates are entitled to receive 90 percent of the payments of principal and interest on the mortgages; class D certificate holders are entitled to receive the other ten percent. The two classes of certificates are identical except that, in the event of a default on the underlying mortgages, the payment rights of class D certificate holders are subordinated to the rights of class C certificate holders. M sells the class C certificates to investors and retains the class D certificates. The trust has multiple classes of ownership interests, given the greater security provided to holders of class C certificates. The interests of certificate holders, however, are substantially equivalent to undivided interests in the pool of mortgages, coupled with a limited recourse guarantee running from M to the holders of class C certificates. In such circumstances, the existence of multiple classes of ownership interests is incidental to the trust's purpose of facilitating direct investment in the assets of the trust. Accordingly, the trust is classified as a trust.

Example (3): A promoter forms a trust in which shareholders of a publicly traded corporation can deposit their stock. For each share of stock deposited with the trust, the participant receives two certificates that are initially attached, but may be separated and traded independently of each other. One certificate represents the right to dividends and the value of the underlying stock up to a specified amount; the other certificate represents the right to appreciation in the stock's value above the specified amount. The separate certificates represent two different classes of ownership interest in the trust, which effectively separate dividend rights on the stock held by the trust from a portion of the right to appreciation in the value of such stock. The multiple classes of ownership interests are designed to permit investors, by transferring one of the certificates and retaining the other, to fulfill their varying investment objectives of seeking primarily either dividend income or capital appreciation from the stock held by the trust. Given that the trust serves to create investment interests with respect to the stock held by the trust that differ significantly from direct investment in such stock, the trust is not formed to facilitate direct investment in the assets of the trust. Accordingly, the trust is classified as an association or a partnership under § 301.7701–2.

Example (4): Corporation N purchases a portfolio of bonds and transfers the bonds to a bank under a trust agreement. At the same time, the trustee delivers to N certificates evidencing interests in the bonds. These certificates are sold to public investors. Each certificate represents the right to receive a particular payment with respect to a specific bond. Under section 1286, stripped coupons and stripped bonds are treated as separate bonds for federal income tax purposes. Although the interest of each certificate holder is different from that of each other certificate holder, and the trust thus has multiple classes of ownership, the multiple classes simply provide each certificate holder with a direct interest in what is treated under section 1286 as a separate bond. Given the similarity of the interests acquired by the certificate holders to the interests that could be acquired by direct investment, the multiple classes of trust interests merely facilitate direct investment in the assets held by the trust. Accordingly, the trust is classified as a trust.

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: March 3, 1986.

J. Roger Mentz,
Acting Assistant Secretary of the Treasury.

[FR Doc. 86–6404 Filed 3–21–86; 8:45 am]
BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Entitlement Charges for Overpayments

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: Interest, administrative costs of collection, court costs, and marshal fees are charged to veterans or eligible persons with outstanding overpayments

of educational assistance allowance. The pertinent section of the Code of Federal Regulations governing charges to entitlement of a veteran or eligible person has not stated whether a charge against entitlement will be made for the amount of accrued interest, administrative costs of collection, court costs and marshal fees when such an overpayment is discharged in bankruptcy, is waived or is compromised. This amended regulation provides that an unrecovered portion of interest, administrative costs of collection, court costs or marshal fees will not result in a charge against a veteran's or eligible person's entitlement. This will be done by first deducting the amount of any such outstanding costs.

EFFECTIVE DATE: March 4, 1986.

FOR FURTHER INFORMATION 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.

SUPPLEMENTARY INFORMATION: On pages 45629 and 45630 of the **Federal Register** of November 1, 1985, there was published a proposal to amend 38 CFR 21.1045 to provide a method for calculating the charge to entitlement when an overpayment of educational assistance allowance is discharged in bankruptcy, is waived and is not recovered, or is compromised.

Interested people were given 33 days to submit comments, suggestions or objections. The VA (Veterans Administration) received no comments, suggestions or objections. Accordingly, the agency is making the proposal final.

The VA has determined that this regulation is not a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 4, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 38—[AMENDED]

38 CFR Part 21 is amended by revising § 21.1045, paragraph (h) to read as follows:

§ 21.1045 Entitlement charges.

* * * * *

(h) *Overpayment cases.* The VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived, and is not recovered, or is compromised. (38 U.S.C. 1661)

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, admininstrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by:

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, admininstrative costs of collection, court costs and marshal fees,

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (h)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, admininstrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (h)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (h)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment (38 U.S.C. 1671)

* * * * *

[FR Doc. 86-6331 Filed 3-21-86; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

Veterans Education; Waiver of Two-Year Operation Requirement

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The law generally requires a course to be in operation for two years before it can be approved for VA (Veterans Administration) training. The law contains several exceptions to this general rule and permits waivers by regulation in certain instances. This regulatory change liberalizes the pertinent regulation to make a waiver easier to obtain for a course offered pursuant to a contract with the Department of Transportation at a Coast Guard station.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION 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.

SUPPLEMENTARY INFORMATION: On Pages 34722 and 34723 of the **Federal Register** of August 27, 1985, there was published a notice of intent to amend Part 21 to permit the waiver of the two-year operation requirement for certain courses offered under contract with the Department of Transportation at Coast Guard stations. Interested people were given 28 days to submit comments, suggestions or objections. The VA received two letters. Both were from executives of educational organizations.

One writer stated that he had "no problem" with the proposal. The other writer had several comments.

His letter stated that the VA should define what the word "course" meant in the proposal. He stated that the VA was going beyond the intent of the Congress in applying the two-year operation requirement to any course that can be applied to a degree. He stated further that the incident of abuse the two-year operation requirement is supposed to correct has never been made public. He opposed the proposal because he believed that to support it would be tantamount to agreeing that the VA has authority to regulate in this area.

It is true that sometimes the word "course" appears in the Code of Federal Regulations in the sense of a unit subject such as History 101 or Basic Welding, and at other times it is used to refer to all the unit subjects in a program of education. However, in this the Code of Federal Regulations is mirroring the use of the term in the law. In this instance the VA believes the law means one or more unit subjects leading to an objective. The agency does not believe that it should define "course" one way or the other in the absence of an amendment to the law which would provide separate terms for the two uses of the word.

Contrary to the writer's assertions, the law requires that the two-year operation requirement be applied in some instances to courses that lead to a degree. It is clear from the legislative history that the Congress intended that the application be made. The incident of abuse to which the writer refers was made public in the Senate report which accompanied the pertinent legislation and in the course of public hearings which were held on the subject during the 1970's.

38 U.S.C. 1789(a) states,

"The Administrator shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an educational institution when such course has been in operation for less than two years."

Subsection (b) of that section provides several exceptions to that general rule including one in (b)(4) for any course which is offered by a nonprofit educational institution of college level and which is recognized for credit toward a standard college degree, and another exception in (b)(6) for—

"Any course offered by an educational institution under a contract with the Department of Defense that: (A) Is given on, or immediately adjacent to, a military base; (B) is available only to active duty military personnel and/or their dependents and (C) has been approved by the State approving agency of the State in which the base is located.

The Administrator may waive the requirements of clause (6) of this subsection, in whole or in part, if the Administrator determines, pursuant to regulations which the Administrator shall prescribe, it to be in the interest of the eligible veteran and the Federal Government."

However, subsection (c) of that section states that in certain instances the exception to the two-year operation requirement provided in (b)(4) for courses leading to a standard college degree is not to be applied. Subsection (c) states—

"Notwithstanding the provisions of subsection (b) (1), (2), (3), or (4) of this section, the provisions of subsection (a) shall apply to any course offered by a branch or extension of—

(1) a public or other tax-supported institution where the branch or extension is located outside of the area of the taxing jurisdiction providing support to such institution; or

(2) a proprietary profit or proprietary nonprofit educational institution where the branch or extension is located beyond the normal commuting distance of such institution.

The Administrator may waive the requirements of this subsection, in whole, or in part, if the Administrator determines, pursuant regulations which the Administrator shall prescribe, it to be in the interest of the eligible veteran and the Federal Government."

Hence, if a proprietary, nonprofit institution of higher learning which has its main campus in Los Angeles contracts with the Department of Transportation to offer courses leading to a baccalaureate degree at Coast Guard stations in North Carolina, the two-year operation requirement found in subsection (a) must be applied in the absence of a liberalizing regulation. Subsection (b)(6) is not broad enough and subsection (c) cancels the exception found in subsection (b)(4).

Subsection (c) was added to section 1789 in the Veterans' Education and Employment Assistance Act of 1976 (Pub. L. 94-502). The Senate report (94-1243) which accompanied this legislation was available to the public. It states in part:

"The basic rationale of the current exceptions to the two-year rule has come under serious question in recent years. Certain institutions, both public and proprietary, have suddenly developed many branch campuses throughout the United States . . . .

The increase in veteran enrollments in schools establishing multi-branch campuses has often been spectacular. In one instance a small institution of higher learning (accredited by a regional accrediting association), which had only a handful of veterans enrolled at its single campus, in less than a year developed branch campuses (which often were rented rooms in local motels) in over 40 States and increased their veteran-student population to over 13,000."

The report goes on to quote from testimony given by VA officials at hearings during 1976. The report then states:

"While the Committee does not undertake to assess either the quality of the instruction offered at all of these branch campuses or the motives of all those who promote such arrangements, the situation does present great potential for abuse, and in several instances that potential appears to have been realized.

At a minimum, the Committee concurs with the Veterans' Administration's testimony concerning the validity of the legislative premise which gives special exceptions to degree-granting institutions."

The report then states that this is the reason that subsection (c) was added to the law.

The VA believes, therefore, that there is ample reason to apply the two-year operation requirement to some courses which lead to a degree. The reasons are found in the law. The incident of abuse which the specific subsection of law requiring that application is designed to correct was made public at the time the subsection was added to the United States Code. Furthermore, the Administrator is empowered by law to waive the requirements in certain instances.

In this case the Administrator believes it to be in the interest of the Federal Government to enable Coast Guard members to use their GI Bill benefits to attend courses offered at their station when the courses are offered pursuant to a contract between an educational institution and the Department of Transportation. Consequently, the proposed amendment to the regulation governing the waiver of the two-year operation requirement is made final without change.

The VA has determined that this amended regulation is not a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), sections 601–612. Therefore, pursuant to 5 U.S.C. 605(b) this regulation is exempt from the initital and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because only a few educational institutions offer courses under contract with the Department of Transportation on or immediately adjacent to Coast Guard stations. Many of these are not small entities. Therefore, the number of affected small entities will not be substantial.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.11.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 10, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising paragraphs (g)(1) introductory text and (g)(1)(i) of § 21.4251 to read as follows:

§ 21.4251 Period of operation of course.

* * * * *

(g) *Waivers*

* * * * *

(1) The Director of the VA field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense or the Department of Transportation on or immediately adjacent to a military base or Coast Guard station located within a State. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to military personnel or Coast Guard personnel, their dependents, civilian employees of the base or station, persons who began the course while on active duty and who were discharged while remaining continuously enrolled in it or any combination of these classes of people. (38 U.S.C. 1789(b))

* * * * *

[FR Doc. 86–6333 Filed 3–21–86; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

Subsistence Allowance Payment Rates

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The amount of monthly subsistence allowance paid to veterans in a vocational rehabilitation program under chapter 31 was increased by 10 percent effective October 1, 1984 under Pub. L. 98–543, the "Veterans' Benefits Improvement Act of 1984". In addition the provisions of 38 CFR 21.260(b) are changed to clarify that payment of subsistence allowance for a veteran being provided nonpay work experience in a Federal agency may be made on less than a full-time basis.

EFFECTIVE DATE: This amendment is effective October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Boies, Assistant Director for Policy and Program Development, Vocational Rehabilitation and Counseling Service (282), Department of Veterans Benefits, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 389–2886.

SUPPLEMENTARY INFORMATION: On pages 38862 and 38863 of the **Federal Register** of September 25, 1985, the VA published a proposed amendment to 38 CFR 21.260 concerning an increase in the monthly subsistence allowance paid to veterans participating in a vocational rehabilitation program authorized under 38 U.S.C. chapter 31. Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed amendment. No comments, suggestions were received, and the amendment is hereby adopted as final without change.

The final regulation has been found to be nonmajor under E.O. 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effect on the economy.

The Administrator hereby certifies that this final rule will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that, the amendments simply make the regulation consistent with recent statutory changes. Thus, no regulatory burdens are imposed on small entities by this regulation.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, claims, education, grant programs, loan programs, reporting requirements, schools, veterans, vocational education, vocational rehabilitation.

Aproved: February 27, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising paragraph (b) of § 21.260 to read as follows:

§ 21.260 Subsistence allowance.

* * * * *

(b) *Rate of payment.* Subsistence allowance is paid at the following rates effective October 1, 1984.

Type of program	Monthly rate of subsistence allowance			
	No dependents	One dependent	Two dependents	Additional amount for each dependent over two
Institutional:[1]				
Full-time	$310	$384	$452	$33
¾ time	233	288	339	25
½	155	193	227	17
Nonpay on-job training in a Federal agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop, independent instructor: Full-time only	310	384	452	33

Type of program	Monthly rate of subsistence allowance			
	No dependents	One dependent	Two dependents	Additional amount for each dependent over two
Nonpay work experience in a Federal agency:				
Full-time	310	384	452	33
¾ time	233	288	339	25
½ time	155	193	227	17
Farm cooperative; apprenticeship or other on-job training: [2] Full-time only	271	327	377	24
Combination (institutional and OJT) (Full-time only):				
Institutional greater than ½ time	310	384	452	33
OJT greater than ½ time [2]	271	327	377	24
Non-farm cooperative (Full-time only):				
Institutional	310	384	452	33
On-job	271	327	377	24
Improvement of rehabilitation potential: Full-time only	310	384	452	33
Independent living; Extended evaluation:				
Full-time	310	384	452	33
¾ time	233	288	339	25
½ time	155	193	227	17
¼ time	78	96	113	9

[1] Measurement of rate of pursuit (§§ 21. 4270–21.4275).
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.
(38 U.S.C. 1508(b), Pub. L. 98-543) (October 1, 1984)

* * * * *

[FR Doc. 86-6332 Filed 3-21-86; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-3-FRL-2988-6]

Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Container Corporation of America

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Container Corporation of America. The Order requires the company to bring air emissions from its graphic arts facility in Montgomery County, Pennsylvania into compliance with certain regulations contained in the federally-approved Pennsylvania State Implementation Plan (SIP) by December 31, 1985. Because of the Administrator's approval, compliance with the Order by December 31, 1985 will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule will take effect on March 24, 1986.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107 (215) 597-6553.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, are available for public inspection and copying (for appropriate charges) during normal business hours at the above address.

SUPPLEMENTARY INFORMATION: On March 26, 1985 the Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 50 No. 58, a notice proposing approval of a Delayed Compliance Order (DCO) issued by the Pennsylvania Department of Environmental Resources to Containers Corporation of America. The basis for EPA's conclusions supporting the issuance of the DCO are set forth in that notice. The notice asked for public comments by April 25, 1985 on the EPA proposal.

No public comments were received in response to the notice. The delayed compliance order issued to Container Corporation of America is hereby approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Container Corporation of America on a schedule to bring its graphic arts facility in Montgomery County into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, § 129.67, a part of the federally-approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet section 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Container Corporation of America to delay compliance with SIP regulations covered by the Order until December 31, 1985. The company was unable to comply with these regulations prior to the completion date called for by the DCO because low solvent coatings were still being developed. EPA has determined that its approval of the Order shall be effective (the date of publication of this notice) because of the need to immediately place Container Corporation of America on a federally enforceable schedule under the Clean Air Act requiring compliance with the applicable requirements of the Implementation Plan.

List of Subject in 40 CFR Part 65

Air pollution control.

Dated: March 10, 1986.

Lee M. Thomas

Adminstrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

PART 65—DELAYED COMPLIANCE ORDER

2. By adding the following entry to the table in § 65.431 to read as follows:

§ 65.431 EPA Approval of State Delayed Compliance Orders Issued to major stationary sources.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Container Corporation of America.	Upper Providence Township, Montgomery County.	.....	Mar. 26, 1985.	Section 129.67 of Title 25.	Dec. 31, 1985.

[FR Doc. 86-6367 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-2, 201-11, 201-23, 201-24, 201-30, 201-32, and 201-33

[FIRMR Amdt. 7]

Management of Federal Automatic Data Processing Equipment Obsolescence

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation prescribes policies and procedures regarding management of obsolescence in the Federal automatic data processing equipment (ADPE) inventory. The purpose is to address aging ADPE inventory problems. The intent is to provide additional guidance to help agencies recognize the economic and technical obsolescence of Federal ADPE in order to target system replacement opportunities and thereby increase economy and efficiency of automatic data processing in the Government.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Phillip R. Patton, Policy Branch (KMPP), Information Resources Management Service, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) Basic policies were promulgated in January 1981 to provide guidance and a regulatory foundation upon which agencies can institute programs to replace economically outdated systems within the competitive acquisition process. The Comptroller General, in his December 15, 1980 report (AFMD-81-9), concluded ". . . that agencies inhibited by obsolescent computer systems should replace the equipment, when economically justified, as expeditiously as possible under the current competitive acquisition process." While the report contained recommendations directed to heads of Federal agencies, it also recommended ". . . that GSA issue guidance to the agencies outlining the criteria to be used and the cost comparisons to be made in determining economic obsolescence." On March 22, 1982, GSA circulated for agency review and comment proposed FPR and FPMR amendments addressing obsolescence and other issues. On April 23, 1982, a further explanation of the proposed obsolescence provisions was provided to agencies. (Sharing provisions contained in the March 22, 1982, proposal have been implemented in FIRMR Amendment 4 dated June 1985 (50 FR 27142, July 1, 1985.) In February, 1985, GSA published a paper entitled "Assessing ADPE Obsolescence in Major Federal Systems."

(2) Notice of proposed rulemaking regarding this action was published in the **Federal Register** (50 FR 24785, June 13, 1985). All comments received have been considered.

(3) As a result of public comments received on the proposed regulation, the portion regarding technology updates has not been promulgated. This action does not preclude GSA from assisting Federal agencies in individual cases where expeditious replacement is appropriate to achieve economy and efficiency. In any event, the rules of full and open competition must be followed when replacing outdated ADPE.

(4) The regulation provides for obsolescence reviews that are intended to identify outdated ADPE that should be replaced with newer, more economical ADPE.

(5) Clarification is provided that the present value discount factor be specifically included in the analysis for obsolescence.

(6) In an additional initiative, except for excess ADP Fund equipment, the screening period for excess and exchange/sale ADPE is reduced from 90 calendar days to 60 calendar days thereby accelerating the reuse and disposal process.

(7) Explanations for the changes being made by this issuance are shown below:

a. Part 201-2, Definitions of Words and Terms, is amended by adding two definitions to § 201-2.001, Definitions, that are essential to the treatment of issues relating to the obsolescence and reuse of ADPE: They are:

1. "Match list;"

2. "Outdated ADPE;" and

b. Part 201-11, Competition, is amended by adding § 201-11.002-2, Follow-on acquisitions under other than full and open competition, to ensure that the special justification provisions of FAR 6.302-1(a)(2)(ii) regarding follow-on contracts are not used to perpetuate any contract which involves obsolete ADPE.

c. Part 201-23, Delegation of Authority, is amended by changing § 201-23.104-1, Automatic data processing equipment (ADPE), to require a delegation of procurement authority for requirements for outdated ADP equipment at the same threshold level as that for only one responsible source or a specific make and model specification for ADPE.

d. Part 201-24, Acquisition Policies, is amended by adding § 201-24.206, Acquisition of outdated ADPE, to establish a general policy regarding the acquisition of outdated ADPE. Outdated ADPE shall not generally be a source of supply for the Government unless that ADPE is determined to be the lowest overall cost source.

e. Part 201-30, Management of ADP Resources, is amended, as follows:

1. Part 201-30.009, Analysis of alternatives for satisfying a requirement, is amended to require that newer functionally-similar ADPE alternatives be reviewed when the continued use of currently installed outdated ADPE is being considered as a viable alternative.

2. Section 201-30.009-2, Analysis for obsolescence, is added to provide policy guidance to agency managers in conducting an obsolescence review. It sets forth the cost factors that should be considered in the obsolescence review analysis. It also provides guidance as to when obsolescence reviews should be conducted on a priority basis.

f. Part 201-32, Contracting for ADP Resources, is amended as follows:

1. Section 201-32.203 is revised to provide that one of the other factors to be considered in determining the lowest overall cost for ADP equipment systems is whether the proposed ADPE is current technology and not outdated.

2. Section 201-32.206 is also revised to provide that the outdated ADPE acquisition policy provisions be applied to orders for outdated ADPE from GSA nonmandatory ADP schedules.

g. Part 201-33, Reuse of ADP Equipment, is revised to provide agency guidance on the reuse of outdated ADPE in conjunction with the treatment of the same subject in other FIRMR parts. Part 201-33 is amended as follows:

1. Section 201-33.003, Reutilization of excess ADPE, is revised to advise agencies that they should determine whether their ADP requirements can be efficiently and economically satisfied from the reuse program. Requests for reuse of outdated ADPE are subject to the provisions of § 201-33.012. Outdated ADPE will not generally be offered for agency screening for reuse.

2. Section 201-33.011, Reporting excess or exchange/sale ADPE, is revised to change the screening period for excess and exchange/sale ADPE from 90 calendar days to 60 calendar days. It is also changed to require agencies, when reporting "outdated" ADPE, to annotate the SF 120 accordingly.

3. A new § 201-33.012, Reuse of outdated ADPE, is added to this part to provide regulatory coverage on the reporting and reuse of outdated ADPE.

(8) The General Services Administration has determined that this rule is no a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or not net cost effect on society.

List of Subjects in 41 CFR Parts 201-2, 201-11, 201-23, 201-24, 201-30, 201-32, and 201-33.

Competition, Computer technology, Government records management, Government property management, Government procurement, Information resources activities, and Telecommunications.

PART 201-2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for Part 201-2 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201-2.001 is amended to add (alphabetically) definitions to read as follows:

§ 201-2.001 Definitions.

* * * * *

"Match list" means a GSA maintained list of agency requested outdated ADPE that will be screened against reported outdated ADPE.

* * * * *

"Outdated ADPE" means any ADPE that is over eight years old (based on the initial commercial installation date of the equipment) and is no longer in current production.

* * * * *

PART 201-11—COMPETITION

1. The table of contents of Part 201-11 is amended by adding an entry for § 201-11.002-2; and the authority citation for Part 201-11 continues to read as follows:

201-11.002-2 Follow-on acquisitions under other than full and open competition.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201-11.002-2 is added to read as follows:

§ 201-11.002-2 Follow-on acquisitions under other than full and open competition.

The special justification provisions of FAR 6.302-1(a)(2)(ii) regarding follow-on contracts shall not be used to perpetuate any contract for obsolete automatic data processing equipment (ADPE), or for ADPE used primarily to execute software that requires general redesign to satisfy mission needs in an economic and efficient manner. For these purposes, obsolete ADPE means ADPE for which an analysis under § 201-30.009-2 shows that cost savings are obtainable with newer ADPE technology.

PART 201-23—DELEGATIONS OF AUTHORITY

1. The authority citation for Part 201-23 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201-23.104-1 is amended by revising paragraph (c)(2) to read as follows:

§ 201-23.104-1 Automatic data processing equipment (ADPE).

* * * * *

(c) * * *

(2) $250,000 purchase price or basic monthly rental charges (including attendant maintenance costs) that do not exceed an annual rate of $100,000 for:

(i) Requirements available from only one responsible source;

(ii) Requirements using specific make and model specifications; or

(iii) Requirements for outdated ADPE or requirements that include one or more components of outdated ADPE when the outdated component's purchase price or rental charges exceed the applicable threshold in this paragraph (c)(2).

PART 201-24—ACQUISITION POLICIES

1. The table of contents for Part 201-24 is amended by revising the entry for § 201-24.206; and the authority citation for Part 201-24 continues to read as follows:

201-24.206 Acquisition of outdated ADPE.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201-24.206 is revised to read as follows:

§ 201-24.206 Acquisition of outdated ADPE.

(a) The acquisition of (1) outdated ADPE and (2) ADPE that is no longer being installed by the commercial (non-government) market to satisfy requirements for commercially available, general purpose ADPE, most often does not achieve lowest overall cost, price and other factors considered over the system/item life. This is due to factors such as higher price/performance ratios, lower reliability, decreased functionality, and higher energy consumption.

(b) Outdated ADPE and ADPE that is no longer being installed by the commercial (non-government) market shall not be acquired unless it is determined to be the lowest overall cost source for fulfilling the Government's need, price and other factors considered over the system/item life. None of the following actions shall be taken unless they achieve lowest overall cost, price and other factors considered, over the system/item life:

(1) Reuse of Government excess outdated ADPE. (See § 201-33.012.)

(2) Specification of outdated ADPE as a mandatory requirement in a Government solicitation.

(3) Award of a contract for delivery of outdated ADPE, including options to acquire additional optional quantities.

PART 201-30—MANAGEMENT OF ADP RESOURCES

1. The table of contents for Part 201-30 is amended by revising the entry for § 201-30.009-2; and the authority citation for Part 201-30 continues to read as follows:

201-30.009-2 Analysis of obsolescence.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201-30.009 is amended by revising the introductory text of paragraph (a), adding paragraph (b) and removing paragraph (c), to read as follows:

§ 201-30.009 Analysis of alternatives for satisfying a requirement.

(a) A comparative cost analysis shall be performed for each identified requirement or when planning (see § 201-16.002) indicates the possible existence of outdated ADPE. The purpose of the analysis is to determine which alternative will meet the user's needs at the lowest overall cost over the system/item life. The alternatives to be considered shall include, but are not limited to the following:

* * * * *

(b) Where the analysis includes evaluation of the continued use of outdated ADPE, the analysis shall also evaluate the newer functionally-similar ADPE alternatives. Identifiable and quantifiable costs that are directly related to the costs of obsolescence (e.g., maintenance and operation, energy consumption, floor space, personnel, and other applicable factors) shall be considered (see § 201-30.009-2(a)).

3. Section 201-30.009-2 is revised to read as follows:

§ 201-30.009-2 Analysis for obsolescence.

(a) An obsolescence review is a limited comparative cost analysis performed to determine whether total overall systems life cost savings are obtainable with newer ADPE technology, relative to operation of outdated ADPE (either the CPU or other components of the total mainframe ADP system). The analysis shall include (but not necessarily be limited to) consideration of the following items for both the existing outdated ADPE and the replacement ADPE as appropriate:

(1) System acquisition costs: Purchase price of replacement system or net lease cost of replacement system including emulators and simulators;

(2) System operating costs:

(i) Maintenance and operations costs (preventive maintenance and unscheduled downtime),

(ii) Energy cost (operating and cooling of central processing units (CPUs) and peripherals), and

(ii) Timesharing service to supplement capacity lost due to downtime;

(3) Hidden costs of equipment operation:

(i) Personnel (e.g., operators, programmers, and systems analysts) costs such as unscheduled personnel overtime and manual labor to replace normally automated functions, and

(ii) Floor space costs (CPUs, peripherals, and personnel);

(4) Auxiliary hardware costs:

(i) Uninterruptable power supplies,

(ii) Front end data communication processors,

(iii) Peripheral equipment controllers,

(iv) Communication adapters, and

(v) Hardware optimizers;

(5) Conversion cost, if applicable;

(6) Administrative costs of the acquisition process; and

(7) Present value of money (see § 201-24.208(b)).

(b) Agency ADP managers should give obsolescence reviews priority and should evaluate their ADPE resources for obsolescence regularly to determine whether the cost of operating outdated ADPE is greater than the cost of acquiring and operating technologically newer ADPE. Indicators of obsolescence include:

(1) Maintenance services or parts are becoming unavailable or are no longer provided by the original equipment manufacturer (OEM);

(2) An operating system is not or will no longer be supported by the OEM;

(3) Records indicate a degradation in equipment reliability affecting the supported mission;

(4) Maintenance costs are accounting for an increasingly higher portion of overall operating costs;

(5) Energy consumption, including necessary environmental control, is relatively high; and

(6) Non-compatibility with recent and more cost-effective software enhancements, such as automatic documentation, date dictionaries, coding optimizers, and extensive software libraries.

(c) When the cost of operating outdated ADPE is greater than the cost of acquiring and operating technologically newer ADPE, agencies should replace the equipment as expeditiously as possible under the current competitive acquisition process.

PART 201-32—CONTRACTING FOR ADP RESOURCES

1. The authority citation for Part 201-32 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 481(c).

2. Section 201-32.203 is amended by adding a new paragraph (h) and redesignating and revising paragraphs (h) and (i) as (i) and (j) respectively to read as follows:

§ 201-32.203 Factors to be considered in determining lowest overall cost for ADP equipment systems.

* * * * *

(h) The proposed ADPE represents current technology and is not outdated.

(i) The continued availability of operating system software support and maintenance services beyond the initial system/item life that would enhance the probability of reutilization of the ADPE within the Government.

(j) The potential for supporting other agencies through the ADP sharing program.

3. Section 201-32.206 is amended by revising paragraph (a)(2) to read as follows:

§ 201-32.206 Use of GSA nonmandatory ADP schedule contracts.

(a) * * *

(2) An order against a GSA nonmandatory ADP schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201-32.206 (but see § 201-11.002-2 where technical and requirements personnel use a specific make and model specification) and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. However, the use of a GSA nonmandatory ADP schedule contract for requirements available from only one responsible source shall be certified, justified, and approved in accordance with FAR 6.303 and 6.304. If responsible alternative sources are available (see FAR Part 7 for market survey procedures), the availability of items under a GSA nonmandatory ADP schedule contract shall not preclude or waive the requirement to seek (through alternative contracting procedures) the lowest overall cost alternative to meet the needs of the Government. In addition, the availability of those items under a GSA nonmandatory ADP schedule contract shall not preclude or otherwise detract from procuring the items (including peripheral equipment or items for augmenting an existing system) from a number of different sources if this action will be in the best interest of the Government. Any restrictive requirement (e.g., an "all or none" requirement or a requirement for "only new" equipment) shall not be used unless specifically justified. Also, any outdated ADPE ordered from a GSA nonmandatory ADP schedule must meet the acquisition policy provisions set forth in § 201-24.206.

* * * * *

PART 201-33—REUSE OF ADP EQUIPMENT

1. The table of contents for Part 201-33 is amended by adding § 201-33.012; and the authority citation for Part 201-33 continues to read as follows:

201-33-012 Reuse of outdated ADPE.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201-33.003 is revised to read as follows:

§ 201-33.003 Reutilization of excess ADPE.

Federal agencies shall determine whether their ADP requirements can be efficiently and economically satisfied by using excess or exchange/sale ADPE. Agency procedures shall include screening of availability lists. To obtain maximum reutilization and to minimize the procurement of new ADPE, excess and exchange/sale ADPE shall be made available for transfer to other Federal agencies in accordance with the provisions of this Part 201-33. Excess auxiliary or accessorial items with a

unit original acquisition cost (OAC) of $1,500 or less shall be made available for transfer to other Federal agencies in accordance with the provisions of FPMR Subpart 101-43.3. Any need for excess ADPE expressed by a Federal agency, including the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations, shall take precedence over disposal, provided such a need is made known to GSA prior to shipment or delivery in case of donation or prior to removal of the property from Government control in case of sale. Outdated ADPE will not be offered by GSA for agency screening; reuse shall be subject to the provisions of § 201-33.012.

3. Section 201-33.011 is amended by revising paragraphs (a), (c), and (d)(6) to read as follows:

§ 201-33.011 Reporting excess or exchange/sale ADPE.

* * * * *

(a) The SF 120 shall be submitted to the above address by the holding agency at least 60 calendar days before the anticipated release date as determined by the holding agency. This report is exempt from reports control in accordance with FRMR Subpart 101-45.6. Excess ADPE in the hands of Government contractors may be reported on an appropriate contractor inventory appended to an SF 120, provided that the reporting format includes an adequate commercial description and other appropriate data required by paragraph (b) of this section.

* * * *

(c) By the time Government-owned ADPE becomes excess to an agency's needs it may be outdated in relation to new technology, or the supplier may no longer produce the equipment or develop and maintain software necessary for the operation of equipment. Accordingly, information such as the availability of software packages, engineering drawings, maintenance manuals and other technical literature relating to Government-owned ADPE shall be included on the SF 120. The SF 120 shall include the notation "Outdated ADPE" when the ADPE meets the definition set forth in § 201-2.001.

(d) * * *

(6) The name and telephone number of the contracting officer. Until this information is received, the equipment will not be entered into exchange/sale screening. Exchange/sale reports received with inadequate screening time (in noncompliance with the 60 day requirement in this § 201-33.011), will be disapproved and entered into screening as excess ADPE. If there is any change to a cash or exchange offer subsequent to the submission of an SF 120, a revised SF 120 indicating the new cash or exchange offer shall be promptly submitted to GSA. Agencies will be advised promptly, in writing, of the date the original or revised SF 120 is received by GSA. Such equipment shall not be sold or exchanged prior to written authorization from GSA. (SF 120 is illustrated in Appendix E of the looseleaf edition of the FIRMR.)

4. Sections 201-33.012 is added to read as follows:

§ 201-33.012 Reuse of outdated ADPE.

(a) Outdated ADPE may be used to satisfy requirements only if it is the lowest overall cost means of fulfilling the Government need, price, and other factors considered over the system/item life. Requesting agencies shall conduct an obsolescence review in accordance with § 201-30.009-2 before they make a request to reuse outdated ADPE including exchange/sale and excess ADPE. GSA will not list outdated ADPE on availability lists. GSA will normally process the SF 120 for excess ADPE that is outdated directly to the GSA regions for surplus disposal after review as provided in paragraph (b) of this section. GSA will review the SF 120 for exchange/sale ADPE that is outdated prior to processing as provided in paragraph (b) of this § 201-33.012.

(b) Agencies may initiate action to request transfer and reuse of outdated ADPE in accordance with the following procedures.

(1) Under certain limited circumstances reuse of outdated ADPE will provide the lowest overall cost solution to satisfying an ADP requirement. When an agency determines it has such a requirement, it shall provide a description of the ADPE and a copy of the obsolescence review to GSA (KMA), Washington, DC 20405. This GSA office will review the justification and either (i) approve the request and advise GSA (KHE) to authorize transfer to the agency as an exception to normal procedures if such equipment is reported or (ii) advise the requesting agency of GSA denial of the reuse. When GSA (KMA) approves the request, GSA (KHE) will hold the request on a "match list" for review against incoming SF 120's and advise the requesting agency. When a match is made, the requesting agency will be authorized to submit an SF 122 to GSA in lieu of surplus disposal or reimbursable sale of the outdated ADPE. Agency requests will expire on the first anniversary of placement on the "match list" unless the requesting agency submits an extension request to GSA (KHE) stating that the equipment is still required. The extension shall expire after six additional months.

(2) If the SF 120 submission is for exchange/sale ADPE is outdated, GSA will notify the agencies on the "match list" of the amount of the exchange reimbursement anticipated to the holding agency. Requesting agencies shall, in response, determine whether the outdated ADPE will still provide the lowest overall cost solution when the reimbursement from the requesting agency to the holding agency is taken into account.

Note.—GSA publishes a listing of outdated ADPE periodically in a FIRMR bulletin published in Appendix B of the looseleaf edition of the FIRMR.

Dated: January 21, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-6313 Filed 3-21-86; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 42 and 47

[CGD 86-016]

Combination Load Lines

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule corrects an unintended inequity in the present load line regulations. Some unmanned deck cargo barges which operate in both the Great Lakes and the ocean (dual service) are limited in how deeply the barge may be loaded by two different stability requirements rather than by the use of the geometric freeboard tables applicable to the vast majority of vessels. Currently there is no specified method to display these different stability limitations on barges in ocean service. The current practice is to use a single International (oceans) load line mark corresponding to the ocean stability limitation. This places an unfair burden on these dual service barges because similar barges which operate exclusively on the Great Lakes are allowed to load to a deeper draft during the summer, using the Great Lakes summer load line mark. This interim final rule allows the use of the

equivalent of a Great Lakes summer load line mark on these dual service stability limited deck cargo barges.

EFFECTIVE DATE: April 23, 1986.

ADDRESSES: Written comments should be sent to Commandant (G-CMC) (CGD86-016), U.S. Coast Guard Headquarters, Washington, DC 20593. The comments and materials referenced in this notice will be available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-GMC), Coast Guard Headquarters, Room 2110, 2100 Second Street, SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Mrs. June E. Keller, Office of Merchant Marine Safety (G-MTH-5), Room 1308, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 426-2187.

SUPPLEMENTARY INFORMATION: Canonie Offshore Company, a Muskegon, Michigan company, brought an inequity in the load line marking requirements as applied to their barges which operate in both International (oceans) and Great Lakes service to the attention of the Coast Guard.

The load line mark represents the minimum freeboard (distance between the waterline and the main deck) at which a vessel may operate. Most deck cargo barges are assigned a freeboard based on the geometric characteristics of the barge (i.e., length, hull form, bow height, etc.). Due to their design, some deck cargo barges are assigned greater freeboards than those corresponding to the geometric characteristics in order to meet the stability requirements.

Deck cargo barges which operate in both International (oceans) and Great Lakes service normally receive a single International load line, applicable for all locations. The mark is based on the geometric freeboard or the freeboard dictated by the stability requirements for barges in ocean service (15 foot-degrees of intact stability righting energy (46 CFR 174.015(a)(1)), whichever provides the greater freeboard.

An International load line mark based on stability requirements for ocean service would limit the barge's load carrying capacity while on the Great Lakes in summer to less than that which would be allowed if it operated on the Great Lakes exclusively and was thus allowed to display a load line mark based on stability requirements for Great Lakes summer service (10 foot-degrees of intact stability righting energy (46 CFR 174.015(a)(2)).

There was no intent to prohibit stability limited unmanned deck cargo barges operating in both International and Great Lakes service from operating at the maximum load carrying capacity permitted other deck cargo barges operating solely on the Great Lakes. The problem had not been brought to our attention previously. The U.S. Coast Guard generally permits vessels to operate under different stability requirements in different areas. The seasonal load line marks must distinguish which stability standard is applicable according to geographic location and season.

The Coast Guard has resolved the current inequity by allowing the use of a Tropical (T) load line mark to represent Great Lakes summer service on these dual service stability limited barges. The (T) mark has been chosen because its application most closely parallels that of the Great Lakes summer season (April 16 through September 30) for vessels operating exclusively on the Great Lakes. The (T) mark on a vessel with an International load line applies in the Great Lakes for almost the same period, excluding only April 16 through April 30. A different unique load line mark to cover the seasonal period was not possible because the mark must be recognized by the International Load Line Convention. The use of the (T) mark on these barges will be limited to the Great Lakes.

The rule is being placed in a new part 47 in anticipation of consolidating other rules involving combination load lines in one location in a future rulemaking (CGD-86-013). A conforming amendment is also made to 46 CFR 42.03-5. The Coast Guard anticipates that this final rule will retain its interim status until publication of a final rule for CGD-86-013.

The Coast Guard finds good cause to publish an interim final rule without opportunity for notice and comment for the following reasons: (1) These regulations will resolve an unintended inequity in the current load line regulations; (2) There are no adverse safety or economic effects; and (3) The summer season on the Great Lakes for these vessels starts on 1 May. Delay in publication of the interim final rule may not allow eligible vessels to take advantage of this provision for the 1986 season. The Coast Guard finds that an opportunity for prior notice and public comment is unnecessary and contrary to the public interest.

Even though this is being published as an interim final rule, the Coast Guard welcomes comments thereon. Persons submitting comments should include their names and address, identify this rule (CGD86-016), and the specific section of the rule to which their comments apply, and give reasons for each comment. Persons desiring acknowledgment that their comments have been received should include a stamped, self-addressed postcard or envelope.

Drafting Information: The principal persons involved in drafting this document are Mrs. June E. Keller, Office of Merchant Marine Safety, and Commander Ronald C. Zabel, Office of the Chief Counsel.

Regulatory Evaluation: This interim final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 28, 1979). The economic impact of this interim final rule has been found to be so minimal that further evaluation is unnecessary. This interim final rule will be beneficial to the owners of the affected vessels, because the cargo carrying capacity of these barges will be increased on the Great Lakes during the summer months by approximately 5 percent. It is expected that only a small number of vessels would be affected because barges which have load lines are normally designed so their load carrying capacity is not limited by stability requirements.

Regulatory Flexibility Act: Since the impact of this interim final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act: The proposed rulemaking will not result in any increase in information collection requirements for these types of vessels.

List of Subjects

46 CFR Part 42

Coast Guard, Penalties, Vessels, Marine safety, Foreign trade, Treaties, Navigation (water).

46 CFR Part 47

Coast Guard, Vessels, Navigation (water), Marine safety.

For the reasons set out in the preamble, Subchapter E of Title 46, Code of Federal Regulations is amended as follows.

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

1. The authority citation for Part 42 is revised to read as follows and all other authority citations within the part are removed.

Authority: 46 App. U.S.C. 86; 88a; 49 CFR 1.46(46).

2. In § 42.03-5 paragraph (a)(3) is revised to read as follows:

§ 42.03-5 U.S.-flag vessels subject to the requirements of this subchapter.

(a) * * *

(3) All U.S.-flag vessels authorized to engage in foreign or international voyages may also engage in domestic voyages by sea and, as permitted by § 45.9 of this part and Part 47 of this subchapter, in Great Lakes voyages without additional load line marks and/or certificates. Where additional load line marks and certificates are provided to specifically cover "Special Service, Coastwise" or "Great Lakes" operation, such vessels are subject to the applicable provisions of Parts 44 and 45 of this subchapter.

* * * * *

3. Part 47 is added to read as follows:

PART 47—COMBINATION LOAD LINES

Subpart A—General

47.100 Purpose.
47.110 Definitions used in this part.

Subpart B—E [Reserved]

Subpart F—International and Great Lakes Service; Stability Limited Deck Cargo Barges

47.600 Description of service.
47.610 Conditions of assignment.
47.620 Loads line marks.
47.630 Restrictions.
47.640 Form of certificate.

Subpart G—[Reserved]

Authority: 46 App. U.S.C. 86; 88a; 49 CFR 1.46(b).

Subpart A—General

§ 47.100 Purpose.

(a) The purpose of the regulations in this part is to set forth simplified alternative marking schemes for those vessels operating in more than one service. Operating requirements for a given vessel could vary depending on the service, the season of the year, stability requirements, manning requirements and tonnage requirements. The conditions of assignment, restrictions applicable, form of the certificate and the load line marks are described.

§ 47.110 Definitions used in this part.

(a) "International service" means:

(1) A voyage by sea between a port under the jurisdiction of the United States and a port of a foreign country, its colonies, territories, or protectorates, or conversely (a voyage exclusively on the Great Lakes is excepted); or

(2) A voyage that proceeds beyond 20 nautical miles from the territorial sea baseline.

(b) "Great Lakes service" means a voyage from a United States port or place on the Great Lakes to another United States port or place on the Great Lakes or to a Canadian port or place on the Great Lakes, or conversely. In concurrence with related Canadian regulations, the waters of the St. Lawrence River west of a rhumb line drawn from Cap de Rosiers to West Point, Anticosti Island, and west of a line along 63° W. Longitude from Anticosti Island to the north shore of the St. Lawrence River shall be considered as part of the Great Lakes. In addition, the Victoria Bridge, Montreal, Canada, is the dividing line between fresh water and salt water in the St. Lawrence River.

Subpart B—E [Reserved]

Subpart F—International and Great Lakes Service; Stability Limited Deck Cargo Barges

§ 47.600 Description of service.

This subpart applies to deck cargo barges operating in International and Great Lakes service and meeting the conditions of assignment in § 47.610 of this subpart.

§ 47.610 Conditions of assignment.

Owners or operators of deck cargo barges which are draft limited by the intact stability requirements of 46 CFR 174.015 (a)(1) and (a)(2) may elect to be assigned load lines under this subpart in order to load to a draft corresponding to the intact stability requirement of 10 foot-degrees (46 CFR 174.015(a)(2)) while engaging in Great Lakes service during the summer season.

§ 47.620 Load line marks.

(a) A plimsoll mark (disc and line through center) applicable to International service must be placed at the draft corresponding to 15-degrees of righting energy as calculated in fulfilling the requirements of 46 CFR 174.015(a)(1).

(b) The seasonal ladder representing summer, winter, and winter North Atlantic seasons must be as shown in Figure 1 below.

(c) An equivalent Great Lakes summer seasonal line must be placed on the seasonal ladder at the draft corresponding to 10 foot-degrees of righting energy as calculated in fulfilling the requirements of 46 CFR 174.015(a)(2) and be marked with a (T).

(d) The fresh water mark may be omitted by request of the owner or operator.

§ 47.630 Restrictions.

(a) The mark (T) applies only to Great Lakes service from May 1 through September 30.

(b) Notations are to be placed on the face of the load line certificate to the effect that:

(1) The barge must be operated in compliance with the draft vs. cargo vertical center of gravity tables in the U.S. Coast Guard approved stability letter, and

(2) The mark (T) is applicable only for Great Lakes service from May 1 through September 30 as per 46 CFR 45.9

§ 47.640 Form of certificate.

The form of the certificate is as specified in § 42.50-5(b) of this subchapter with the exception that the illustrated load line marks are as shown in Figure 1 below.

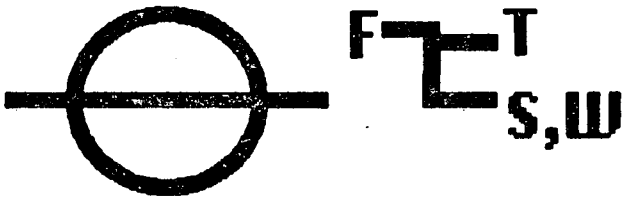

Figure 1. Load Line Marks

Subpart G—[Reserved]

W.J. Ecker,
Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.
March 17, 1986.

[FR Doc. 86-6172 Filed 3-21-86; 8:45 am]
BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73, 74, 76, and 78

Oversight of the Radio and TV Broadcast

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast station regulations in Parts 73, 74, 76, and 78 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts and contemporize as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: March 24, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:.

List of Subjects

47 CFR Part 73

Radio Broadcasting.

47 CFR Part 74

Radio Broadcasting, Television Broadcasting.

47 CFR Parts 76 and 78

Cable Television.

Order

In the matter of Oversight of the Radio and TV Broadcasting Rules.

Adopted: March 4, 1986.
Released March 7, 1986.

By the Acting Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast, Cable TV and Cable TV Relay Service rules. Modifications are made herein to update, delete, clarify or correct FCC regulations as described in the following amendment summaries:

(a) Section 73.68 was amended in the *Report and Order* in MM Docket 85-90 in November 1985.[1] One of the revisions changed paragraph (e) to (d). The paragraph, prior to the redesignation, ended by stating ". . . . and all other data obtained pursuant to this paragraph (e) of this section."

The rule writer failed to change the reference to "this paragraph (e) of this section" to (d).

Correction is made herein to simply state ". . . . and all other data obtained pursuant to this paragraph." (See appendix item 2).

(b) Section 73.69, Antenna monitors, cross references in paragraph (a)(2), § 73.53 "(c)(9)." Paragraph (c)(9) was changed to (b)(9) in an Order effective August 12, 1985. 50 FR 32414, August 12, 1985. The cross reference is corrected via this *Order*. (See appendix item 3).

(c) In an *Order* adopted in August 1985,[2] Section 73.182, Engineering standards of allocation, was amended, in part, by redesignating paragraphs (o) through (y) as (1) through (v). A cross reference to § 73.182, paragraph (w), remains in § 73.183(b). It is changed to read § 73.182(t) via this Order.

Also, in paragraph (n) of § 73.182, paragraph "(w)" of this same § 73.182 is again cross referenced; it is changed to correctly read paragraph (t). (See appendix items 4 and 5).

(d) In Subject C, Part 73, the rule for noncommercial FM stations, § 73.508, Standards of good engineering practice, states that all NCE FM stations (with over 10 watts output power) will be subject to the provisions of the technical standards found in Subpart B, commercial FM stations.

In the requirements regarding transmitter location found in § 73.315 of Subpart B, the rule states that a minimum field strength of 3.16 mV/m (or 70 dB above one mV/m (dBu) over the community of license is required. Questions have been raised by consulting engineers regarding applicability of this requirement to noncommercial FM stations.

It does not apply. The application form for construction permit for noncommercial stations is quite clear in this matter, requiring only a map exhibit showing the 1 mV/m contour.

In order to avoid continuing confusion, changes will be made in Section 73.315 to remove further obfuscation. (See appendix item 6).

(e) Section 73.702, Assignment and use of frequencies, was amended in the *Report and Order* in MM Docket 84-706 by revising paragraph (f).[3] The revision allowed International Broadcast stations located in Region 3 to use the 7100-7300 kHz frequency band.

The revision of paragraph (f) of this rule section was later modified, in October 1985,[4] as result of a petition for reconsideration of the *Report and Order*.

In the drafting of the rule amendment, in the *Report and Order*, new text was added to paragraph (f) as a footnote. It was this "footnote" which was further amended in the M.O. & O. In codifying the change, the footnote was lost in the text's transmission from the **Federal Register** to Title 47, Code of Federal Regulations.

This Order adds the lost "footnote" to paragraph (f), designating it as subparagraph (2)(i) thereto, and reformats the entire paragraph into a more orderly textual form by separating the whole into subparagraphs (f) (1), (2), (2)(i) and (3). (See appendix item 7).

(f) Section 399 of the Communications Act of 1934, as amended, prohibits editorializing by noncommercial educational broadcast stations. Prior to the section's amendment by Pub. L. 97-35, in August 1981,[5] it contained paragraph (a) and paragraph (b) with several subparagraphs thereto. The public law amended the section to its present single, unlettered paragraph.

A reference to "section 399(a), Communications Act," stated in § 73.1930, is revised herein to conform to the 1981 change in the Act by removing the incorrect paragraph "(a)" designation. (See appendix item 8).

(g) In the *Order*[6] which conformed the FCC rules to the amendments to section 311(c)(3) of the Communications Act, pursuant to Congressional action in 1982,[7] amendments were made in § 73.3525, Agreements for removing application conflicts. In part, the amendments removed paragraph (b) and redesignated paragraphs (c) through (i) as (b) through (h).

The newly designated paragraph (e) contains a cross reference to old paragraph (d) which was changed to paragraph (c). Failure to change this cross reference from (d) to (c) is remedied herein.

Further, a cross reference in newly denoted paragraph (b) refers to "(c)(2)," which will be changed to read "subparagraph (2) of this paragraph." (See appendix item 9).

(h) Some 15 years ago, the operators rules for AM radio[8] allowed "routine

[1] 50 FR 47051, November 14, 1985.

[2] *Order*. 50 FR 32414, August 12, 1985.

[3] *Report and Order* in MM Docket 84-706, Frequency Assignments for the International Broadcast Service, 50 FR 15146, April 17, 1985.

[4] *Memorandum Opinion and Order* in Docket 84-706, 50 FR 42528, October 21, 1985.

[5] Pub. L. 97-35, 95 Stat. 357, 730, August 31, 1981.

[6] *Order*. FCC 83-152, 48 FR 17590, April 25, 1983.

[7] Communications Amendments Act of 1982, Pub. L. 97-259, 96 Stat. 1087, Section 116(a).

[8] 47 CFR 73.93.

operation of the transmitting apparatus at a standard [sic] broadcast station with power of 10 kW or less and nondirectional antenna [to be] performed by an operator other than a radiotelephone first class operator. . . ." However, the licensee was required, in this event, to "either employ one or more operators, holding a valid radiotelephone first-class operator license, as a full-time member of the station staff or, in the alternative, *contract in writing for the services, on a part-time basis, of one or more such operators.* (Emphasis added)

In addition, the licensee was required to keep "a signed copy of the [contract] agreement . . . in the files of the station . . . and made available for inspection by any authorized representative of the Commission."

In § 73.3613, Filing of contracts, subparagraph (d)(4) states that licensees must keep available for FCC inspection, "contracts with chief operators *or other engineering personnel.*" (Emphasis added)

These "other engineering personnel" stated in this section are the contract first-class radiotelephone operators described above. Such requirements were eliminated with the licensed operator deregulation proceedings in the past decade. This reference to "other engineering personnel" is therefore removed.

The retention-in-station-file requirement, "contract with chief operators," will remain in § 73.3613(d)(4), pursuant to the chief operator rule, § 73.1870(b)(3) which states, in part: "agreement with chief operators serving on a contract basis must be in writing with a copy kept in the station files."

When § 73.3613, was revised, effective July 22, 1985 an amendment to the rule removed subparagraphs (a) (2), (5) and (6) and marked them [Reserved]. It is our practice, wherever possible, to keep rule texts free of such meaningless designations. Via this Order the designations "[Reserved]" found in subparagraphs (a) (2), (5) and (6) are removed, and the succeeding subparagraphs are redesignated by moving them up in numerical, sequential order. (See appendix item 10).

(i) The *Report and Order* in MM Docket 85-36, a "Review of Technical and Operational Requirements," deleted paragraph (a) of § 74.561, Frequency tolerance, and designated it "[Reserved]." The retained rule text is in the single remaining paragraph (b).

Since this has now become a one-paragraph rule, paragraph designations are superfluous. Therefore, the (b) designation is excised and its text becomes the single, undesignated rule text of § 74.561. The text, paragraph "(a) [Reserved]" is also removed. (See appendix item 11).

(j) Two cross references in Part 74 are incorrect, as stated, due to changes made in the referenced rule.

In Section 74.801, Definitions, a cross reference to § 76.5(11) is made. This paragraph in § 76.5 was revised to read (ee) in an *Order* effective August 12, 1985. (50 FR 32414, August 12, 1985.) The cross reference in § 74.801 is corrected.

In § 74.832, Licensing requirements and procedures (for low power auxiliary stations), paragraph (a)(3) refers to § 76.5 (w) and (x) Paragraph (x) was long ago removed, so no longer applies; paragraph (w) was redesignated paragraph (r) in the *Order* mentioned above, effective in August, 1985. The § 76.5(x) cross reference is removed from § 74.832 (since it no longer exists) and the reference to paragraph (w) is corrected to read 76.5(r). (See appendix items 12 and 13).

(k) The station ID requirements for FM translator and booster stations are stated in § 74.1283. There is a cross reference in paragraph (b) of the section referring to "the provisions of § 73.287. . . ." This reference is corrected to read "§ 73.1201," which reflects the change made some years ago when station ID rules, formerly in the AM, FM, and TV subparts were placed in this one rule section in subpart H of Part 73. (See appendix item 14).

(l) In Mass Media Docket 84-1296, the Commission undertook to conform its cable rules to the provisions of the Cable Communications Policy Act of 1984.

One of the changes adopted in the Report and Order [9] added a note to § 76.5, Definitions, following paragraph (a). It was designated "Note 2," and the existing note following paragraph (a) was denoted "Note 1."

A later amendment was made to § 76.5 in October 1985, wherein Note 1 was removed, The writer, failing to account for the addition of Note 2 the previous May, directed the removal of "the Note" in § 76.5. This inexact note removal directive resulted in Note 2 being inadvertently removed and Note 1 retained, thereby effecting the opposite of the desired goal of the October rule amendment. Herein, we will delete Note 1 (the original plan) and replace Note 2 designating it simply as "Note" since it now stands alone following paragraph (a). (See appendix item 15).

(m) Section 76.64, Carriage of STV programs and telecommunications services on the vertical blanking interval, cross references the provisions of five Part 76 rule sections. One of the referenced sections is § 76.63 which was removed from the rules in the CATV syndicated program exclusivity proceeding in 1980.[10] Reference to it is removed from § 76.64 herein. (See appendix item 16).

(n) The *Report and Order* in Mass Media Docket 85-61, changed the FCC's rules regarding equal employment opportunities in the cable industry.[11] The action was necessitated by passage of the Cable Communications Policy Act of 1984. Included in the rules' modifications adopted in the *Report and Order* was a new Subpart E in Part 76 entitled "Equal Employment Opportunity Requirements." This new subpart replaced § 76.311 which formerly held the equal employment requirements for cable systems.

The requirements for equal employment opportunities in Part 78, the Cable TV Relay Service (CARS) are found in § 78.75 which simply directs the rule user to "See § 76.311. . . ."

This directive must be changed to the new Subpart E, Part 76, and is accomplished herein. (See appendix item 17).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amemdments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, it is ordered, That pursuant to section 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73, 74, 76, and 78 of the FCC Rules and Regulations are amended as set forth in

[9] *Report and Order*, MM Docket 84-1296. 50 FR 18637, May 2, 1985.

[10] *Memorandum Opinion and Order*, Dockets 20988 and 21284, adopted July 22, 1980. 79 FCC 2d 652.

[11] 50 FR 40836, October 7, 1985.

the attached appendix, effective upon publication in the **Federal Register.**

6. For further information on this *Order,* contact Steve Crane, (202) 632-5414, Mass Media Bureau.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

Appendix

PARTS 73, 74, 76, AND 78 [AMENDED]

47 CFR Parts 73, 74, 76 and 78 are amended as follows:

1. The authority citation for Parts 73, 74, 76 and 78 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.68 is amended by revising paragraph (d)(4) to read as follows:

§ 73.68 Sampling systems for antenna monitors.

* * * * *

(d) * * *

(4) Request for modification of license shall be submitted to the FCC in Washington, DC, within 30 days of the date of sampling system modification or replacement. Such request shall specify the transmitter plate voltage and plate current, common point current, base currents and their ratios, antenna monitor phase and current indications, and all other data obtained pursuant to this paragraph.

* * * * *

3. 47 CFR 73.69 is amended by revising paragraph (a)(2) to read as follows:

§ 73.69 Antenna monitors.

(a) * * *

(2) The antenna monitor installed at a station operating a directional antenna by remote control, using extension meters to read and log the monitor indications or when the monitor is installed in the antenna field at a distance from the transmitter, must be designed and authorized for such use in accordance with the provisions of § 73.53(b)(9).

* * * * *

4. 47 CFR 73.182 is amended by revising paragraph (n) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(n) Objectionable interference from a station on an adjacent channel shall be considered to exist to a station when, at the normally protected contour of a desired station, the field strength of the ground wave of an undesired station operating on an adjacent channel (or the root-sum-square value of the field strengths of two or more such undesired stations operating on the same adjacent channel) exceeds a value specified in paragraph (t) of this section.

* * * * *

5. 47 CFR 73.183 is amended by revising paragraph (b), except the note, to read as follows:

§ 73.183 Groundwave signals.

* * * * *

(b) In determining interference based upon field strength measurements, it is necessary to do the following: First, establish the outer boundary of the protected service area of the desired station in the direction of the station that may cause interference to it. Second, at this boundary, measure the interfering signal from the undesired station. The ratio of the desired to the undesired signal given in § 73.182(t) should be applied to the measured signals and if the required ratio is observed, no objectionable interference is foreseen. When measurements of both the desired and undesired stations are made in one area to determine the point where objectionable interference from groundwave signals occur or to establish other pertinent contours, several measurements of each station shall be made within a few miles of this point or contour. The effective field of the antennas in the pertinent directions of the stations must be established and all measurements must be made in accordance with § 73.186.

* * * * *

6. 47 CFR 73.315 is amended by adding a Note to follow paragraph (a) to read as follows:

§ 73.315 Transmitter location.

(a) * * *

Note.—The requirements of paragraph (a) of this section do not apply to noncommercial educational FM broadcast stations.

* * * * *

7. 47 CFR 73.702 is amended by revising paragraph (f) to read as follows:

§ 73.702 Assignment and use of frequencies.

* * * * *

(f) Frequencies assigned by the FCC shall be within the following bands which are allocated exclusively to the international broadcast service;

(1) 5,950–6,200 kHz; 9,500–9,775 kHz; 11,700–11,975 kHz; 15,100–15,450 kHz; 17,700–17,900 kHz; 21,450–21,750 kHz; 25,600–26,100 kHz.

(2) In addition, the following band is allocated exclusively to the international broadcast service in Region 3:

7,100–7,300 kHz. Assignments in this frequency band will be limited to international broadcast stations located in the area designated as Region 3 by No. 395 of the International Radio Regulations and authorized only to transmit to zones and areas of reception situated outside Region 2 as defined in No. 394 of the International Radio Regulations. In addition, during the hours of 0800–1600 UTC (Coordinated Universal Time) antenna gain with reference to an isotropic radiator in any easterly direction that would intersect any area in Region 2 shall not exceed 2.15 dBi, except in the case where a transmitter power of less than 100 kW is used. In this case, antenna gain on restricted azimuths shall not exceed that which is determined in accordance with equation below. Stations desiring to operate in this band must submit sufficient antenna performance information to ensure compliance with these restrictions. Permitted Gain for Transmitter powers less than 100 kW:

$$Gi = 2.15 + 10 \log \left(\frac{100}{Pa} \right) \text{dBi}$$

Where:

Gi = maximum gain permitted with reference to an isotropic radiator.

Pa = Transmitter power employed in kW.

(3) The carrier frequencies assignable shall begin 5 kHz above the frequency specified above for the beginning of each band and shall be in sucessive steps of 5 kHz to and including 5 kHz below the frequency specified as the end of each band.

* * * * *

8. 47 CFR 73.1930 is amended by revising paragraph (b) to read as follows:

§ 73.1930 Political editorials.

* * * * *

(b) Inasmuch as noncommercial educational stations may not engage in editorializing nor may support nor oppose any candidate for political office (section 399, Communications Act), the provisions of paragraph (a) of this section, do not apply to such stations.

9. 47 CFR 73.3525 is amended by revising paragraphs (b)(6) and (e) to read as follows:

§ 73.3525 Agreements for removing application conflicts.

* * * * *

(b) * * *

(6) Where the FCC orders that further opportunity be afforded for other persons to apply for the facilities sought

to be withdrawn, no application of any party to the agreement will be acted upon by the FCC less than 30 days from the last day of publication of the notice specified in subparagraph (2) of this paragraph. Any applications for a broadcast station on the same frequency in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, filed within the 30-day period following the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), or otherwise timely filed, will be entitled to comparative consideration with other pending mutually exclusive applications. If the application of any party to which the new application may be in conflict has been designated for hearing, any such new application will be entitled to consolidation in the proceeding.

* * * * *

(e) Where an affidavit filed pursuant to paragraph (c) of this section states that consideration has been paid or promised, the affidavit shall set forth in full all relevant facts, including, but not limited to, the material listed in paragraph (a) of this section for inclusion in affidavits.

* * * * *

§ 73.3613 [Amended]

10. 47 CFR 73.3613 is amended by removing paragraphs (a)(2) [Reserved], (a)(5) [Reserved] and (a)(6) [Reserved] and redesignating paragraph (a)(3) and (a)(4) as (a)(2) and (a)(3) respectively.

§ 74.561 [Amended]

11. 47 CFR 74.561, Frequency tolerance, is amended by removing the designations (a) [Reserved] and (b) and retaining the text of (b) as the single, undesignated paragraph of this section.

12. 47 CFR 74.801 is amended by revising the definition of Cable television system operator to read as follows:

§ 74.801 Definitions.

Cable television system operator. A cable television operator is defined in 76.5(ee) of the rules.

* * * * *

13. 47 CFR 74.832 is amended by revising paragraph (a)(3) to read as follows:

§ 74.832 Licensing requirements and procedures.

(a) * * *

(3) A cable television system operator who operates a cable system that produces a program material for origination or access cablecasting, as defined in § 76.5(r).

* * * * *

14. 47 CFR 74.1283 is amended by revising paragraph (b) to read as follows:

§ 74.1283 Station identification.

* * * * *

(b) FM Broadcast booster stations shall be identified by their primary stations by the broadcasting of the primary station's call letters and location, in accordance with the provisions of § 73.1201 of this chapter.

* * * * *

15. 47 CFR 76.5 is amended by revising the Note following paragraph (a) to read as follows:

§ 76.5 Definitions.

(a) * * *

Note.—The provisions of Subparts D and F of this Part shall also apply to all facilities defined previously as cable systems on or before April 28, 1985.

* * * * *

16. 47 CFR 76.64 is revised to read as follows:

§ 76.64 Carriage of subscription television programs and telecommunications services on the vertical blanking interval.

The provisions of §§ 76.55, 76.57, 76.59 and 76.61 do not require carriage of any subscription TV program or any telecommunications service transmitted on the vertical blanking interval.

17. 47 CFR 78.75 is revised to read as follows:

§ 78.75 Equal employment opportunities.

See Subpart E, Part 76 of this chapter.

[FR Doc. 86-5800 Filed 3-21-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

[Docket No. 40211-4050]

Foreign Fishing; Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason allocation of reserve.

SUMMARY: NOAA issues this notice to allocate 51,030 metric tons (mt) of Atlantic mackerel reserve to the total allowable level of foreign fishing (TALFF). This action is allowed by regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). The intended effect of the allocation is to promote full utilization of the optimum yield by all harvesters of this fishery.

EFFECTIVE DATE: March 21, 1986.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600 extension 273.

SUPPLEMENTARY INFORMATION: Final initial specifications for the Atlantic mackerel, squid, and butterfish fisheries for the fishing year 1985-1986 became effective for Atlantic mackerel on May 14, 1985 (50 FR 20103) and for squid and butterfish on May 15, 1985 (50 FR 20215). The Atlantic mackerel specifications established a 51,050-mt reserve. Regulations at 50 CFR 655.23 provide a mechanism to allocate all or part of the Atlantic mackerel reserve to TALFF during each fishing year. A complete discussion of these procedures is found in the supplementary information section of the notice of proposed allocation of reserve (51 FR 5747, February 18, 1986) and is not repeated here. No comments were received during the 15-day comment period provided by the notice of proposed allocation. Therefore, the Secretary of Commerce allocates the 51,030 mt of reserve to TALFF, which now will total 102,100 mt. In the proposed allocation table an amount of 20 mt was listed in the reserve; this was incorrect. On January 9, 1986 (51 FR 959) NOAA transferred 20 mt of mackerel reserve to TALFF without adjusting the numerical specifications table. NOAA therefore corrects that error with this notice.

Bycatch TALFF specifications for *Loligo, Illex,* and butterfish will also increase, each by one percent of the mackerel reallocation (510 mt), as follows: *Lo ligo*—from 7,725 mt to 8,235 mt, *Illex*—from 3,900 mt to 4,410 mt, and butterfish-from 1, 145 mt to 1,655 mt.

The following table lists the sum of all adjustments because of this final notice of At lantic mackerel increase to TALFF. The table represents the latest specifications for the 1985-1986 fishing year for Atlantic mackerel, squid, and butterfish for the maximum optimum yield (Max OY), allowable catch (AC), allowable biological catch (ABC) (**NOTE:** The proposed squid ABCs as published February 18, 1986, were incorrect; the amounts below represent the correct amounts), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), Reserve, (if any), and total allowable level of foreign fishing (TALFF).

1985-1986 FISHING YEAR SPECIFICATIONS

[In metric tons]

	Squid		Butterfish	Atlantic mackerel
	Loligo	Illex		
Max OY	44,000	30,000	[1] 16,000	225,300
AC				225,300
ABC	33,000	25,000	[1] 16,000	
IOY	30,735	20,410	12,655	225,300
DAH	22,500	16,000	11,000	[2] 123,200
DAP	20,500	11,500	11,000	13,000
JVP	2,000	4,500		100,000
Reserve	0	0	0	0
TALFF	8,235	4,410	1,655	102,100

[1] Up to the figure given.
[2] Includes 10,200 mt for recreational catch.

Classification

This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 655

Fisheries.

(16 U.S.C. 1801 *et seq*)

Dated: March 19, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86-6370 Filed 3-21-86; 8:45 am]

BILLING CODE 3522-10-M

Proposed Rules

Federal Register
Vol. 51, No. 56
Monday, March 24, 1986

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Changes to the Procedural and Operational Details of the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on several changes to the procedural and operational details of the Raisins Diversion Program (RDP). The changes would: (1) Broaden the category of producer applicants receiving priority for program participation; (2) add authority for subjecting those approved applicants, who fail to follow through with their intention to remove vines, to legal and administrative sanctions; (3) clarify that order requirements are applicable to raisin handlers when redeeming diversion certificates just as though the raisins were acquired as new crop raisins; and (4) allow the Raisin Administrative Committee (Committee) to release to the handler the entire tonnage represented by diversion certificates. These changes were recommended by the Committee, which works with the U.S. Department of Agriculture (USDA) in administering the marketing order to improve RDP operations.

DATES: Comments must be received by April 3, 1986.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, Agricultural Marketing Service, USDA, Washington, DC 20250, Telephone: (202) 447-5053.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under Secretary's Memorandum No. 1512-1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 23 handlers of raisins will be subject to regulation under the Marketing Order for Raisins Produced from Grapes Grown in California during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued under this order impose some costs on affected handlers and the number of such firms may be substantial, the added burden imposed on small entities, if present at all, is not significant.

These proposals would amend Subpart Administrative Rules and Regulations (7 CFR 989.102—989.176; 50 FR 3879) by revising § 989.156 (d), (h), and (p), adding a new sentence to § 989.156(k), and changing the heading of § 989.156(g). The changes are intended to foster smoother more efficient diversion program operations. This subpart is operative pursuant to the marketing agreement and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

This proposed rule provides for a comment period of less than 30 days. A longer comment period would be contrary to the public interest. The final rule, if issued, needs to be made effective by April 15, 1986, in order to provide producers with adequate notice of the changes and the opportunity to withdraw prior to June 1, 1986. Under § 989.156(r) of the RDP rules and regulations, successful applicants have 10 days to withdraw from the program if they disagree with any program changes. June 1 is the date specified in § 989.156(h) of the RDP rules and regulations by which successful applicants must have removed their grapes or vines under the RDP.

The RDP, which was implemented for the first time in 1985, gives producers the means of voluntarily reducing the quantity of grapes grown for drying while receiving the equivalent quantity of raisins represented on diversion certificates to sell to handlers as though the raisins were produced in the current crop year. Since the establishment of the RDP, the raisin industry has been working to bring raisin supplies more in line with demand. In 1985, 60,000 tons of raisins were diverted from production. The Committee has designated over 100,000 tons of Natural Seedless raisins for the 1986 diversion program because raisin supplies are expected to again exceed market demand and normal carryover needs by that amount.

The first change would revise § 989.156(d) to allow producers, who agree to remove vines from a partial production unit, to receive the same priority as those who remove vines from an entire production unit. This change would encourage vine removal, which is the most effective way currently known for accomplishing program objectives.

The second change would add legal and administrative remedies to § 989.156(h) for those approved applicants who fail to follow through with their intention to remove vines as specifically stated on their application. Such producers shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of § 989.156, and may be denied the opportunity to participate in future programs. This would discourage

approved applicants from changing from vine removal to diversion by another method. In an oversubscription situation, when a lottery system is required, producers who indicate vine removal on their diversion applications but later decide to divert by another means would avoid the lottery system and deny other producers the opportunity to participate in the program. These measures are necessary to foster compliance and more effectively enforce the provisions of the diversion program.

The third change is in § 989.156(p) and would clarify that order requirements that are applicable to handlers when diversion certificates are redeemed. It is the Committee's intention to clarify that the raisin tonnage represented on diversion certificates be treated in the same manner as new crop raisins and to protect the interests of reserve pool equity holders. This includes any reserve pool obligations, payment of assessments, storing of reserve tonnage, and remedies in the event of handlers' failure to deliver reserve tonnage raisins. These requirements are applicable to reserve raisins released to handlers under the diversion program.

The last change is in § 989.156(k). It would allow the Committee to release to handlers the entire amount on the diversion certificate when certificates are redeemed. The current provisions only allow the Committee to release the free tonnage portion on the certificates to handlers. One year's program experience has shown that diversion certificates could be redeemed before free and reserve percentages have been computed and announced. Releasing the entire amount of reserve tonnage, regardless of whether free and reserve percentages are established, would allow handlers to treat the reserve raisins represented by diversion certificates the same as if a crop was produced and delivered to the handler.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Paragraphs (d), (h), (k) and (p) of § 989.156 are revised, and the heading of paragraph (g) is revised to read as follows:

Subpart—Administrative Rules and Regulations

§ 989.156 Raisin diversion program

* * * * *

(d) *Priority of applications and allocation of tonnage.* Those producer applicants indicating that the vines of the producing units or portions thereof will be removed, shall receive priority over other applicants when reserve tonnage under the program is to be allocated. Grafting vines of one varietal type to another varietal type does not constitute removal under the program. If the production volume in such applications exceeds the amount of diversion tonnage available under the program, a lottery will be held to allocate such diversion tonnage among the applicants. In conducting any lottery under this section, the Committee may group producer applications on a handler-by-handler basis, and separate lotteries will be held for each such group. The diversion tonnage of raisins available for each such group in each lotttery may not exceed the percentage of total handler acquisitions acquired by the group's handler during the previous crop year. To the extent diversion tonnage exists after such group lotteries, such remaining diversion tonnage may be allocated by one lottery of all remaining producer applications. If reserve tonnage exists under the program after the allocation of diversion tonnage has been made to all eligible producer applicants who remove vines, all other applications shall be considered. If the production volume in such applications exceeds the amount of reserve raisin tonnage remaining under the program, a lottery will be held to allocate the remaining diversion tonnage in the manner described above.

* * * * *

(g) *Verification.*

* * * * *

(h) *Compliance.*—(1) *Methods of diversion.* An approved applicant shall be required to take the necessary measures to preclude grapes from being produced and harvested on the production unit involved in the program. These measures may include spur pruning the vines, chemically removing the crop before maturity, hand removing and destroying the bunches of grapes before maturity, removing the vines, or any other method which prevents the grapes from naturing and being harvested. Grafting vines of one varietal type to another varietal type does not constitute removal of the vines under the program.

(2) *Period of diversion.* An approved applicant must remove the grapes, or vines, indicated on the application within the production unit or portion thereof designated in the application not later than June 1 of the crop year when a raisin diversion program is implemented.

(3) *Failure to divert.* Any raisin producer who does not take the necessary measures to remove the grapes on an approved production unit by June 1, or any raisin producer who has indicated the removal of vines or the intent to remove the vines and who does not remove such vines on an approved production unit or portion thereof by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the act, and may be denied the opportunity to participate in future diversion programs.

* * * * *

(k) *Redemption of certificates.* Any handler holding diversion certificates may redeem such certificates for reserve pool raisins from the Committee. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the established harvest costs plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting raisins as specified in § 989.401 for the entire tonnage shown on the certificate. Handlers who acquire diversion certificates from producers shall report acquisitions of such certificates and submit them for redemption in a manner and for the reporting periods provided in § 989.173(b) for the acquisition of raisins acquired from producers. The Committee shall issue a reserve release entitling the handler to an amount of reserve pool raisins equal to the entire tonnage shown on the certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled. Diversion certificates will only be valid and honored by the Committee if presented to it for redemption on or before February 15 of the crop year for which they were issued.

* * * * *

(p) *Handling of reserve pool tonnage released when diversion certificates are redeemed.* Handlers shall comply with the applicable provisions of the order and administrative rules and regulations for the reserve pool tonnage released under the raisin diversion program in the same manner as raisins acquired from producers. Such provisions shall include, but not be limited to, reporting,

satisfying reserve pool obligations, payment of assessments, storing reserve tonnage, and the remedies in the event of failure to deliver reserve tonnage raisins.

* * * * *

Dated: March 17, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-6280 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulation at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The proposed rule would: (1) Increase the minimum net worth requirement applicable to contracting warehousemen, (2) increase the maximum net worth requirement by adjusting the per bushel/hundredweight rate used to determine such requirement, (3) provide for the payment of application and inspection fees by warehousemen seeking initial approval to enter into a storage agreement with CCC and, (4) provide for the proration of the first year's contract fee if the initial contract approval date does not coincide with the annual renewal date.

CCC is also requesting comments regarding a proposed change in the annual renewal date for the Uniform Grain Storage Agreement (UGSA) and the Uniform Rice Storage Agreement (URSA) renewal from July 1 to April 1, beginning in 1987.

DATE: Comments must be received on or before April 23, 1986 in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Paul W. King, Director, Warehouse Division, U.S. Department of Agriculture, Agriculture Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013, (202) 447-4018 or 447-7433.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962, South Building, P.O. Box 2415, Washington DC 20013, (202) 447-5647.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." This action has been classified "not major" since implemention of the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has set forth Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the grain warehousing industry, financial institution requirements, and Federal contracting requirements during the past few years necessitate updating the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed.

The number of grain warehouse bankruptcies over the past several years has steadily increased. In fiscal year 1980 there were only 4 grain warehouse bankruptcies. This number has increased every year with 67 grain warehouse bankruptcies being recorded in fiscal year 1985. These bankruptcies, as well as changes in the marketing operations of warehousemen who are buying and selling the same products they also store, has increased the risk of loss to CCC and other depositors of grain in warehouses. The use of "delayed price" and "deferred payment" contracts as a marketing tool also has contributed to the possibility of increased losses to CCC and other grain depositors. Therefore, in order to reduce CCC's vulnerability to losses as a result of warehouse failures, it is proposed that the minimum net worth requirement for the approval of a warehouse to store CCC commodities be raised from $25,000 to $50,000 and the per bushel/hundredweight net worth ratio used to compute minimum net worth also be increased.

CCC also proposes to require the payment of application and inspection fees by grain and rice warehousemen seeking initial approval to enter into a UGSA or URSA. Such fees would be at the same rate as charged under the United States Warehouse Act (USWA) for initial approval which is $10 per 10,000 bushels of storage capacity or fraction thereof, but in no case less than $100 nor more than $1,000. This fee would be used to partially defray the cost to CCC of examining the warehouse and determining the financial acceptability of the warehouseman, as well as other administrative expenses which are incurred by CCC in determining whether a warehouseman

should be approved to enter into a UGSA or URSA with CCC.

CCC presently collects the full annual contract fee from warehousemen for the first contract year of the UGSA or URSA irrespective of when the contract is entered into during the contract year. It is proposed that the annual contract fee be prorated according to the number of full months for which the contract is to be effective.

CCC is also requesting comments regarding a proposed change in the annual contract renewal date from July 1 to April 1. The July 1 annual renewal date has caused problems for producers who harvest their grain in May and June and store their grain in commercial warehouses. These producers must select a commercial warehouse to store their harvested grain without knowing the storage and handling rates for the next contract year. An April 1 contract renewal date would eliminate this problem. If such a change is implemented, the 1986–87 contract year will be nine months rather than twelve months. Contract fees would be adjusted accordingly.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs, Agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, and Warehouses.

Proposed Rule

PART 1421—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 1421 be amended as follows:

1. The authority citation for 7 CFR Part 1421, Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed continues to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

2. In § 1421.5552, paragraph (a)(3) is revised to read as follows:

§ 1421.5552 Basic Standards.

* * * * *

(a) * * *

(3) Have a net worth which is the greater of $50,000 or an amount which is computed by multiplying the maximum storage capacity of the warehouse (the total quantity of the commodity which the warehouseman desires to store and which the warehouse can accommodate when stored in the customary manner) under the approved contract with CCC times twenty-five (25) cents per bushel in the case of grain, fifty (50) cents per hundredweight in the case of rough rice, eighty-five (85) cents per hundredweight in the case of milled rice, and sixty (60) cents per hundredweight in the case of dry edible beans. In the case of seed, the net worth of the warehouseman shall be at least equal to an amount which is computed by multiplying the estimated number of pounds of seed to be stored times seven (7) cents per pound. If this calculated net worth requirement exceeds $50,000, the warehouseman may satisfy any deficiency in net worth between the $50,000 minimum requirement and such calculated net worth requirement by furnishing bonds, irrevocable letters of credit, or other acceptable substitute security meeting the requirements of § 1421.5553.

* * * * *

3. Section 1421.5555, paragraph (b) is revised as follows:

§ 1421.5555 Exceptions.

* * * * *

(b) A warehouseman who has a net worth of at least $50,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

4. The heading to § 1421.5558 is revised and § 1421.5558 is amended by revising paragraph (a)(2), adding a new paragraph (a)(3) and by revising paragraph (b) to read as follows:

§ 1421.5558 Contract and Application and Inspection Fees.

(a) * * *

(2) All grain and rice warehousemen who do not have an existing agreement with CCC for the storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral but who desire such an agreement must pay an application and inspection fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination. The annual contract fee must be paid by the warehouseman to CCC prior to the time that the agreement is entered into.

(3) The contract fee will be prorated based upon the total number of months for which the contract is to be effective.

(b) The amount of the contract and application and inspection fees shall be determined and announced annually by the Executive Vice President, CCC.

Signed at Washington, D.C., on March 19, 1986.

Milt J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-6388 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AGL-4]

Proposed Establishment of Transition Area—Paxton, IL

Correction

In FR Doc. 86-5204 beginning on page 8334 in the issue of Tuesday, March 11, 1986, make the following correction: On page 8335, in the third column, in the fifth line of the amendment to § 71.181, "radial" is misspelled.

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No. 51191-5191]

Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: NOAA proposes to establish procedures to license operators of private land remote-sensing space systems in the United States under Title IV of the Land Remote-Sensing Commercialization Act of 1984, Pub. L. 98-365, 15 U.S.C. 2401 *et seq.* (the Act). NOAA believes the procedures in this Notice of Proposed Rulemaking (NPR) adequately protect the basic U.S. interests articulated by the Act, promoting national security, fulfilling international obligations, including the supervision required by Article VI of the Outer Space Treaty, and ensuring that access to unenhanced data is provided on a non-discriminatory basis. At the same time, the procedures in this NPR are intended to facilitate licensing and thereby aid in the development of a U.S. land-remote sensing industry.

Interested persons are invited to review the NPR and to submit comments on the proposed regulations.

DATES: Comments on the NPR must be received by May 23, 1986.

ADDRESSES: Comments should be sent to Peggy Harwood, NOAA, National Environmental Satellite, Data, and Information Service, FB-4, Room 2051, Washington, D.C. 20233. Phone (301) 763-4522.

FOR FURTHER INFORMATION CONTACT: Peggy Harwood at the address and telephone given above or John Milholland, NOAA, Office of General Counsel at (202) 254-7512.

SUPPLEMENTARY INFORMATION: Title IV of the Act requires that any person subject to the jurisdiction or control of the United States who intends to operate a private remote-sensing space system must obtain a license from the Secretary of Commerce. The authority to issue licenses has been delegated to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) and redelegated to the Assistant Administrator for the National Environmental Satellite, Data, and Information Service (NESDIS).

The Act sets forth detailed criteria for licensing decisions, and further refinement of the criteria by regulation is not generally necessary or useful. where, however, the Act is less specific, e.g., as it relates to national security considerations, NESDIS believes that further refinement is not feasible at this time as discussed later under section III. C.

Consequently, the NPR sets forth primarily procedural requirements for obtaining a license. NESDIS intends to establish as simple a process as possible consistent with ensuring that its review of applications will protect the limited U.S. interests articulated by the Act.

I. The Application Process (Subpart B)

Licensing procedures involve the following stages:

A. Pre-application consultation (Section 960.4)

Consultation is discretionary on the part of the applicant but early communication is encouraged to promote cooperation and avoid delay. If prospective applicants request consultation, NESDIS must comply; the address for filing a written request is provided.

B. Filing Applications (Section 960.5 & 960.6)

No particular form of application is specified, but any application must be signed by the appropriate official (section 960.5(b)) and must contain the information specified in section 960.6. This section requires only information strictly necessary to make the determinations required by section 401(b) of the Act and § 960.11 of the regulations. These determinations relate primarily to national security interests and international obligations and to ensuring that unenhanced data is available on a non-discriminatory basis. Section 960.8 sets forth procedures for treating the information submitted as confidential to the extent permitted under the Freedom of Information Act.

C. Initial Agency Review (Section 960.9)

NESDIS and the relevant federal agencies will have up to 21 days to review an application for sufficiency of information and request additional detail if needed. The Act provides for a review period of 120 days from receipt for a complete application (section 960.9(d)).

D. Insurance of License (Sections 960.10 thru 960.12)

It is anticipated that the Assistant Administrator will make a determination "as soon as practicable" within the statutory time limit of 120 days from receipt of a complete application. (section 960.10(a)). The criteria for approval reflect the primary concerns of the Act, national security, international obligations, and non-discriminatory access to unenhanced data. The provisions contained in the license itself are dictated in large part by the requirements of section 402(b) of the Act.

II. Enforcement Procedures (Subpart C)

Section 403(a) of the Act gives the Administrator various powers to ensure compliance with the Act, these regulations and the license. These powers include the power to modify, suspend, or terminate the license, impose civil penalties up to $10,000 per violation, and seize objects, records or reports when there is probable cause to believe they were, are, or are likely to be used in a violation. Section 402(a) of the Act entitles the licensee to an adjudication on the record including an agency hearing with respect to any such adverse action.

NOAA has developed detailed procedures generally applicable to a wide range of NOAA enforcement programs. These procedures, set forth in 15 CFR Part 904, are incorporated in relevant part in these regulations. The procedures for the assessment of civil penalties (15 CFR 904 subpart B) and the procedures for holding agency hearings (15 CFR 904 subpart C) are incorporated in full. Section 403(a)(1) of the Act authorizes the Administrator, after notifying the licensee, to require immediate termination of activities under a license if he or she determines that the licensee "has substantially failed" to comply with the Act, these regulations, or the terms and conditions of the license. The NOAA-wide permit sanction procedures in 15 CFR 904 subpart D are followed in principle, but not detail, in section 960.14 of these regulations.

Section 403(a)(2) of the Act authorizes the Administrator to inspect the equipment, facilities, or financial records of a licensee; setion 402(b)(7) specifies that the licensee must agree to such inspection as a condition of the license. Under section 960.12(e) of these regulations inspection may take place either prior to launch to verify that the specifications of the licensed system conform to those in the application, or during operations under the license to ensure compliance with it. Such inspection can occur at "any reasonable time."

III. Specific Issues

Reviewers may wish to address the following issues raised by the NPR.

A. Scope of Regulations

Section 402 of the Act requires that persons "subject to the jurisdiction or control of the United States" must obtain a license under Title IV of the Act in order to operate a private remote-sensing space system. The Act does not apply to foreign entities operating solely from foreign territory. There may be instances, however, where foreign operators will carry out some activities in the U.S. or in conjunction with U.S. entities, such as using U.S. launch vehicles. Section 960.2 of the regulations provides guidance on the type of activities which could subject a non-U.S. operator to U.S. jurisdiction or control for licensing purposes under the Act. The basic principle behind this section is that foreign companies competing with U.S. firms in the remote-sensing market should do so on an equal basis. On the other hand, the U.S. generally avoids extra-territorial application of its laws. Furthermore, trying to impose restrictions on foreign operators to ensure equality with U.S. firms could discourage such operators from dealing with U.S. companies, particularly where the foreign operator intends to sell data primarily in foreign markets. U.S. policy is not promoted by insisting on unenforceable licensing conditions or on losing U.S. business without any

practical gain. This section attempts to balance these competing interests.

It may be noted that use of a U.S. launch vehicle or platform does not by itself require a license but is a factor to be considered with other U.S.-based activities.

B. Value-Added Activities

Section 402(b)(9) of the Act requires an operator who intends to engage in "value-added activities" to notify NESDIS and provide a plan to ensure non-discriminatory access to the "unenhanced data" generated by the system. This section directs NESDIS to define what constitutes a "value-added activity" by regulation.

Under section 104(4) of the Act "unenhanced data" includes both unprocessed and minimally processed signals and film products. Section 104(4) defines some processes that are "minimal" (rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response) and some that are not (conclusions, manipulations, or calculations derived from signals or film products or the combination of the signals or film products with other data or information).

Clearly, any "minimal processing" does not constitute a "value-added activity" even though it may add to the usefulness of the product and even increase its market value. Conversely, what may be called "enhancement activities" generally are "value-added activities" although presumably there is some distinction or there would be no need for further definition.

The regulations distinguish between activities which alter or replace the "measured values" of "unenhanced data" and those which don't. "Measured values" are simply the numbers, shades, or colors assigned in some standardized system to represent the amount of radiation sensed in spectral band. Increasing the marketability alone, for example by enlarging or reducing a photo image, is not a "value-added activity".

Finally, the regulations confirm that private operators who intend to engage in remote-sensing activities to further their own commercial activities, such as oil exploration or timber management, must ensure non-discriminatory access to the useful unenhanced data that they generate. The definition specifies that an operator can engage in a "value-added activity" even though no resale is contemplated. Consequently, such operators must furnish the required plan and ensure equal access to the unenhanced data by other users (see also section 960.11(b)). This requirement is consistent with section 601(a) of the Act.

The Act defines in detail the elements of non-discriminatory access (Section 104(3)) and the regulations do not elaborate on these elements.

C. Further Definition of National Security and Foreign Policy Concerns

NESDIS recognizes that some prospective applicants may want greater certainty as to when NESDIS would deny or condition a license to protect national security or foreign policy interests. The relevant factors are reflected in the information requirements of section 960.6 but individual judgments are made in context affected by rapidly changing technology and must be made on a case-by-case basis.

D. Enforcement Procedures

In most cases the rights of licensees are fully defined by the procedures which have been developed by NOAA for its other regulatory programs. These procedures are contained in 15 CFR Part 904, the appropriate sections of which are incorporated in subpart C of these regulations.

A unique statutory authority not reflected in Part 904 is provided by section 403(a)(1) of the Act: the Administrator may immediately terminate activities under a license if he or she determines that the licensee has "substantially failed to comply with" the Act, these regulations, or the license. NESDIS does not further define what constitutes a "substantial" failure.

IV. Other Actions Associated With the Rulemaking

A. Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The proposed regulations establish the procedures for licensing private operators of land remote-sensing space systems in accordance with the criteria established by the Act. The regulations will not result in any direct, or major indirect, economic or environmental effect. They are intended to promote the U.S. land remote-sensing industry by facilitating the licensing process and by ensuring that foreign companies competing with U.S. companies in the remote-sensing market do so on an equal basis to the maximum extent practicable.

B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This proposed rule is essentially procedural and establishes a process intended to minimize any adverse impact on any entity—large or small—which may need a license to operate a remote-sensing space system. Because of the large size and cost of land remote-sensing projects, small businesses are unlikely to be able to amass the capital necessary to enter the field. The only involvement of small business concerns is likely to be as contractors or subcontractors who do not require a license. The General Counsel of the Department of Commerce has, therefore, certified that this regulation will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act of 1980 (Pub. L. 96–511)

The regulations contain certain information requirements which have not been reviewed by the Office of Management and Budget. These information requirements are being reviewed at this time and comments on them should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Commerce, NOAA. The regulations impose the minimal information requirements to allow informed decisions in implementing NOAA's licensing responsibilities under Title IV of the Act. Very few applications are expected.

D. National Environmental Policy Act

Publication of the proposed regulations does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

V. Final Rules

NOAA will issue final rules after the comments received in response to the Notice have been evaluated.

List of Subjects in 15 CFR Part 960

Scientific equipment, Space transportation and exploration.

Dated: November 18, 1985.

William P. Bishop,

Acting Assistant Administrator.

Accordingly, a new Part 960 of Title 15 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 960—PRIVATE LAND REMOTE-SENSING SPACE SYSTEMS

Subpart A—General

Sec.
960.1 Purpose.
960.2 Scope.
960.3 Definitions.

Subpart B—Application Process

960.4 Pre-application consultation.
960.5 General.
960.6 Information to be submitted with application.
960.7 Amendment, withdrawal, and termination of an application.
960.8 Confidentiality of information.
960.9 Review procedures.
960.10 Timely approval or denial of application and issuance of license.
960.11 Criteria for approval or denial.
960.12 Contents of license.

Subpart C—Enforcement Procedures

9060.13 General.
9060.14 License Sanctions.
9060.15 Civil penalties.
9060.16 Seizure.

Authority: 15 U.S.C. 2401, et seq.

Subpart A—General

§ 960.1 Purpose.

These regulations establish the minimum practicable procedures and informational requirements to license and supervise the operation of a private remote-sensing space system under Title IV of the Land Remote-Sensing Commercialization Act of 1984 (The Act). They are intended to facilitate the development of private operational remote-sensing space systems in the United States while carrying out the purposes of the Act, which include in particular:

(a) To preserve and promote the national security of the United States;

(b) To ensure that data from private operational remote-sensing space systems will be sold on a non-discriminatory basis; and

(c) To fulfill the international obligations of the United States.

§ 960.2 Scope.

The Act and these regulations apply to any person subject to the jurisdiction or control of the United States who operates a private remote-sensing space system either directly or through an affiliate or subsidiary. For the purposes of these regulations, a person, affiliate, or subsidary is subject to the jurisdiction or control of the United States if such person is:

(a) A U.S. Citizen;

(b) A corporation, partnership, association or other entity organized or existing under the laws of the United States;

(c) Any other private space system operator having substantial connections with the United States or deriving substantial benefits from U.S. law that support its international operations. Relevant connections include using a U.S. launch vehicle and/or platform, operating a spacecraft command and/or data acquisition station in the U.S., and processing the data at and/or marketing it from facilities within the U.S. The following examples are intended to illustrate the application of this subsection.

Example 1. A non-U.S. corporation launches an operational remote-sensing space system using a U.S. operated launch vehicle and/or a platform launched from U.S. territory. The company operates no speacecraft command ground station in the U.S. although it has technicians and suppervisors present in the U.S. to ensure integration of the foreign-built satellite or space system with the launch vehicle. The company acquires data directly from the space system and processes and distributes it from facilities outside the U.S., although it advertises the availability of data and/or information in U.S. publications.

The company is not subject to U.S. jurisdiction or control and requires no license for its remote-sensing activities.

Example 2. A company's operation is the same as in Example 1 except that it acquires, processes and distributes the data from one or more facilities within the U.S.

The company is subject to U.S. jurisdiction or control and requires a license.

Example 3. A company's operation is the same as in Example 2 except that it launches its remote-sensing space system on a non-U.S. launch vehicle from foreign territory.

The company is still subject to U.S. jurisdiction or control and requires a license.

Where ground activities in the U.S. are less extensive than those described above, such as mere operation of a command and data acquisition facility or a small retail distribution outlet, the Administrator will decide on an individual basis whether the operator is subject to U.S. jurisdiction or control for purposes of Title IV. In such cases, the use of a U.S. launch vehicle and/or platform may be significant although such use alone is not a sufficient connection.

Interested persons with questions may request a formal, binding opinion from the Administrator concerning the application of these regulations to their operation. Informal opinions by private operators of launch vehicles or other government agencies should not be relied upon.

§ 960.3 Definitions.

For the purposes of these regulations, the following terms have the following meanings:

Act means the Land Remote-Sensing Commercialization Act of 1984 (Pub. L. 98-365, 15 U.S.C. 4201 *et seq.*);

Administrator means the Administrator of NOAA, or his designee;

Affiliate means any person: (a) Which owns or controls more than 5% interest in the applicant or licensee, or (b) which is under common ownership or control with the applicant or licensee;

Application means any written request submitted under this part for: (a) Issuance of a license for the operation of a private remote-sensing space system; (b) transfer or renewal of any such license; or (c) an amendment to any such license as a result of a substantial change in any of the specified terms and conditions of the license;

Basic data set means data collected by any licensed private remote-sensing space system that: (a) Has been selected to be maintained by the United States Government in a public archive, and (b) shall remain distinct from any inventory of data that a system operator may maintain for sales and for other purposes. Section 602 of the Act ("Archiving of Data") sets forth the Government's interest and criteria for determining the "basic data set;"

Experimental data means data collected by the United States Government in experimental remote-sensing programs;

Measured values mean the assigned numbers, shades or colors, which represent, in some standardized system, an amount of electromagnetic radiation sensed in a spectral band.

NESDIS means the National Environmental Satellite, Data, and Information Service;

NOAA means the National Oceanic and Atmospheric Administration;

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity organized or existing under the laws of any nation.

Remote-sensing space system means any instrument or device or combination thereof and any related ground based facilities capable of sensing the Earth's surface from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of these regulations, small, hand-held cameras

shall not be considered remote-sensing space systems.

Subsidiary means an entity whose controlling interest is held by the applicant or licensee.

Unenhanced data means unprocessed or minimally processed signals or film products collected from a licensed remote-sensing space system. Such minimal processing may include rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response. Such minimal processing does not include conclusions, manipulations, or calculations derived from such signals or film products or the combination of the signals or film products with other data or information.

Value-added activity means any activity that substantially changes the information content of the unenhanced data by altering or replacing the measured values of an unenhanced data product or by combining unenhanced signals or film products with other data or information. Converting assigned values from one unit of measurement to another does not constitute a value-added activity and increasing the marketability or the price of an unenhanced data product does not by itself constitute a value-added activity. The product derived may be for sale, for any other form of distribution, or for the internal use of the system operator activity.

Subpart B—Application Process

§ 960.4 Pre-application consultation.

(a) Applicants are encouraged to consult with NOAA and other relevant federal agencies at the earliest possible planning stages. Such consultation may reveal design or data collection requirements that may be accommodated early at low cost or avoid costly changes in design or data collection characteristics. Consultation at the time a license application is being prepared may prove useful in defining informational requirements and in expediting review.

(b) *Consultation.* The Administrator shall consult upon request with any prospective applicant to assist the applicant in: (1) Properly preparing the application, and (2) contacting other Government agencies involved in the application review process in order to discuss the prospective application.

(c) *Request.* A prospective applicant who wishes to have a pre-application consultation should make such request in writing to the Assistant Administrator, National Environmental Satellite, Data, and Information Service, Washington, DC 20233.

§ 960.5 General.

(a) *Where to file.* Applications and all related documents shall be filed with the Assistant Administrator, National Environmental Satellite, Data, and Information Service (NESDIS), NOAA, Washington, DC 20233.

(b) *Form.* No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed as follows:

(1) For a corporation: By a principal executive officer at least at the level of vice-president.

(2) For a partnership or a sole proprietorship: by a general partner or proprietor, respectively; or

(3) For an association or other entity: by a principal executive officer.

(c) *Number of copies.* Eight (8) copies of each application must be submitted.

§ 960.6 Information to be submitted with application.

The following information on the applicant, and its affiliates and subsidiaries shall be provided by the applicant:

(a) The name, mailing address, telephone number and citizenship of the applicant and any affiliates or subsidiaries, and of each director or owner of greater than five (5) percent interest.

(b) A copy of the charter or instrument by which the applicant was formed and authorized to do business. If the applicant is a corporation its charter shall be certified by the Secretary of State or other appropriate authority of the jurisdiction in which incorporated.

(c) The name, address, and telephone number of a person upon whom service of all documents may be made.

(d) Adequate operational information regarding the applicant's remote-sensing space system on which to base review to ensure compliance with national security and international requirements including,

(1) The date of intended commencement of operations and the expected duration of such operations;

(2) The method of launch, and the name and location of the operator of the launch vehicle and the lanuch site;

(3) The range of orbits and altitudes requested for authorized operation;

(4) The range of spatial resolution or instantaneous field of view requested; and

(5) The spectral bands requested for authorized operation.

(e) The applicant's intended data acquisition and distribution plans, including:

(1) Plans for data transmission to the ground;

(2) Method of data distribution including scheduling plans and procedures;

(3) Location of major data distribution outlets;

(4) Data reproduction policy;

(5) Pricing policy;

(6) The names and addresses of any parties that will engage in the marketing of data on a contractual basis with the applicant, or its affiliates and subsidiaries; and

(7) Any other information necessary to satisfy the requirements of section 601 of the Act.

(f) Any plans that the applicant, or any affiliate or subsidiary may have for engaging in value-added activities, including a plan and pricing policy for ensuring non discriminatory access to unenhanced data.

(g) All existing or anticipated agreements regarding system operation between the applicant, its affiliates and subsidiaries, and any foreign nation, entity or consortium.

(h) Proposed method of disposition of any remote-sensing satellites owned or operated by the applicant.

In the case of an application for an amendment to an existing license, only modifications or additions to previously submitted information need be provided.

§ 960.7 Amendment, withdrawal, and termination of an application.

(a) If information in an application becomes materially inaccurate or incomplete after it is filed but before the license application proceeding is completed, the applicant must promptly file an amendment that contains the corrected or additional information. The applicant should follow the procedures specified in section 960.5 for an original filing.

(b) If the Administrator determines that any amendment constitutes a major and substantial change to the applicant's original proposal, the Administrator may:

(1) Suspend the time deadlines prescribed in the Act and these regulations for processing the application, pending review of the amendment; or

(2) Require the applicant to submit a new license application.

(c) An applicant may withdraw an application at any time before the license application review is completed by delivering or mailing a written notice of withdrawal to the Administrator.

(d) The Administrator shall terminate review of a license application if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) The applicant, after written notice by the Administrator pursuant to § 960.9(c), does not provide adequate additional information to complete the application within the time stated in the written notice and the Administrator elects to disapprove the application under § 960.10(b).

§ 960.8 Confidentiality of information.

(a) Any person who submits information pursuant to this part, considered to be a trade secret, or commercial or financial information that is privileged or confidential, may request in writing that the information be given confidential treatment. Such request should:

(1) Be submitted at the time of submission of the information; and

(2) State the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurence of a certain event, or permanently).

(b) Information for which confidential treatment is requested must be clearly marked with a legend such as "Proprietary Information" or "Confidential Treatment Requested." Where such marking proves impracticable, a cover sheet containing such legend must be securely attached.

(c) If a request for confidential treatment is received after the information itself is received, NESDIS will try to associate the request with copies of the information, but cannot guarantee that such efforts will be effective.

(d) Any request for confidential treatment may include a written justification, stating why the information is a trade secret, or commercial or financial information that is privileged or confidential, and describing:

(1) The commercial or financial nature of the information;

(2) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(3) The nature and extent of the competitive harm that would result from public disclosure of the information;

(4) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(5) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(6) The nature of the measures that have been and are being taken to protect the information from disclosure.

(e) Request for disclosure.

(1) Requests for disclosure of information submitted, reported, or collected pursuant to this part shall be in accordance with 15 CFR 903.7.

(2) NOAA will not usually determine whether confidential treatment is warranted until it receives a request for disclosure of the informtion, unless it would encourage the submission of information not required to be submitted under this part.

(3) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator will notify immediately the person who submitted the information and:

(i) Inform such person of the date by which NOAA must determine whether confidential treatment is warranted in order to comply with the request for disclosure (usually within 10 working days of receipt of the request); and

(ii) Inquire whether such person continues to request confidential treatment.

(4) If the person waives or withdraws a request for confidential treatment in full or in part, the person is strongly encouraged to deliver to NOAA a written statement to that effect. If the person confirms the request for confidential treatment, such person is strongly encouraged to deliver to NOAA a written statment is sufficient time for NOAA to fully consider it in making its formal determination (generally, not later than the close of business on the fourth working day after being notified under paragraph (e)(3) of this section . Such statment may:

(i) Address the issues listed in paragraph (d) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(ii) Update or supplement any statement previously submitted under paragraph (d) of this section; and

(iii) Present arguments against disclosure of the information.

(5) To the extent permitted by applicable law, part or all of any statement submitted under this section will be treated as confidential if so requested by the person submitting the response.

§ 960.9 Review procedures.

(a) The Administrator shall immediately forward a copy of any application or a summary thereof to the Department of Defense, the Department of State, and any other federal agencies determined to have a substantial interest in the proposed activity, such as the National Aeronautics and Space Administration, and the Department of Transportation. The Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant.

(b) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by Subpart B of these regulations. In making this determination the Administrator shall consider timely comments provided by the federal agencies consulted under paragraph (a) of this section.

(c) If the Administrator determines that all of the required information is not contained in the application, the Administrator may require by written notice to the applicant, that the applicant file further information, analysis, or explanation.

(d) If the Administration requires further information under paragraph (c) of this section, the time limitations prescribed by sectin 401(c) of the Act do not begin to run until the date on which the Administrator determines that the application appears to be complete and so notifies the applicant.

(e) Within sixty days of receipt of a complete application, each federal agency consulted under paragraph (a) of this section shall recommend approval or disapproval of the application. If an agency recommends disapproval, it shall state why it believes the application does not comply with any law or regulation within its area of responsibility and how it believes the application may be amended or the license conditioned to comply with the law or regulation in question.

§ 960.10 Timely approval or denial of application and issuance of license.

(a) The Administrator shall approve or deny a complete application as soon as practicable. If final action has not occurred within one hundred and twenty days agter receipt, the Administrator shall inform the applicant of any pending issues and of actions required to resolve them.

(b) If the Administrator denies the application, he or she shall provide the applicant with a concise statement in writing of the reasons therefor. Within 30 days after receipt of a notice of denial, the applicant may appeal by written notice to the Administrator and may request either an informal hearing or a formal hearing to be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C.

(c) As soon as practicable after the close of a hearing or, in the case of a formal hearing, the issuance of a recommended decision by the Administrative Law Judge, the

Administrator shall decide the matter and serve notice of the decision on the applicant. This decison shall be considered final agency action.

§ 960.11 Criteria for approval or denial.

Before approving an application and issuing a license or an amendment to a license, the Administrator shall find in writing that:

(a) The licensee will operate the system in a manner consistent with national security and the international obligations of the U.S.;

(b) The licensee will make available unenhanced data to all potential users on a non-discriminatory basis in accordance with sections 104(3) and 601 of the Act and, if the licensee or any affiliate or subsidiary will engage in any value-added activities, the plan required by section 402(9)(B) of the Act clearly separates all such value-added activities, whether conducted by the license itself or by any affiliate or subsidiary, from other activities involved in operating the system and ensures that any unenhanced data generated by the system will be made available to all potential users on a non-discriminatory basis;

(c) The licensee will make available to the Administrator all unenhanced data which the Administrator may request for a basic data set pursuant to section 602 of the Act; and

(d) If the space system will utilize a space platform owned or operated by the licensee, the licensee has agreed to dispose of such platform in a satisfactory manner.

In making the findings required by paragraph (a) of this section, the Administrator shall be entitled to rely upon the written recommendations of the Departments of Defense and State described in § 960.9(e).

§ 960.12 Contents of license.

Each license issued by the Administrator for the operation of a remote-sensing space system shall specify:

(a) The name and address of the person to whom the license is being issued, and the name and address of the agent for service of documents, if different;

(b) The effective date of the license and its duration;

(c) The characteristics of the system approved, including specifically:

(1) The range of orbits and altitudes authorized for operation;

(2) The range of spatial resolution or instantaneous field of view authorized; and

(3) The spectral bands authorized.

(d) Terms and conditions necessary to ensure:

(1) Compliance with any national security concerns and any international obligations specified by the Departments of Defense and State respectively; and

(2) Adherence to the approved plans for the licensee to make unenhanced data available to all potential users on a nondiscriminatory basis;

(e) That the licensee will make available to the Administrator any data requested for a basic data set on reasonable terms and conditions;

(f) That the licensee will notify the Administrator of any agreement which it intends to enter into with any foreign nation or entity or any consortium involving a foreign nation or entity at least 30 days before concluding such an agreement;

(g) That the licensee will allow the Administrator or other appropriate federal official access at any reasonable time to any facility or site of the licensee or any contrator of the licensee:

(1) To verify that the space system conforms to representations made in the license applicaiton; or

(2) To monitor activities of the licensee under the license and ensure compliance with the terms of the license;

(h) That the licensee will surrender the license and terminate all operations immediately upon notification that the Administrator has determined under section 403(a)(1) of the Act that the licensee has substantially failed to comply with any condition listed in this section;

(i) If the space system will utilize a civilian U.S. Government platform, that the licensee will reach an agreement with the appropriate agency to reimburse the Government for all related costs and to ensure that the use of the platform will not interfere with the government's mission;

(j) Appropriate provisions governing the disposition of any space platforms owned or operated by the licensee, including at a minimum sufficient advance notification to the Administrator of such disposition to allow review and approval of the procedures proposed.

(k) The conditions that require an amendment of the licensee including any change:

(1) In ownership of the licensee;

(2) In citizenship of: The president, proprietor, or other chief executive officer of the licensee and, if the licensee is a corporation, the chairman of the board of directors, or if the licensee is a partnership, a general or limited partner;

(3) In the operations of the licensee that would result in sensing activities outside the range of orbits and altitudes, the range of spatial resolution or instantaneous field of vision, or the spectral bands approved under paragraph (c) of this section, except in case of an emergency posing an imminent and substantial threat of harm to human life, property, the environment or the remote-sensing space system itself, in which cases the license shall attempt to obtain oral approval from the Administrator.

Subpart C—Enforcement Procedures

§ 960.13 General.

Section 403(a) of the Act authorizes the Administrator to take actions adverse to a licensee if the licensee fails to comply with the Act, these regulations, or any terms, conditions or restrictions in the license. These adverse actions are:

(a) License sanctions, including modification, suspension, and termination of any license;

(b) Civil penalties not to exceed $10,000 for each day of operation in violation of a license, regulation, or the Act; and

(c) Seizure of any object, record, or report if there is probable cause to believe that such object, record, or report is being or is likely to be used to commit a violation.

This subpart establishes uniform rules and procedures for these adverse actions.

§ 960.14 License sanctions.

(a) If the Administrator determines, on the basis of available information, that the licensee is not in compliance with any applicable provision of the Act, any regulation, or any license condition or restriction, the Administrator may issue the licensee a Notice of License Sanction (NOLS) proposing to:

(1) Revoke the license;

(2) Suspend the license for a specified period of time or until certain stated requirements are met, or both;

(3) Modify the license, to aid future enforcement efforts; or

(4) Terminate the license.

The NOLS will contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, or license allegedly violated;

(iii) The nature and duration of the proposed sanction; and

(iv) The effective date of the sanction, which is 30 days after the date of the NOLS unless the Administrator requires

immediate termination of some or all licensed activities under paragraph (c) or unless the licensee requests a hearing under paragraph (b) of this section.

The NOLS also may propose to assess a civil penalty in accordance with § 960.15.

(b) Within 30 days after receipt of the NOLS, the licensee may request a hearing by serving a written request on the Administrator either in person or by certified or registered mail, return receipt requested, at the Address specified in the NOLS. Such hearing shall be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C.

(c) If the Administrator determines that the licensee has substantially failed to comply with any provision of the Act, these regulations, or with term, condition, or restriction of the license, the NOLS will include a finding to this effect and may require immediate termination of some or all licensed operations. Any request for a hearing under paragraph (b) of this section will not delay immediate termination under this paragraph.

§ 960.15 Civil penalties.

Section 403(a)(3) of the Act authorizes the Administrator to assess civil penalties of up to $10,000 for any violation of any requirement of the Act, these regulations or any term or condition of a license. Each day of operation in violation constitutes a separate violation. Such penalties will be assessed in accordance with the procedures set forth at 15 CFR Part 904, Subpart B.

§ 960.16 Seizure.

(a) If the Administrator determines that there is probable cause to believe that any object, record, or report was used, is being used or is likely to be used in violation of the Act, these regulations or the requirements of any license, the Administrator may seize any such item and issue the licensee a Notice of Seizure (NOS) containing:

(1) A description of the object, record, or report seized;

(2) A concise statement of the facts believed to show use or possible use in a violation; and

(3) A specific reference to the provisions of the Act, regulation, or license allegedly vilolated.

Within 30 days after receipt of a NOS, the licensee may request a hearing by serving a written and dated request on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the notice. Such hearing shall be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C. For good cause shown, the Administrator may in his or her sole discretion return the seized item pending the outcome of the hearing.

[FR Doc. 86-6199 Filed 3-21-86; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 602]

LR-19-80

Unisex Annuity Tables

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income. Questions have arisen concerning the gender distinction in the existing tables and the outdated mortality experience upon which those tables are based. These regulations would affect taxpayers receiving amounts as annuities under annuity, endowment, or life insurance contracts for which they have paid premiums or other consideration and provide them with the guidance needed to determine the amount includible in gross income with respect to such contracts. This document also contains proposed regulations relating to the computations necessary to determine the amount excludable from an employee's gross income by allocation of contributions when the actual employer contributions are not known. This document also proposes to remove certain regulations relating to defined benefit plans that provided benefits for employees who were either self-employed or a shareholder-employee.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 8, 1986. The amendments to §§ 1.72-4, 1.72-5, 1.72-6, 1.72-7, 1.72-9, and 1.72-11 are proposed to be effective on July 1, 1986, and to apply to amounts received as an annuity after June 30, 1986. In addition, the proposed amendments to § 1.72-6 include transitional rules applicable to amounts received under contracts in which an amount is invested before July 1, 1986. The amendments to § 1.403 (b)-1 (d)(4)(iv) are proposed to be effective for taxable years beginning after July 1, 1986. The removal of §§ 1.401(a)-18 and 1.401(j) -1 through -6 is proposed to be effective for plan years beginning after December 31, 1983.

ADDRESS: Send comments and requests for a public hearing concerning the proposed amendments relating to the annuity tables to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-19-80], Washington, DC 20224.

Send comments and requests for a public hearing concerning IRC section 403(b) to Commissioner of Internal Revenue, Attention: CC:LR:T:EE-114-82, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

For further information concerning the proposed amendments relating to the annuity tables contact: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3238 (not a toll-free call).

For further information concerning IRC SECTIONS 401(a)(18), 401(j) or 403(b) CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T:EE-114-82). Telephone 202-566-3422 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Table of OMB Control Numbers (26 CFR Part 602). The proposed amendments would update and gender-neutralize the annuity tables used to determine the exclusion ratio applicable to amounts received as annuities under annuity, endowment, or life insurance contracts. Section 72 permits a taxpayer to exclude from gross income that part of any amount received as an annuity which bears the same ratio to such amount as the investment in the contract as of the annuity starting date bears to the expected return under the contract as of such date. If the expected return depends in whole or in part on the life expectancy of one or more individuals, the statute requires that the expected return be computed with reference to actuarial tables prescribed by the Secretary of the Treasury. Soon after section 72 was enacted in 1954, the Secretary published regulations containing tables based on 1937 individual annuitant mortality and distinguished by gender. The effect of

this gender distinction is that women are not entitled to exclude from gross income as high a proportion of the amount received as an annuity as men of the same age.

Revised Annuity Tables

These proposed amendments provide new tables that eliminate the gender distinction and are based on more recent mortality experience. The proposed tables are based, as are the tables currently in effect, on individual annuitant mortality. The 1983 experience table used to produce the annuity tables proposed in this document was developed by the Society of Actuaries and reflects application of improvement factors to a 1973 individual-annuitant experience table. See Report of the Committee to Recommend a New Mortality Basis for Individual Annuity Valuation (Derivation of the 1983 Table a) Vol. XXXIII, Transactions of the Society of Actuaries 675, 708 (1981). In addition, the proposed unisex tables assume that the population mix of males and females at each age is the same as that of individual annuitants. The individual-annuitant gender mix reflected in the proposed tables is based on the same Society of Actuaries study.

The Service and Treasury would appreciate any comments on these proposed amendments that focus on whether the assumptions used to develop the tables are appropriate for determining life expectancies of taxpayers receiving amounts taxable under section 72, especially those taxpayers who can be expected to use the section 72 annuity tables (rather than, for example, the three-year recovery rule of section 72(d)) to compute an exclusion ratio under section 72(b) and 72(c). In particular, the Service and Treasury would be interested in data, undifferentiated by gender, on the mortality experience of taxpayers receiving amounts to which section 72 applies.

Section 72 Transitional Rule

The exclusion ratio with respect to amounts received as an annuity after June 30, 1986, would generally be computed using the updated annuity tables proposed in this document. Two transitional rules are provided, however. The first applies to amounts received under a contract in which no amount was invested after June 30, 1986, and provides that the tables in the existing regulations would apply. The second transitional rule applies to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986. The second transitional rule is optional and would allow a taxpayer either to compute one exclusion ratio using the updated annuity tables, or to compute separate exclusion ratios with respect to the amounts invested in the contract before July 1, 1986, and the amounts invested after June 30, 1986. If the separate computation option were chosen, the tables in the existing regulations would be used to compute the exclusion ratio with respect to portions of the payments under the contract attributable to amounts invested in the contract before July 1, 1986, and the updated tables would be used to compute the exclusion ratio with respect to portions of payments under the contract attributable to amounts invested after June 30, 1986. The amount excludable from gross income would be the sum of the amounts determined by applying the two exclusion ratios to the amount received as an annuity.

The regulations provide that the transitional rules do not apply to an annuity contract with an annuity starting date occurring after June 30, 1986, if the contract provides, at the option of the annuitant or of any other person, for any form of payment or settlement that permits receipt of amounts under the contract in a form other than a life annuity. The transitional rules may not be used, for example, if the contract permits the taxpayer to withdraw the investment in the contract before the annuity starting date, to receive a lump sum in full discharge of the obligation under the contract, or to receive an annuity for a period certain (without regard to life expectancy) or its substantial equivalent. In effect, a contract that provides for these options is treated for purposes of the transitional rules as if the entire investment in the contract were made on the annuity starting date. Thus, the taxpayer must apply the updated, gender-neutral annuity tables proposed in this document to the entire investment in such a contract if the annuity starting date occurs after June 30, 1986.

Removal of Section 401(j) Regulations

Sections 401(a)(18) and 401(j) provided requirements that applied to defined benefit plans that provided benefits for employees who were either self-employed, within the meaning of section 401(c)(1), or a shareholder-employee within the meaning of former section 1379(d). Sections 237(b) and 238(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) repealed these sections. Under section 241(a) of TEFRA these amendments were effective for plan years beginning after 1983. The regulation sections under these repealed Code sections (§§ 1.401(a)–18 and 1.401(j)–6) are, therefore, proposed to be removed from the Code of Federal Regulations. Thus, for plan years beginning after December 31, 1983, these defined benefit plans would no longer be subject to these benefit limitations. These sections, and the regulations would, however, continue to apply to determine whether plan benefits satisfied the requirements for plan years beginning prior to January 1, 1984.

Amendment of Section 403(b) Regulations

Section 1.403 (b)–1 (d)(4) provides the computations necessary to determine the amount excludable from an employee's gross income under section 403(b) when the actual employer contributions made on behalf of an employee to a defined benefit plan are not known. The tables in that section have been removed and gender-neutral tables inserted in lieu thereof. The new tables use an interest rate of 8 percent and the mortality table found in Treas. Reg. § 20.2031–7 of the Estate Tax Regulations. Accordingly, Rev. Rul. 67–78, 1967–1 C.B. 94, which supplemented Table I at § 1.403 (b)–1 (d)(4)(iv), is made obsolete. The new tables are proposed to be effective for taxable years beginning after May 23, 1986.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

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

notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980. Comments on those requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

Drafting Information

The principal author of the regulations under section 72 is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. The principal author of the section 401 and 403 regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.401-0—1.425-1

Income taxes, Employee benefit plan, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 1 and 602 are as follows:

PART 1—INCOME TAX REGULATIONS

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

Authority: 26 U.S.C. 7805. * * * Sections 1.72-4, 1.72-5, 1.72-6, 1.72-7, 1.72-9, and 1.72-11 also issued under 26 U.S.C. 72(c).

Par. 2. Section 1.72-4 is amended by revising paragraphs (a), (d), and (e) to read as follows:

§ 1.72-4 Exclusion ratio.

(a) *General rule.* (1) (i) To determine the proportionate part of the total amount received each year as an annuity which is excludable from the gross income of a recipient in the taxable year of receipt (other than amounts received under (*a*) certain employee annuities described in section 72(d) and § 1.72-13, or (*b*) certain annuities described in section 72(o) and § 1.122-1), an exclusion ratio is to be determined for each contract. In general, this ratio is determined by dividing the investment in the contract as found under § 1.72-6 by the expected return under such contract as found under § 1.72-5. Where a single consideration is given for a particular contract which provides for two or more annuity elements, an exclusion ratio shall be determined for the contract as a whole by dividing the investment in such contract by the aggregate of the expected returns under all the annuity elements provided thereunder. However, where the provisions of paragraph (b)(3) of § 1.72-2 apply to payments received under such a contract, see paragraph (b)(3) of § 1.72-6. In the case of a contract to which § 1.72-6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, the exclusion ratio for purposes of this paragraph (a) is determined in accordance with § 1.72-6(d) and, in particular, § 1.72-6(d)(5)(i).

(ii) The exclusion ratio for the particular contract is then applied to the total amount received as an annuity during the taxable year by each recipient. See, however, paragraph (e)(3) of § 1.72-5. Any excess of the total amount received as an annuity during the taxable year over the amount determined by the application of the exclusion ratio to such total amount shall be included in the gross income of the recipient for the taxable year of receipt.

(2) The principles of subparagraph (1) may be illustrated by the following example:

Example. Taxpayer A purchased an annuity contract providing for payments of $100 per month for a consideration of $12,650. Assuming that the expected return under this contract is $16,000 the exclusion ratio to be used by A is $12,650-16,000; or 79.1 percent (79.06 rounded to the nearest tenth). If 12 such monthly payments are received by A during his taxable year, the total amount he may exclude from his gross income in such year is $949.20 ($1,200x79.1 percent).The balance of $250.80 ($1,200 less $949.20) is the amount to be included in gross income. If A instead received only five such payments during the year, he should exclude $395.50 (500x79.1 percent) of the total amounts received.

For an example of the computation of the exclusion ration in cases where two annuity elements are acquired for a single consideration, see paragraph (b)(1) of § 1.72-6.

(3) The exclusion ratio shall be applied only to amounts received as an annuity within the meaning of that term under paragraph (b) (2) and (3) of § 1.72-2. Where the periodic payments increase in amount after the annuity starting date in a manner not provided by the terms of the contract at such date, the portion of such payments representing the increase is not an amount received as an annuity. For the treatment of amounts not received as an annuity, see section 72(e) and § 1.72-11. For special rules where paragraph (b)(3) of § 172-2 applies to amounts received, see paragraph (d)(3) of this section.

(4) After an exclusion ratio has been determined for a particular contract, it shall be applied to any amounts received as an annuity thereunder unless or until one of the following occurs:

(i) The contract is assigned or transferred for a valuable consideration (see section 72(g) and paragraph (a) of § 1.72-10);

(ii) The contract matures or is surrendered, redeemed, or discharged in accordance with the provisions of paragraph (c) or (d) of § 1.72-11;

(iii) The contract is exchanged (or is considered to have been exchanged) in a manner described in paragraph (e) of § 1.72-11.

* * * * *

(d) *Exceptions to the general rule.* (1) Where the provisions of section 72 would otherwise require an exclusion ratio to be determined, but the investment in the contract (determined under § 1.72-6) is an amount zero or less, no exclusion ratio shall be determined and all amounts received under such a contract shall be includible in the gross income of the recipient for the purposes of section 72.

(2) Where the investment in the contract is equal to or greater than the total expected return under such contract found under § 1.72-5, the exclusion ratio shall be considered to be 100 percent and all amounts received as an annuity under such contract shall be excludable from the recipient's gross income. See, for example, paragraph (f)(1) of § 1.72-5. In the case of a contract to which § 1.72-6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this

paragraph (d)(2) is applied in the manner prescribed in § 1.72-6(d) and, in particular, § 1.72-6(d)(5)(ii).

(3)(i) If a contract provides for payments to be made to a taxpayer in the manner described in paragraph (b)(3) of § 1.72-2, the investment in the contract shall be considered to be equal to the expected return under such contract and the resulting exclusion ratio (100%) shall be applied to all amounts received as an annuity under such contract. For any taxable year, payments received under such a contract shall be considered to be amounts received as an annuity only to the extent that they do not exceed the portion of the investment in the contract which is properly allocable to that year and hence excludable from gross income as a return of premiums or other consideration paid for the contract. The portion of the investment in the contract which is properly allocable to any taxable year shall be determined by dividing the investment in the contract (adjusted for any refund feature in the manner described in paragraph (d) of § 1.72-7) by the applicable multiple (whether for a term certain, life, or lives) which would otherwise be used in determining the expected return for such a contract under § 1.72-5. The multiple shall be adjusted in accordance with the provisions of the table in paragraph (a)(2) of § 1.72-5, if any adjustment is necessary, before making the above computation. If payments are to be made more frequently than annually and the number of payments to be made in the taxable year in which the annuity begins are less than the number of payments to be made each year thereafter, the amounts considered received as an annuity (as otherwise determined under this subdivision) shall not exceed, for such taxable year (including a short taxable year), an amount which bears the same ratio to the portion of the investment in the contract considered allocable to each taxable year as the number of payments to be made in the first year bears to the number of payments to be made in each succeeding year. Thus, if payments are to be made monthly, only seven payments will be made in the first taxable year, and the portion of the investment in the contract allocable to a full year of payments is $600, the amounts considered received as an annuity in the first taxable year cannot exceed $350 ($600 × 7/12). See subdivision (iii) of this subparagraph for an example illustrating the determination of the portion of the investment in the contract allocable to one taxable year of the taxpayer.

(ii) If subdivision (i) of this subpargraph applies to amounts received by a taxpayer and the total amount of payments he receives in a taxable year is less than the total amount excludable for such year under subdivision (i) of this subparagraph, the taxpayer may elect, in a succeeding taxable year in which he receives another payment, to redetermine the amounts to be received as an annuity during the current and and succeeding taxable years. This shall be computed in accordance with the provisions of subdivision (i) of this subparagraph except that:

(*a*) The difference between the portion of the investment in the contract allocable to a taxable year, as found in accordance with subdivision (i) of this subparagraph, and the total payments actually received in the taxable year prior to the election shall be divided by the applicable life expectancy of the annuitant (or annuitants), found in accordance with the appropriate table in § 1.72-9 (and adjusted in accordance with paragraph (a)(2) of § 1.72-5), or by the remaining term of a term certain annuity, computed as of the first day of the first period for which an amount is received as an annuity in the taxable year of the election; and

(*b*) The amount determined under (*a*) of this subdivision shall be added to the portion of the investment in the contract allocable to each taxable year (as otherwise found). To the extent that the total periodic payments received under the contract in the taxable year of the election or any succeeding taxable year does not equal this total sum, such payments shall be excludable from the gross income of the recipient. To the extent such payments exceed the sum so found, they shall be fully includable in the recipient's gross income.

See subdivision (iii) of this subparagraph for an example illustrating the redetermination of amounts to be received as an annuity and subdivision (iv) of this subparagraph for the method of making the election provided by this subdivision.

(iii) The application of the principles of paragraph (d)(3) (i) and (ii) of this section may be illustrated by the following example:

Example. Taxpayer A, a 64 year old male, files his return on a calender year basis and has a life expectancy of 15.6 years on June 30, 1954, the annuity starting date of a contract to which § 1.72-2(b)(3) applies and which he purchased for $20,000. The contract provides for variable annual payments for his life. He receives a payment of $1,000 on June 30, 1955, but receives no other payment until June 30, 1957. He excludes the $1,000 payment from his gross income for the year 1955 since this amount is less than $1,324.50, the amount determined by dividing his investment in the contract ($20,000) by his life expectancy adjusted for annual payments, 15.1 (15.6-0.5), as of the original annuity starting date. Taxpayer A may elect, in his return for the taxable year 1957, to redetermine amounts to be received as an annuity under his contract as of June 30, 1956. For the purpose of determining the extent to which amounts received in 1957 or thereafter shall be considered amounts received as an annuity) to which a 100 percent exclusion ratio shall apply) he shall add $118.63 to the $1,324.50 originally determined to be receivable as an annuity under the contract, making a total of $1,443.13. This is determined by dividing the difference between what was excludable in 1955 and 1956, $2,649 (2×$1,324.50) and what he actually received in those years ($1,000) by his life expectancy adjusted for annual payments, 13.9 (14.4-0.5), as of his age at his nearest birthday (66) on the first day of the first period for which he received an amount as an annuity in the taxable year of election (June 30, 1956). The result, $1,443.13, is excludable in that year and each year thereafter as an amount received as an annuity to which the 100% exclusion ratio applies. It will be noted that in this example the taxpayer received amounts less than the excludable amounts in two successive years and deferred making his election until the third year, and thus was able to accumulate the portion of the investment in the contract allocable to each taxable year to the extent he failed to receive such portion in both years. Assuming that he received $1,500 in the taxable year of his election, he would include $56.87 in his gross income and exclude $1,443.13 therefrom for that year.

(iv) If the taxpayer chooses to make the election described in subdivision (ii) of this subparagraph, he shall file with his return a statement that he elects to make a redetermination of the amounts excludable from gross income under his annuity contract in accordance with the provisions of paragraph (d)(3) of § 1.72-4. This statement shall also contain the following information:

(*a*) The original annuity starting date and his age on that date,

(*b*) The date of the first day of the first period for which he received an amount in the current taxable year,

(*c*) The investment in the contract originally determined (as adjusted for any refund feature), and

(*d*) The aggregate of all amounts received under the contract between the date indicated in (*a*) of this subdivision and the day after the date indicated in (*b*) of this subdivision to the extent such amounts were excludable from gross income.

He shall include in gross income any amounts received during the taxable year for which the return is made in accordance with the redetermination made under this subparagraph.

(v) In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (d)(3) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(iii). This application may be illustrated by the following example:

Example. B, a male calendar year taxpayer, purchases a contract which provides for variable annual payments for life and to which § 1.72–2(b)(3) applies. The annuity starting date of the contract is June 30, 1990, when B is 64 years old. B receives a payment of $1,000 on June 30, 1991, but receives no other payment until June 30, 1993. B's total investment in the contract is $25,000. B's pre-July 1986 investment in the contract is $12,000. If B makes the election described in § 1.72–6(d)(6), separate computations are required to determine the amounts received as an annuity and excludable from gross income with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. In the separate computations, B first determines the applicable portions of the total payment received which are allocable to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. The portion of the payment received allocable to the pre-July 1986 investment in the contract is $480 ($12,000/$25,000 × $1,000). The portion of the payment received allocable to the post-June 1986 investment in the contract is $520 ($13,000/$25,000 × $1,000).

Second, B determines the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract allocable to the taxable year by dividing the pre-July 1986 and post-June 1986 investments in the contract by the applicable life expectancy multiple. The life expectancy multiple applicable to pre-July 1986 investment in the contract is B's life expectancy as of the original annuity starting date adjusted for annual payments and is determined under Table I of § 1.72–9 (15.1 (15.6–0.05)). The life expectancy multiple applicable to post-June 1986 investment in the contract is determined under Table V of § 1.72–9 (20.3 (20.8–0.5)). Thus, the pre-July 1986 investment in the contract allocable to each taxable year is $794.70 ($12,000–15.1), and the post-June 1986 investment in the contract so allocable is $640.39 ($13,000–20.3). Because the applicable portions of the total payment received in 1991 under the contract ($480 allocable to the pre-July 1986 investment in the contract and $520 allocable to the post-June 1986 investment in the contract) are treated as amounts received as an annuity and are excludable from gross income to the extent they do not exceed the portion of the corresponding investment in the contract allocable to 1991 ($794.70 Pre-July 1986 investment in the contract and $640.39 post-June 1986 investment in the contract), the entire amount of each applicable portion of the total payment is excludable from gross income. B may elect, in the return filed for taxable year 1993, to redetermine amounts to be received as an annuity under the contract as of June 30, 1992. The extent to which the amounts received in 1993 or thereafter shall be considered amounts received as an annuity is determined as follows:

Pre-July 1986 investment in the contract allocable to taxable years 1991 and 1992 ($794.70 × 2)	$1,589.40
Less: Portion of total payments allocable to pre-July 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992	480.00
	1,109.40
Divided by: Life expectancy multiple applicable to pre-July 1986 investment in the contract for B, age 66 (14.4—0.5)	13.9
	79.81
Plus: Amount originally determined with respect to pre-July 1986 investment in the contract	794.70
Pre-July 1986 amount	874.51
Post-June 1986 investment in the contract allocable to taxable years 1991 and 1992 ($640.39 × 2)	$1,280.78
Less: Portion of total payments allocable to post-June 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992	520.00
	760.78
Divided by: Life expectancy multiple applicable to post-June 1986 investment in the contract for B, age 66 (19.2—0.5)	18.7
	40.68
Plus: Amount originally determined with respect to post-June 1986 investment in the contract	640.39
Post-June 1986 amount	681.07

(vi) The method of making an election to perform the separate computations illustrated in paragraph (d)(3)(v) of this section is described in § 1.72–6(d)(6).

(e) *Exclusion ratio in the case of two or more annuity elements acquired for a single consideration.* (1)(i) Where two or more annuity elements are provided under a contract described in paragraph (a)(2) of § 1.72–2, an exclusion ratio shall be determined for the contract as a whole and applied to all amounts received as an annuity under any of the annuity elements. To obtain this ratio, the investment in the contract determined in accordance with § 1.72.–6 shall be divided by the aggregate of the expected returns found with respect to each of the annuity elements in accordance with § 1.72–5. For this purpose, it is immaterial that payments under one or more of the annuity elements involved have not commenced at the time when an amount is first received as an annuity under one or more of the other annuity elements.

(ii) The exclusion ratio found under subdivision (i) of this subparagraph does not apply to:

(*a*) An annuity element payable to a surviving annuitant under a joint and survivor annuity contract to which section 72(i) and paragraphs (b)(3) and (e)(3) of § 1.72–5 apply, or to

(*b*) A contract under which one or more of the constituent annuity elements provides for payments described in paragraph (b)(3) of § 1.72–2.

For rules with respect to a contract providing for annuity elements described in (*b*) of this subdivision, see subparagraph (2) of this paragraph.

(2) If one or more of the annuity elements under a contract described in paragraph (a)(2) of § 1.72–2 provides for payments to which paragraph (b)(3) of § 1.72–2 applies:

(i) With respect to the annuity elements to which paragraph (b)(3) of § 1.72–2 does not apply, an exclusion ratio shall be determined by dividing the portion of the investment in the entire contract which is properly allocable to all such elements (in the manner provided in paragraph (b)(3)(ii) of § 1.72–6) by the aggregate of the expected returns thereunder and such ratio shall be applied in the manner described in subdivision (i) of subparagraph (1); and

(ii) With respect to the annuity elements to which paragraph (b)(3) of § 1.72–2 does apply, the investment in the entire contract shall be reduced by the portion thereof found in subdivision (i) of this subparagraph and the resulting amount shall be used to determine the extent to which the aggregate of the payments received during the taxable year under all such elements is excludable from gross income. The amount so excludable shall be allocated to each recipient under such elements in the same ratio that the total of payments he receives each year bears to the total of the payments received by all such recipients during the year. The exclusion ratio with respect to the amounts so allocated shall be 100 percent. See paragraph (f)(2) of § 1.72–5 and paragraph (b)(3) of § 1.72–6.

(iii) In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (e) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(iv).

Par. 3. Section 1.72–5 is amended by revising paragraphs (a), (b), and (e), and

adding a new paragraph (g) to read as follows:

§ 1.72-5 Expected return.

(a) *Expected return for but one life.* (1) If a contract to which section 72 applies provides that one annuitant is to receive a fixed monthly income for life, the expected return is determined by multiplying the total of the annuity payments to be received annually by the multiple shown in Table I or V (whichever is applicable) of § 1.72-9 under the age (as of annuity starting date) and, if applicable, sex of the measuring life (usually the annuitant's). Thus, where a male purchases a contract before July 1, 1986, providing for an immediate annuity of $100 per month for his life and, as of the annuity starting date (in this case the date of purchase), the annuitant's age at his nearest birthday is 66, the expected return is computed as follows:

Monthly payment of $100×12 months equals annual payment of	$1,200
Multiple shown in Table 1, male, age 66	14.4
Expected return (1,200×14.4)	17,280

If, however, the taxpayer had purchased the contract after June 30, 1986, the expected return would be $23,040, determined by multiplying 19.2 (multiple shown in Table V, age 66) by $1,200.

(2) (i) If payments are to be made quarterly, semiannually, or annually, an adjustment of the applicable multiple shown in Table 1 or V (whichever is applicable) may be required. A further adjustment may be required where the interval between the annuity starting date and the date of the first payment is less than the interval between future payments. Neither adjustment shall be made, however, if the payments are to be made more frequently than quarterly. The amount of the adjustment, if any, is to found in accordance with the following table:

If the number of whole months from the annuity starting date to the first payment date is—	0-1	2	3	4	5	6	7	8	9	10	11	12
And the payments under the contract are to be made:												
Annually	+0.5	+0.4	+0.3	+0.2	+0.1	0	0	−0.1	−0.2	−0.3	−0.4	−0.5
Semiannualy	+.2	+.1	0	0	−.1	−.2						
Quarterly	+.1	0	−.1									

Thus, for a male, age 66, the multiple found in Table I, adjusted for quarterly payments the first of which is to be made one full month after the annuity starting date, is 14.5 (14.4+0.1); for semiannual payments the first of which is to be made six full months from the annuity starting date, the adjusted multiple is 14.2 (14.4−0.2); for annual payments the first of which is to be made one full month from the annuity starting date, the adjusted multiple is 14.9 (14.4+0.5). If the annuitant in the example shown in subparagraph (1) of this paragrpah were to receive an annual payment of $1,200 commencing 12 full months after his annuity starting date, the amount of the expected return would be $16,680 ($1,200×13.9 [14.4−0.5]). Similarly, for an annuitant, age 50, the multiple found in Table V, adjusted for quarterly payments the first of which is to be made one full month after the annuity starting date, is 33.2 (33.1+0.1); for semi-annual payments the first of which is to be made six full months from the annuity starting date, the adjusted multiple is 32.9 (33.1−0.2); for annual payments the first of which is to be made one full month from the annuity starting date, the adjusted multiple is 33.6 (33.1+0.5).

(ii) Notwithstanding the table in subdivision (i) of this subparagraph, adjustments of multiples for early or other than monthly payments determined prior to February 19, 1956, under the table prescribed in paragraph 1(b)(4) of T.D. 6118 (19 FR 9897, C.B. 1955-1, 699), approved December 30, 1954, need not be redetermined.

(3) If the contract provides for fixed payments to be made to an annuitant until death or until the expiration of a specified limited period, whichever occurs earlier, the expected return of such temporary life annuity is determined by multiplying the total of the annuity payments to be received annually by the multiple shown in Table IV or VIII (whichever is applicable) of § 1.72-9 for the age (as of the annuity starting date) and, if applicable, sex of the annuitant and the nearest whole number of years in the specified period. For example, if a male annuitant, age 60 (at his nearest birthday), is to receive $60 per month for five years or until he dies, whichever is earlier, and there is no post-June 1986, investment in the contract, the expected return under such a contract is $3,456, computed as follows:

Monthly payments of $60×12 months equals annual payment of	$720
Multiple shown in Table IV for male, age 60, for term of 5 years	4.8

Expected return for 5 year temporary life annuity of $720 per year ($720×4.8)	$3,456

If the annuitant purchased the same contract after June 30, 1986, the expected return under the contract would be $3,528, computed as follows:

Monthly payments of $60×12 months equals annual payment of	$720.00
Multiple shown in Table VIII for annuitant, age 60, for term of 5 years	4.9
Expected return for 5-year temporary life annuity of $720 per year ($720×4.9)	$3,528.00

The adjustment provided by subparagraph (2) of this paragraph shall not be made with respect to the multiple found in Table IV or VIII (whichever is applicable).

(4) If the contract provides for payments to be made to an annuitant for the annuitant's lifetime, but the amount of the annual payments is to be decreased after the expiration of a specified limited period, the expected return is computed by considering the contract as a combination of a whole life annuity for the smaller amount plus a temporary life annuity for an amount equal to the difference between the larger and the smaller amount. For example, if a male annuitant, age 60, is to receive $150 per month for five years or until his earlier death, and is to receive $90 per month for the remainder of his lifetime after such five years, the expected return is computed as if the annuitant's contract consisted of a whole life annuity for $90 per month plus a five year temporary life annuity of $60 per month. In such circumstances, the expected return if there is no post-June 1986 investment in the contract is computed as follows:

Monthly payments of $90×12 months equals annual payment of	$1,080
Multiple shown in Table I for male, age 60	18.2
Expected return for whole life annuity of $1,080 per year	$19,656
Expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a))	$3,456
Total expected return	$23,112

If the annuitant purchased the same contract after June 30, 1986, the expected return would be $29,664, computed as follows:

Monthly payments of $90×12 months equals annual payment of	$1,080
Multiple shown in Table V for annuitant, age 60	24.2
Expected return for whole life annuity of $1,080 per year	$26,136
Plus: Expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a))	$3,528
Total expected return	$29,664

If payments are to be made quarterly, semiannually, or annually, an appropriate adjusment of the multiple found in Table I or V (whichever is applicable) for the whole life annuity should be made in accordance with subparagraph (2) of this paragraph.

(5) If the contract described in subparagraph (4) of this paragraph provided that the amount of the annual payments to the annuitant were to be increased (instead of decreased) after the expiration of a specified limited period, the expected return would be computed as if the annuitant's contract consisted of a whole life annuity for the larger amount minus a temporary life annuity for an amount equal to the difference between the larger and smaller amount. Thus, if the annuitant described in subparagraph (4) of this paragraph were to receive $90 per month for five years or until his earlier death, and to receive $150 per month for the remainder of his lifetime after such five years, the expected return would be computed by subtracting the expected return under a five year temporary life annuity of $60 per month from the expected return under a whole life annuity of $150 per month. In such circumstances, the expected return if there is no post-June 1986 investment in the contract is computed as follows:

Monthly payments of $150×12 months equals annual payment of	$1,800
Multiple shown in Table 1 (male, age 60)	18.2
Expected return for annuity for whole life of $1,800 per year	$32,760
Less expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3))	$3,456
Net expected return	$29,304

If the annuitant purchased the same contract after June 30, 1986, the expected return would be $40,032, computed as follows:

Monthly payments of $150×12 months equals annual payments of	$1,800
Multiple shown in Table V (age 60)	24.2
Expected return for annuity for whole life of $1,800 per year	$43,560
Less expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a))	$3,528
Net expected return	$40,032

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table I or V (whichever is applicable) for the whole life annunity should be made in accordance with subparagraph (2) of this paragraph.

(b) *Expected return under joint and survivor and joint annunities.* (1) In the case of a joint and survivor annuity contract involving two annuitants which provides the first annuitant with a fixed monthly income for life and, after the death of the first annuitant, provides an identical monthly income for life to a second annuitant, the expected return shall be determined by multiplying the total amount of the payments to be received annually by the multiple obtained from Table II or VI (whichever is applicable) of § 1.72-9 under the ages (as of the annuity starting date) and, if applicable, sexes of the living annuitants. For example, a husband purchases a joint and survivor annuity contract providing for payments of $100 per month for life and, after his death, for the same amount to his wife for the remainder of her life. As of the annuity starting date his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. If there is no post-June 1986 expected return is computed as follows:

Monthly payments of $100×12 month equals annual payment of	$1,200
Multiple shown in Table II (male, age 70, female, age 67)	19.7
Expect return ($1,200×19.7)	$23,640

If the annuitants purchased the same contract after June 30, 1986, the expected return would be $26,400, computed as follows:

Monthly payments of $100×12 equals annual payment of	$1,200
Multiple shown in Table VI (ages 70, 67)	22.0
Expected return ($1,200×22.0)	$26,400

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table II or VI (whichever is applicable) should be made in accordance with paragraph (a)(2) of this section.

(2) If a contract of the type described in subparagraph (1) of this paragraph provides that a different (rather than an identical) monthly income is payable to the second annuitant, the expected return is computed in the following manner. The applicable multiple in Table II or VI (whichever is applicable) is first found as in the example in subparagraph (1) of this paragraph. The multiple applicable to the first annuitant is then found in Table I or V (whichever is applicable) as through the contract were for a single life annuity. The multiple from Table I or V is then subtracted from the multiple obtained from Table II or VI and the resulting mutiple is applied to the total payments to be received annually under the contract by the second annuitant. The result is the expected return with respect to the second annuitant. The portion of the expected return with respect to payments to be made during the first annuitant's life is then computed by applying the multiple found in Table I or V to the total annual payments to be received by such annuitant under the contract. The expected returns with respect to each of the annuitants separately are then aggregated to obtain the expected return under the entire contract.

Example (1). A husband purchases a joint and survivor annuity providing for payments of $100 per month for his life and, after his death, payments to his wife of $50 per month for her life. As of the annuity starting date his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. There is no post-June 1986 investment in the

Multiple from Table II (male, age 70, female, age 67)	19.7
Multiple from Table I (male, age 70)	12.1
Difference (multiple applicable to second annuitant)	7.6
Portion of expected return, second annuitant ($600×7.6)	$4,560
Portion of expected return, first annuitant ($1,200×12.1)	$14,520
Expected return under the contract	$19,080

The expected return thus found, $19,080, is to be used in computing the amount to be excluded from gross income. Thus, if the investment in the contract in this example is $14,310, the exclusion ratio is $14,310÷$19,080; or 75 percent. The amount excludable from each monthly payment made to the husband is 75 percent of $100, or $75, and the remaining $25 of each payment received by him shall be included in his gross income. After the husband's death, the amount excludable by the second annuitant (the surviving wife) would be 75 percent of each monthly payment of $50, or $37.50, and the remaining $12.50 of each payment shall be included in her gross income.

Example (2). If the same contract were purchased after June 30, 1986, the expected return would be $22,800, computed as follows:

Multiple from Table VI (ages 70, 67)	22.0
Multiple from Table V (age 70)	16.0
Difference (multiple applicable to second annuitant)	6.0
Portion of expected return, second annuitant (600×6.0)	$3,600
Plus: Portion of expected return, first annuitant ($1,200×16.0)	$19,200
Expected return under the contract	$22,800

If the investment in the contract is $14,310, the exclusion ratio is $14,310÷$22,800, or 62.8 percent. Thus, the husband would exclude $62.80 of each $100 payment received by him. After his death, his wife would exclude 62.8 percent, or $31.40 each $50 monthly payment.

Example (3). If amounts were invested in the same contract both before July 1, 1986, and after June 30, 1986, and the election described in § 1.72-6 (d) (6) were made, two exclusion ratios would be determined pursuant to § 1.72-6 (d). Assume that the husband's total investment in the contract is $14,310 and that $7,310 is the pre-July 1986 investment in the contract. The pre-July 1986 exclusion ratio would be $7,310÷$19,080, or 38.3 percent. The post-June 1986 exclusion ratio would be $7,000÷$22,800, or 30.7 percent. The husband would exclude $69.00 ($38.30 + $30.70) of the $100 monthly payment received by him. The remaining $31.00 would be included in his gross income. After the husband's death, the amount excludable by his wife would be $34.50 (38.3 percent of $50 plus 30.7 percent of $50). The remaining $15.50 would be included in gross income.

The same method is used if the payments are to be increased after the death of the first annuitant. Thus, if the payments to be made until the husband's death were $50 per month and his widow were to receive $100 per month thereafter until her death, the 7.6 multiple in example (1) above would be applied to the $100 payments, yielding an expected return with respect to this portion of the annuity contract of $9,120 ($1,200 × 7.6). An expected return of $7,260 ($600 × 12.1) would be obtained with respect to the payments to be made to the husband, yielding a total expected return under the contract of $16,380 ($9,120 plus $7,260). If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiplies found in Tables I and II or Tables V and VI (whichever are applicable) should be made in accordance with paragraph (a)(2) of this section.

(3) In the case of a joint and survivor annuity contract in respect of which the first annuitant died in 1951, 1952, or 1953, and the basis of the surviving annuitant's interest in the contract was determinable under section 113(a)(5) of the Internal Revenue Code of 1938, such basis shall be considered the "aggregate of premiums or other consideration paid" by the surviving annuitant for the contract. (For rules governing this determination, see 26 CFR (1939) 39.22(b)(2)-2 and 39.113(a)(5)-1 (Regulations 118).) In determining such an annuitant's investment in the contract, such aggregate shall be reduced by any amounts received under the contract by the surviving annuitant before the annuity starting date, to the extent such amounts were excludable from his gross income at the time of receipt. The expected return of the surviving annuitant in such cases shall be determined in the manner prescribed in paragraph (a) of this section, as though the surviving annuitant alone were involved. For this purpose, the appropriate multiple for the survivor shall be obtained from Table I as of the annuity starting date determined in accordance with paragraph (b)(2)(i) of § 1.72-4.

(4) If a contract involving two annuitants provides for fixed monthly payments to be made as a joint life annuity until the death of the first annuitant to die (in other words, only as long as both remain alive), the expected return under such contract shall be determined by multiplying the total of the annuity payments to be received annually under the contract by the multiple obtained from Table IIA or VIA (whichever is applicable) of § 1.72-9 under the ages (as of the annuity starting date) and, if applicable, sexes of the annuitants. If, however, payments are to be made under the contract quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table IIA or VIA shall be made in accordance with paragraph (a)(2) of this section.

(5) If a joint and survivor annuity contract involving two annuitants provides that a specified amount shall be paid during their joint lives and a different specified amount shall be paid to the survivor upon the death of whichever of the annuitants is the first to die, the following preliminary computation shall be made in all cases preparatory to determining the expected return under the contract:

(i) From Table II or VI (whichever is applicable), obtain the multiple under both of the annuitants' ages (as of the annuity starting date) and, if applicable, their appropriate sexes;

(ii) From Table IIA or VIA (whichever is applicable), obtain the multiple applicable to both annuitants' ages (as of the annuity starting date) and, if applicable, their appropriate sexes;

(iii) Apply the multiple found in subdivision (i) of this subparagraph to the total of the amounts to be received annually after the death of the first to die; and

(iv) Apply the multiple found in subdivision (ii) of this subparagraph to the difference between the total of the amounts to be received annually before and the total of the amounts to be received annually after the death of the first to die.

If the original annual payment is in excess of the annual payment to be made after the death of the first to die, the expected return is the sum of the amounts determined under subdivisions (iii) and (iv) of this subparagraph. This may be illustrated by the following examples:

Example (1). A husband purchases a joint and survivor annuity providing for payments of $100 a month for as long as both he and his wife live, and, after the death of the first to die, payments to the survivor of $75 a month for life. As of the annuity starting date, his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. If there is no post-June 1986 investment in the contract, the expected return under the contract is computed as follows:

Multiple from Table II (male age 70, female age 67)	19.7
Multiple from Table IIA (male age 70, female age 67)	9.3
Portion of expected return ($900×19.7—sum per year after first death)	$17,730
Portion of expected return ($300×9.3—amount of change in sum at first death)	$2,790
Expected return under the contract	$20,520

The total expected return in this example, $20,520, is to be used in computing the amount to be excluded from gross income. Thus, if the investment in the contract is $17,887, the exclusion ratio is $17,887–$20,520, or 87.2 percent. The amount excludable from each monthly payment made while both are alive is 87.2 percent of $100, or $87.20, and the remaining $12.80 of each payment shall be included in gross income. After the death of the first to die, the amount excludable by the survivor shall be 87.2 percent of each monthly payment of $75, or $65.40, and the remaining $960 of each payment shall be included in gross income.

Example (2). Assume the same facts as in example (1), except that the contract is purchased after June 30, 1986.

The expected return under the contract is computed as follows:

Multiple from Table VI (ages 70, 67)	22.0
Multiple from Table VIA (ages 70, 67)	12.4
Portion of expected return ($900×22.0—sum per year after first death)	$19,800
Plus: Portion of expected return ($300×12.4—amount of change in sum at first death)	$3,720
Expected return under the contract	$23,520

Thus, if the investment in the contract is $17,887, the exclusion ratio is $17,887÷$23,520, or 76.1 percent. The amount excludable from each monthly payment made while both are alive would be 76.1 percent of $100, or $76.10, and the remaining $23.90 of each payment would be included in gross income. After the death of the first to die, the amount excludable by the survivor would be 76.1 percent of each monthly payment of $75, or $57.08, and the remaining $17.92 of each payment would be included in gross income.

Example (3). Assume the same facts as in examples (1) and (2), except that the total investment in the contract is $17,887, and that the pre-July 1986 investment in the contract is $8,000. Assume also that one of the annuitants makes the election described in § 1.72–6(d)(6). Separate computations shall be performed pursuant to § 1.72–6(d) to determine the amount excludable from gross income. The pre-July 1986 exclusion ratio would be $8,000÷$23,520, or 34 percent. The post-June 1986 exclusion ratio would be $9,887÷$23,520, or 42 percent. The amount excludable from each monthly payment made while both are alive would be $76 ((.34×100)+(.42×100)), and the remaining $24 of each $100 payment would be included in gross income. After the death of the first to die, the amount excludable by the survivor would be $57.00 of each monthly payment of $75 ((.34×75)+(.42×75)), and the remaining $18.00 of each payment would be included in gross income.

If the original annual payment is less than the annual payment to be made after the death of the first to die, the expected return is the difference between the amounts determined under subdivisions (iii) and (iv) of this subparagraph. If, however, payments are to be made quarterly, semiannually, or annually under the contract, the multiples obtained from both Tables II and IIA or Tables VI and VIA (whichever are applicable) shall first be adjusted in a manner prescribed in paragraph (a)(2) of this section.

(6) If a contract provides for the payment of life annuities to two persons during their respective lives and, after the death of one (without regard to which one dies first), provides that the survivor shall receive for life both his own annuity payments and the payments made formerly to the deceased person, the expected return shall be determined in accordance with paragraph (e)(4) of this section.

(7) If paragraph (b)(3) of § 1.72–2 applies to payments provided under a contract and this paragraph applies to such payments, the principles of this paragraph shall be used in making the computations described in paragraph (d)(3) of § 1.72–4. This may be illustrated by the following examples, examples (1) through (3) of which assume that there is no post-June 1986 investment in the contract:

Example (1). Taxpayer A, a male age 63, pays $24,000 for a contract which provides that the proceeds (both income and return of capital) from eight units of an investment fund shall be paid monthly to him for his life and that after his death the proceeds from six such units shall be paid monthly to B, a female age 55, for her life. The portion of the investment in the contract allocable to each taxable year of A is $955.20 and that allocable to each taxable year of B is $715.40. This is determined in the following manner:

Multiple from Table II (male, age 63, and female, age 55)	28.1
Number of units to be paid, in effect, as a joint and survivor annuity	×6
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	168.6
Multiple from Table I (male, age 63)	16.2
Number of units to be paid, in effect, as a single life annuity	×2
Number of total annual unit payments anticipatable with respect to A alone	32.4
Total number of unit payments anticipatable	201
Portion of investment in the contract allocable to unit payments ($24,000÷201) on an annual basis	$119.40
Number of units to A white he continues to live	×8

Portion of the investment in the contract allocable to each taxable year of A	$955.20
Portion of investment in the contract allocable to unit payments ($24,000÷201) on an annual basis	$119.40
Number of units payable to B for her life after A's death	×6
Portion of the investment in the contract allocable to each taxable year of B	$716.40

For the purpose of the above computation it is immaterial whether or not A lives to or beyond the life expectancy shown for him in Table I.

Example (2). Assume that Taxpayer A in example (1) receives payments for five years which are at least as large as the portion of the investment in the contract allocable to such years, but in the sixth year he receives a total of only $626.40 rather than the $955.20 allocable to such year. A is 69 and B is 61 at the beginning of the first monthly period for which an amount is payable in the seventh taxable year. A makes the election in that year provided under paragraph (d)(3) of § 1.72–4. The difference between the portion of the investment in the contract allocable to the sixth year and the amount actually received in that year is $328.80 ($955.20 less $626.40). In this case, 139.2 unit payments are anticipatable (on an annual basis), since the appropriate multiple from Table II of § 1.72–9, 23.2, multiplied by the number of units payable, in effect, as a joint and survivor annuity yields this result (6×23.2). A's appropriate multiple from Table I of § 1.72–9 for the two units which will cease to be paid at his death is 12.6, and the total number of unit payments anticipatable (on an annual basis) is, therefore, 164.4 (2×12.6 plus 139.2). Dividing the difference previously found ($328.80) by the total number of unit payments thus determined (164.4) indicates that A will have an additional allocation of the investment in the contract of $16 to the seventh and every succeeding full taxable year (8 units×$2), and B will have an additional allocation of the investment in the contract of $12 (6 units×$2) to each taxable year in which she receives 12 monthly payments subsequent to the death of A. The total allocable to each taxable year of A is, therefore, $971.20, and that allocable to each taxable year of B will be $728.40.

Example (3). If, in example (2), A had died at the end of the fifth year, in the sixth year B would have received a payment of $469.80 (that portion of the $626.40 that A would have received which is in the same ratio that 6 units bear to 8 units) and would thus have reeived $246.60 less than the portion of the investment in the contarct originally determined to be allocable to each of her taxable years. In these circumstances, B would be entitled to elect to redetermine the portion of the investment in the contract allocable to the taxable year of election and all subsequent years. The new amount allocable thereto would be found by dividing the $246.60 difference by her life expectancy as of the first day of the first period for which she received an amount as an annuity in the seventh year of the annuity contract, and adding the result to her originally determined allocation of $716.40.

Example (4). On July 1, 1986, Taxpayer C, age 60, pays $28,000 for a contract which provides that the proceeds (both income and return of capital) from 10 units of an investment fund shall be paid monthly to C for C's life and that after C's death the proceeds from 4 such units shall be paid monthly to D, age 57, for D's life. The portion of the investment in the contract allocable to each taxable year of C is $1,037.00 and that allocable to each taxable year of D is $414.80. This is determined as follows:

Multiple from Table VI (ages 60, 57)	31.2
Number of units to be paid, in effect, as a joint and survivor annuity	×4
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	124.8
Multiple from Table V (age 60)	24.2
Number of units to be paid, in effect, as a single life annuity	×6
Number of total annual unit payments anticipatable with respect to C alone	145.2
Total number of unit payments anticipatable	270
Portion of investment in the contracts allocable to unit payments ($28,000÷270) on an annual basis	103.70
Number of units payable to C while C continues to live	×10
Portion of the investment in the contract allocable to each taxable year of C	$1,037.00
Portion of investment in the contract allocable to unit payments ($28,000÷270) on an annual basis	$103.70
Number of units payable to D for D's life after C's death	×4
Portion of the investment in the contract allocable to each taxable year of D	$414.80

For purposes of the above computation it is immaterial whether or not C lives to or beyond the life expectancy shown in Table V.

Example (5). Assume the same facts as in example (4), except that C's total investment in the contract is $28,000, and C's pre-July 1986 investment in the contract is $16,000. If C makes the election described in § 1.72–6(d)(6), separate computations are required to determine the amount excludable from gross income with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. The annuitant shall apply the appropriate pre-July 1986 and post-June 1986 life expectancy multiples to the applicable portions of the units to be paid as a joint and survivor annuity, and as a single life annuity.

Pre-July 1986 Computation (all references to unit payments are to the pre-July 1986 applicable portion of such payments):

Multiple from Table II (male, age 60, female, age 57)	27.6
Number of units to be paid, in effect, as a joint and survivor annuity	×4
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	110.40
Multiple from Table I (male, age 60)	18.2
Number of units to be paid, in effect, as a single life annuity	×6
Number of total annual unit payments anticipatable with respect to C alone	109.20
Total number of unit payments anticipatable	219.6
Portion of pre-July 1986 investment in the contract allocable to unit payments ($16,000÷219.60) on an annual basis	$72.86
Number of units payable to C while C continues to live	×10
Portion of pre-July 1986 investment in the contract allocable to each taxable year of C	728.60
Portion of pre-July 1986 investment in the contract allocable to unit payments ($16,000÷219.60) on an annual basis	72.86
Number of units payable to D for D's life after C's death	×4
Portion of pre-July 1986 investment in the contract allocable to each taxable year of D	$291.44

Post-June 1986 Computation (fall references to unit payments are to the post-June 1986 applicable portion of such payments):

Multiple from Table VI (ages 60, 57)	31.2
Number of units to be paid, in effect, as a joint and survivor annuity	×4
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	124.80
Multiple from Table V (age 60)	24.2
Number of units to be paid, in effect, as a single life annuity	×6
Number of total annual unit payments anticipatable with respect to C alone	145.20
Total number of unit payments anticipatable	270

Portion of post-June 1986 investment in the contract allocable to unit payments ($12,000÷270) on an annual basis	$44.44
Number of units payable to C while C continues to live	×10
Portion of post-June 1986 investment in the contract allocable to each taxable year of C	$444.40
Portion of post-June 1986 investment in the contract allocable to unit payments ($12,000÷270) on an annual basis	44.44
Number of units payable to D for D's life after C's death	×4
Portion of post-June 1986 investment in the contract allocable to each taxable year of D	$177.78
Total computation:	
Total portion of the investment in the contract allocable to each taxable year of C ($728.60+$444.40)	$1,173.00
Total portion of the investment in the contract allocable to each taxable year of D ($291.44+$177.78)	$469.22

Example (6). Assume that taxpayer C in example (4) receives payments for four years which are at least as large as the portion of the investment in the contract allocable to such years, but in the fifth year receives a total of only $600 rather than the $1,037 allocable to such year. C is 65 and D is 62 at the beginning of the first monthly period for which an amount is payable in the sixth taxable year. C makes the election in that year provided under paragraph (d)(3) of § 1.72–4. The difference between the portion of the investment in the contract allocable to the fifth year and the amount actually received in that year is $437 ($1,037−$600). In this case, 106.4 unit payments are anticipatable with respect to the joint and survivor annuity element, since the appropriate multiple from Table VI of § 1.72–9, 26.6, multiplied by the number of units payable, in effect, as a joint and survivor annuity yields this result (4 × 26.6). C's appropriate multiple from Table V of § 1.72–9 for the six units which will cease to be paid at C's death is 20.0, and the number of unit payments anticipatable with respect to C alone is 120 (6 × 20). The total number of unit payments anticipatable is, therefore, 226.4 (120 plus 106.4). Dividing the difference previously found ($437) by the total number of unit payments thus determined (226.4) indicates that C will have an additional allocation of the investment in the contract of $19.30 to the sixth and every succeeding full taxable year (10 units × $1.93), and D will have an additional allocation of the investment in the contract of $7.72 (4 units × $1.93) to each taxable year in which D receives 12 monthly payments subsequent to the death of C. The total allocable to each taxable year of C is, therefore, $1,056.30, and that allocable to each taxable year of D will be $422.52.

Example (7). If, in example (6), C had died at the end of the fourth year, in the fifth year D would have received a payment of $240 (that portion of the $600 that C would have received which is in the same ratio that 4 units bear to 10 units) and would thus have received $174.80 less than the portion of the investment in the contract allocable to each of D's taxable years. In these circumstances, D would be entitled to elect to redetermine the portion of the investment in the contract allocable to the taxable year of election and all subsequent years. The new amount allocable thereto would be found by dividing the $174.80 difference by D's life expectancy as of the first day of the first period for which D received an amount as an annuity in the sixth year of the annuity contract, and adding the result to D's originally determined allocation of $414.80.

* * * * * *

(e) Expected return where two or more annuity elements providing for fixed payments are acquired for a single consideration. (1) In the case of a contract described in paragraph (a)(2) of § 1.72–2, which provides for specified payments to be made under two or more annuity elements, the expected return shall be found for the contract as a whole by aggregating the expected returns found with respect to each annuity element. If individual life annuity elements are involved (including joint and survivor annuities where the primary annuitant died before January 1, 1954) expected return for each of them shall be determined in the manner prescribed in paragraph (a) of this section. If joint and survivor annuity elements are involved, the expected return for such elements shall be determined under the appropriate subparagaph of paragraph (b) of this section. If terms certain or amounts certain are involved, the expected returns for such elements shall be determined under paragraph (c) or (d) of this section, respectively.

(2) The aggregate expected return found in accordance with the rules set forth in subparagraph (1) of this paragraph shall constitute the expected return for the contract as a whole. The investment in the contract shall be divided by the amount thus determined to obtain the exclusion ratio for the contract as a whole, This exclusion ratio shall be applied to all amounts received as a annuity under the contract by any recipient (in accordance with the provisions of § 1.72–4), except in the case of amounts received by a surviving annuitant under a joint and survivor annuity element to which the provisions of section 72(i) and paragraph (b)(3) of this section would apply if it were a separate contract. See subparagraph (3) of this paragraph.

(3) In the case of a contract providing two or more annuity elements, one of which is a joint and survivor annuity element of the type described in section 72(i) and paragraph (b)(3) of this section, the general exclusion ratio for the contract as a whole, for the purpose of computations with respect to all the other annuity elements shall be determined in accordance with the principles of subparagraphs (1) and (2) of this paragraph. A special exclusion ration shall thereafter be determined for the surviving annuitant receiving payments under the annuity element described in section 72(i) and paragraph (b)(3) of this section by using the investment in the contract and the expected return determined in accordance with the provisions of paragraph (b)(3) of this section.

(4) In the case of a contract providing for payments to be made to two persons in the manner described in paragraph (b)(6) of § 1.72–5, the expected return is to be computed as though there were two joint and survivor annuities under the same contract, in the following manner. First, the multiple appropriate to the ages (as of the annuity starting date) and, if applicable, sexes of the annuitants involved shall be found in Table II or VI (whichever is appicable) of § 1.72–9 and adjusted, if necessary, in the manner described in paragraph (a)(2) of this section. Second, the multiple so found shall be applied to the sum of the payments to be made each year to both annuitants. The result is the expected return for the contract as a whole.

(5) For rules relating to expected return where two or more annuity elements are acquired for a single consideration and one or more of such elements does not specify a fixed payment for each period, see paragraph (f) of this section.

* * * * *

(g) *Expected return with respect to contracts subject to § 1.72–6(d).* In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, an expected return is computed using the multiples in Tables I through IV of § 1.72–9 with respect to the pre-July 1986 investment in the contract and a second expected return is computed using the multiples in Tables V through VIII of § 1.72–9 with respect to the post-June 1986 investment in the contract.

Par. 4. Section 1.72–6 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 1.72-6 Investment in the contract.

* * * * *

(b) *Allocation of the investment in the contract where two or more annuity elements are acquired for a single consideration.* (1) In the case of a contract described in § 1.72-2(a)(2) which provides for two or more annuity elements, the investment in the contract determined under paragraph (a) shall be allocated to each of the annuity elements in the ratio that the expected return under each annuity element bears to the aggregate of the expected returns under all the annuity elements. The exclusion ratio for the contract as a whole shall be determined by dividing the investment in the contract (after adjustment for the present value of any or all refund features) by the aggregate of the expected returns under all the annuity elements. This may be illustrated by the following examples:

Example (1). If a contract provides for annuity payments of $1,000 per year for life (with no refund feature) to both A and B, a male and female, respectively, each 70 years of age as of the annuity starting date, such contract is acquired for consideration of $19,575 (without regard to whether paid by A, B, or both), and there is no post-June 1986 investment in the contract, the investment in the contract shall be allocated by determining the exclusion ratio for the contract as a whole in the following manner:

Expectancy of A under Table 1 and § 1.72-5(a)(2), 11.8 (12.1-0.5), multiplied by $1,000	$11,600
Expectancy of B computed in a similar manner ($1,000×14.5 [15.0−0.5])	14,500
Total expected return	26,100

The exclusion ratio for both A and B is then $19,575÷$26,100, or 75 percent. A and B shall each exclude from gross income three-fourths ($750) of each $1,000 annual payment received and shall include the remaining one-fourth ($250) of each $1,000 annual payment received in gross income.

Example (2). Assume the same facts as in example (1) except that of the total investment in the contract of $19,575, the pre-July 1986 investment in the contract is $10,000. If the election described in § 1.72-6(d)(6) is made with respect to the contract, the investment in the contract shall be allocated by determining an exclusion ratio for the contract as a whole based on separately computed exclusion ratios with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract in the following manner:

Expectancy of A under Table I and § 1.72-5(a)(2), 11.6 (12.1-0.5), multiplied by $1,000	$11,600
Plus: Expectancy of B under Table I and § 1.72-5(a)(2), 14.5 (15.0-0.5), multiplied by $1,000	$14,500
Pre-July 1986 expected return	$26,100
lus: Expectancy of A under Table V and § 1.72-5(a)(2), 15.5 (16.0-0.5), multiplied by $1,000	$15,500
Expectancy of B under Table V and § 1.72-5(a)(2), 15.5 (16.0-0.5), multiplied by $1,000	$15,500
Post-June 1986 expected return	$31,000
Pre-July 1986 exclusion ratio ($10,000÷$26,100)	38.3
Post-June 1986 exclusion ratio ($9,575÷31,000)	30.9
A and B shall each exclude from gross income $692 (38.3 percent of $1,000+30.9 percent of $1,000) of each $1,000 payment and include the remaining $308 in gross income	

(2) In the case of a contract providing for specified annual annuity payments to be made to two persons during their joint lives and the payment of the aggregate of the two individual payments to the survivor for his life, the investment in the contract shall be allocated in accordance with the provisions of subparagraph (1) of this paragraph. For this purpose, the investment in the contract (without regard to the fact that differing amounts may have been contributed by the two annuitants) shall be divided by the expected return determined in accordance with paragraph (e)(4) of § 1.72-5. The resulting exclusion ratio shall then be applied to any amounts received as an annuity by either annuitant.

(3) In the case of a contract providing two or more annuity elements, one or more of which provides for payments to be made in a manner described in paragraph (b)(3) of § 1.72-2, the investment in the contract shall be allocated to the various annuity elements in the following manner.

(i) If all the annuity elements provide for payments to be made in the manner described in paragraph (b)(3) of § 1.72-2, the investment in the contract shall be allocated on the basis of the amounts received by each recipient by apportioning the amount determined to be excludable under that section to each recipient in the same ratio as the total of the amounts received by him in the taxable year bears to the total of the amounts received by all recipients during the same period; and

(ii) If one or more, but not all, of the annuity elements provide for payments to be made in a manner described in paragraph (b)(3) of § 1.72-2:

(*a*) With respect to all annuity elements to which that section does not apply, the investment in the contract for all such elements shall be the portion of the investment in the contract as a whole (found in accordance with the provisions of this section) which is properly allocable to all such elements; and

(*b*) With respect to all annuity elements to which paragraph (b)(3) of § 1.72-2 does apply, the investment in the contract for all such elements shall be the investment in the contract as a whole (found in accordance with the provisions of this section) as reduced by the portion thereof determined under (*a*) of this subdivision.

For the purpose of determining, pursuant to (*a*) of this subdivision, the portion of the investment in the contract as a whole properly allocable to a particular annuity element, reference shall be made to the present value of such annuity element determined in accordance with paragraph (e)(1)(iii) (*b*) of § 1.101-2.

(iii) In the case of a contract to which paragraph (d) of this section applies, this paragraph (b) is applied in the manner prescribed in paragraph (d) and, in particular, paragraph (d)(5)(v) of this section.

* * * * *

(d) *Pre-July 1986 and post-June 1986 investment in the contract.* (1) This paragraph (d) applies to an annuity contract If—

(i) The investment in the contract includes a pre-July 1986 investment in the contract and a post-June 1986 investment in the contract (both as defined in § 1.72-6(d)(3));

(ii) The use of a multiple found in Tables I through VIII of § 1.72-9 is required to determine the expected return under the contract; and

(iii) The election described in paragraph (d)(6) of this section is made with respect to the contract.

(2) In the case of annuity contract to which this paragraph (d) applies—

(i) All computations required to determine the amount excludable from gross income shall be performed separately with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract as if each such amount were the entire investment in the contract;

(ii) The multiples in Tables I through IV shall be used for computations involving the Pre-July 1986 investment in the contract and the multiples in Tables V through VIII shall be used for computations involving the post-June 1986 investment in the contract; and

(iii) The amount excludable from gross income shall be the sum of the amounts determined under the separate computations required by paragraph (d)(2)(i) of this section.

(3) For purposes of the regulations under section 72, the pre-July 1986 investment in the contract and post-June 1986 investment in the contract are determined in accordance with the following rules:

(i) (A) If the annuity starting date of the contract occurs before July 1, 1986, the pre-July 1986 investment in the contract is the total investment in the contract as of the annuity starting date;

(B) If the annuity starting date of the contract occurs after June 30, 1986, and the contract does not provide for a disqualifying form of payment or settlement, the pre-July 1986 investment in the contract is the investment in the contract computed as of June 30, 1986, as if June 30, 1986, had been the later of the annuity starting date of the contract or the date on which an amount is first received thereunder;

(C) If the annuity starting date of the contract occurs after June 30, 1986, and the contract provides, at the option of the annuitant or of any other person (including, in the case of an employee's annuity, an option exercisable only by, or with the consent of, the employer), for a disqualifying form of payment or settlement, the pre-July 1986 investment in the contract is zero (i.e., the total investment in the contract is post-June 1986 investment in the contract).

(ii) The post-June 1986 investment in the contract is the amount by which the total investment in the contract as of the annuity sarting date exceeds the pre-July 1986 investment in the contract.

(iii) For purposes of paragraph (d)(3)(i) of this section, a disqualifying form of payment or settlement is any form of payment or settlement (whether or not selected) that permits the receipt of amounts under the contract in a form other than a life annuity. For example, each of the following options provides for a disqualifying form of payment or settlement:

(A) An option to receive a lump sum in full discharge of the obligation under the contract.

(B) An option to receive an amount under the contract after June 30, 1986, and before the annuity starting date.

(C) An option to receive an annuity for a period certain.

(D) An option to receive payments under a refund feature (within the meaning of paragraphs (b) and (c) of this section) that is substantially equivalent to an annuity for a period certain.

(E) An option to receive a temporary life annuity (within the meaning of § 1.72-5 (a)(3)) that is substantially equivalent to an annuity for a period certain.

An option to receive alternative forms of life annuity is not a disqualifying option for purposes of paragraph (d)(3)(i) of this section. Thus, if the sole options provided under a contract are a single life annuity and a joint and survivor life annuity, paragraph (d)(3)(i) (C) of this section does not apply to such contract.

(iv) For purposes of paragraph (d)(3)(iii) of this section, a refund feature is substantially equivalent to an annuity for a period certain if its value determined under Table VII of § 1.72-9 exceeds 50 percent. Similarly, a temporary life annuity is substantially equivalent to an annuity for a period certain if the multiple determined under Table VIII of § 1.72-9 exceeds 50 percent of the maximum duration of the annuity.

(4) In any separate computation under this paragraph (d), only the applicable portion of other amounts (such as the total expected return under the contract, or the total amount guaranteed under the contract as of the annuity starting date) shall be taken into account if the use of the entire amount in such computation is inconsistent with the use in the computation of only a portion of the investment in the contract. For example, such use is generally inconsistent if the computation requires a comparison of the investment in the contract and such other amount for the purpose of using the greater (or lesser) amount or the difference between the two. For purposes of the first sentence of this paragraph (d)(4), the applicable portion is the amount that bears the same ratio to the entire amount as the pre-July 1986, investment in the contract or the post-June 1986 investment in the contract, whichever is applicable, bears to the total investment in the contract as of the annuity starting date.

(5) *Application to particular computations.* (i) In the case of a contract to which this paragraph (d) applies, the exclusion ratio for purposes of § 1.72-4 (a) is the sum of the exclusion ratios separately computed in accordance with this paragraph (d). The exclusion ratio with respect to the pre-July 1986 investment in the contract is determined by dividing the pre-July 1986 investment in the contract by the expected return as found under § 1.72-5 by applying the appropriate multiples of Tables I through IV of § 1.72-9. Similarly, the exclusion ratio with respect to the post-June 1986 investment in the contract is determined by dividing the post-June 1986 investment in the contract by the expected return as found under § 1.72-5 by applying the appropriate multiples in Tables V through VIII of § 1.72-9.

(ii) The applicability of § 1.72-4(d)(2) to a contract to which this paragraph (d) applies shall be determined separately with respect to the post-June 1986 investment in the contract and the pre-July 1986 investment in the contract and in each such determination only the applicable portion of the total expected return under the contract shall be taken into account. If § 1.72-4(d)(2) applies with respect to either such investment in the contract, the separately computed exclusion ratio shall be considered to be the applicable portion of 100 percent.

(iii) If § 1.72-4(d)(3) applies to a contract to which this paragraph (d) applies—

(A) The applicable portions (as defined in paragraph (d) (4) of this section) of payments received under the contract for a taxable year shall be separately computed;

(B) The pre-July 1986 investment in the contract and the post-June 1986 investment in the contract shall be separately allocated to the taxable year; and

(C) The separate applicable portions of the payments received under the contract for the taxable year shall be considered to be amounts received as an annuity (for which the exclusion ratio is 100 percent) only to the extent they do not exceed the portions of the corresponding investments in the contract which are properly allocable to that year.

See the example in § 1.72-4(d)(3)(v).

(iv) If § 1.72-4(e) applies to a contract to which this paragraph (d) applies, the exclusion ratio shall be separately computed with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. For purposes of the separate computations under § 1.72-4(e)(2)(ii), only the applicable portion of payments received shall be taken into account and the exclusion ratio (100%) shall be applied to the separately computed portion allocated to each participant.

(v) If paragraph (b)(3) of this section applies to a contract to which this paragraph (d) applies, separate allocations are required with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract.

For purposes of the separate computations required to determine the portion of the investment in the contract properly allocable to a particular annuity element, only the applicable portion of the present value of the annuity element determined in

accordance with § 1.101–2(e)(1)(iii)(b) is taken into account.

(vi) If § 1.72–7 applies to a contract to which this paragraph (d) applies, separate computations are required to determine the adjustment to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. For purposes of such separate computations, only the applicable portions of the amounts described in § 1.72–7(b)(3)(ii),(c)(1)(vii)(*b*), and (d)(1)(ii) are taken into account. Similarly, in the case of computations with respect to the guarantee of a specified amount under § 1.72–7(d)(1), only the applicable portion of such amount is taken into account.

(6) This paragraph (d) applies to a contract only if the first taxpayer to receive an amount as an annuity under the contract elects to perform separate computations with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract as if each such amount were the entire investment in contract. If two or more annuitants receive an amount as an annuity under the contract at the same time (such as under a joint-and-last-survivorship annuity contract), an election by one of the annuitants is treated as an election by each of the annuitants. The election is made by attaching a statement to the first return filed by the taxpayer for the first taxable year in which an amount is received as an annuity under the contract. The statement must indicate that the taxpayer is electing to apply the provisions of paragraph (d) of § 1.72–6, and must also contain the name, address, and taxpayer identification number of each annuitant under the contract, and the amount of the pre-July 1986 investment in the contract.

(7) If the investment in the contract includes a post-June 1986 investment in the contract and the election described in paragraph (d)(6) of this section is not made—

(i) The amount excludable from gross income shall be determined without regard to the separate computations described in this paragraph (d); and

(ii) Only the multiples found in Tables V through VIII shall be used in determining the amount excludable from gross income.

Par. 5. Section 1.72–7 is amended by revising paragraphs (b), (c), (d), and (e), and adding a new paragraph (f) to read as follows:

§ 1.72–7 Adjustment in investment where a contract contains a refund feature.

* * * * *

(b) *Adjustment of investment for the refund feature in the case of a single life annuity.* Where a single life annuity contract to which section 72 applies contains a refund feature and the special rule of paragraph (d) of this section does not apply, the investment in the contract shall be adjusted in the following manner:

(1) Determine the number of years necessary for the guaranteed amount to be fully paid by dividing the maximum amount guaranteed as of the annuity starting date by the amount to be received annually under the contract to the extent such amount reduces the guaranteed amount. The number of years should be stated in terms of the nearest whole year, considering for this purpose a fraction of one-half or more as an additional whole year.

(2) Consult Table III or VII (whichever is applicable) of § 1.72–9 for the appropriate percentage under the whole number of years found in subparagraph (1) of this paragraph and the age (as of the annuity starting date) and, if applicable, sex of the annuitant.

(3) Multiply the percentage found in subparagraph (2) of this paragraph by whichever of the following is the smaller: (i) The investment in the contract found in accordance with § 1.72–6 or (ii) the total amount guaranteed as of the annuity starting date.

(4) Subtract the amount found in subparagraph (3) of this paragraph from the investment in the contract found in accordance with § 1.72–6.

The resulting amount is the investment in the contract adjusted for the present value of the refund feature without discount for interest and is to be used in determining the exclusion ratio to be applied to the payments received as an annuity. The percentage found in Tables III or VII shall not be adjusted in a manner described in paragraph (a)(2) of § 1.72–5. These principles may be illustrated by the following examples:

Example (1). On January 1, 1954, a husband, age 65, purchased for $21,053, an immediate installment refund annuity payable $100 per month for life. The contract provided that in the event the husband did not live long enough to recover the full purchase price, payments were to be made to his wife until the total payments under the contract equaled the purchase price. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

Cost of the annuity contract (investment in the contract, unadjusted	$21,053
Amount to be received annually	$1,200
Number of years for which payment guaranteed ($21,053 divided by $1,200)	17.5
Rounded to nearest whole number of years	18
Percentage located in Table III for age 65 (age of the annuitant as of the annuity starting date) and 18 (the number of whole years) (percent)	30
Subtract value of the refund feature to the nearest dollar (30 percent of $21,053)	$6,316
Investment in the contract adjusted for the present value of the refund feature without discount for interest	$14,737

Example (2). Assume the same facts as in example (1), except that the total investment in the contract was made after June 30, 1986. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed as follows:

Cost of the annuity contract (investment in the contract, unadjusted	$21,053
Amount to be received annually	$1,200
Number of years for which payment guaranteed ($21,053 ÷ $1,200)	17.5
Rounded to nearest whole number of years	18
Percentage in Table VII for age 65 and 18 years (percent)	15
Subtract value of the refund feature to the nearest dollar (15 percent of $21,053)	$3,158
Investment in the contract adjusted for the present value of the refund feature without discount for interest	$17,895

Example (3). Assume the same facts as in example (1), except that the pre-July 1986 investment in the contract is $10,000 and the post-June 1986 investment in the contract is $11,053. If the annuitant makes the election described in § 1.72–6(d)(6), separate computations must be performed pursuant to § 1.72–6(d) to determine the adjusted investment in the contract. The pre-July 1986 investment in the contract and the post-June 1986 investment in the contract adjusted for the purpose of determining the exclusion ratios are, respectively, $7,000 and $9,395, determined as follows:

Pre-July 1986 investment in the contract (unadjusted)	$10,000
Pre-July 1986 portion of the amount to be received annually ($10,000/$21,053 × $1,200)	$570.00
Number of years for which payment guaranteed ($10,000 ÷ $570)	17.50
Rounded to nearest whole number of years	18
Percentage in Table III for age 65 and 18 years (percent)	30

Subtract value of refund feature to nearest dollar (30 percent of $10,000)	$3,000
Pre-July 1986 investment in the contract adjusted for the present value of the refund feature without discount for interest	$7,000
Post-June 1986 investment in the contract (unadjusted)	$11,053
Post-June 1986 portion of the amount to be received annually ($11,053/$21,053×$1,200)	$630
Number of years for which payment guaranteed ($11,053÷$630)	17.54
Rounded to nearest whole number of years	18
Percentage in Table VII for age 65 and 18 years (percent)	15
Subtract value of the refund feature to the nearest dollar (15 percent of $11,053)	$1,658
Post-June 1986 investment in the contract adjusted for the present value of the refund feature without discount for interest	$9,395

If, in the above examples, the guaranteed amount had exceeded the investment in the contract (or applicable portion thereof), the percentage found in Table III or VII (whichever is applicable) should have been applied to the lesser of these amounts since any excess of the guaranteed amount over the investment in the contract (as found under § 1.72–6) would not have constituted a refund of premiums or other consideration paid. In such a case, however, a different multiple might have been obtained from Table III or VII (whichever is applicable) since the number of years for which payments were guaranteed would have been greater.

(c) *Adjustment of investment for the refund feature in the case of a joint and survivor annuity.* (1) Where a joint and survivor annuity contract described in paragraph (b) (1) or (6) of § 1.72–5 contains a refund feature and the special rule of paragraph (d) of this section does not apply, the investment in the contract shall be adjusted in the following manner:

(i) Determine the number of years necessary for the guaranteed amount to be fully paid by dividing the maximum amount guaranteed as of the annuity starting date by the amount to be received annually under the contract. the number of years should be stated in terms of the nearest whole year, considering for this purpose a fraction of one-half or more as an additional whole year.

(ii) Consult Table III or VII (whichever is applicable) of § 1.72–9 for the appropriate percentages under the whole number of years found in subdivision (i) of this subparagraph and the age (as of the annuity starting date) and, if applicable, sex of each annuitant. If Table III applies and the annuitants are not of the same sex, substitute for the female annuitant a male annuitant 5 years younger, or for the male annuitant a female annuitant 5 years older, so that Table III will be entered in both cases with the ages of annuitants of the same sex.

(iii) Find the sum of the two percentages found in accordance with subdivision (ii) of this subparagraph.

(iv) To the age of the elder of the two annuitants (as determined under subdivision (ii) of this subparagraph if Table III applies), add the number of years (indicated in the table below) opposite the number of years by which such annuitants' ages differ:

Number of years difference in age (2 male annuitants or 2 female annuitants if Table III applies)	Addition to older age in years
0 to 1, inclusive	9
2 to 3, inclusive	8
4 to 5, inclusive	7
6 to 8, inclusive	6
9 to 11, inclusive	5
12 to 15, inclusive	4
16 to 20, inclusive	3
21 to 27, inclusive	2
28 to 42, inclusive	1
Over 42	0

(v) Consult Table III or VII (whichever is applicable) for the appropriate percentage under the whole number of years found in subdivision (i) of this subparagraph and the age and, if applicable, sex of the elder annuitant as adjusted under subdivision (iv) of this subparagraph.

(vi) Subtract the percentage obtained in subdivision (V) of this subparagraph from the sum of the percentages found under subdivision (iii) of this subparagraph. If the result is less than one, subdivisions (vii) and (viii) of this subparagraph shall be disregarded and no adjustment made to the investment in the contract.

(vii) Multiply the percentage found in subdivision (vi) of this subparagraph by whichever of the following is the smaller: (*a*) the investment in the contract found in accordance with § 1.72–6 or (*b*) the total amount guaranteed as of the annuity starting date.

(viii) Subtract the amount found in subdivision (vii) of this subparagraph from the investment in the contract found in accordance with § 1.72–6.

(2) The principles of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). Prior to July 1, 1986, Taxpayer A, a 70-year old male, purchases a joint and last survivor annuity for $33,050. The contract provides for payments of $100 a month to be paid first to himself for life and then to B, his 40-year old daughter, if she survives him. The contract further provides that in the event both die before ten years' payments have been made, payments will be continued to C, a beneficiary, or to C's estate, until ten years' payments have been made. If there is no post-June 1986 investment in the contract, the investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

Cost of the annuity contract (investment in the contract unadjusted)	$33,050
Guaranteed amount ($1,200×10)	$12,000
Percentage in Table III for male, age 70 (or female, age 75) for duration of the guarantee (10)	21
Percentage in Table III for female, age 40 (or male, age 35) for duration of the guarantee (10)	2
Sum of percentage obtained	23
Difference in years of age between two males, aged 70 and 35 (or 2 females, aged 75 and 40)	35
Addition, in years, to older age	1
Percentage in Table III for male one year older than A	22
Difference between percentages obtained (23 percent less 22 percent)	1
Value of the refund feature to the nearest dollar (1 percent of $12,000)	$120
Investment in the contract adjusted for present value of the refund feature	$32,930

Example (2). The facts are the same as in example (1), except that the total investment in the contract was made after June 30, 1986, and A is 73 years of age. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

Cost of the annuity contract (investment in the contract, unadjusted)	$33,050
Guaranteed amount ($1,200×10)	$12,000
Percentage in Table VII for age 73 for duration of the guarantee (10)	14

Percentage in Table VII for age 40 for duration of the guarantee (10)	1
Sum of percentages obtained	15
Difference in years of age between two annuitants	33
Addition, in years, to older age	1
Percentage in Table VII for annuitant one year older than A	16
Difference between percentages obtained (16 percent less 15 percent)	1
Value of the refund feature to the nearest dollar (1 percent of $12,000)	$120
Investment in the contract adjusted for present value of the refund feature	$32,930

(d) *Adjustment of investment in the contract where paragraph (b)(3) of § 1.72-2 applies to payments.* (1) If paragraph (b)(3) of § 1.72-2 applies to payments to be made under a contract and this section also applies because of the provision for a refund feature, an adjustment shall be made to the investment in the contract in accordance with this paragraph before making the computations required by paragraph (d)(3) of § 1.72-4 and paragraph (b)(7) of § 1.72-5. In the case of the guarantee of a specified amount, the adjustment shall be made by applying the appropriate multiple from Table III or VII (whichever is applicable), as otherwise determined under this section, to the investment in the contract or the guaranteed amount, whichever is the lesser. The guarantee period shall be found by dividing the amount guaranteed by an amount determined by placing the payments received during the first taxable year (to the extent such payments reduce the guaranteed amount) on an annual basis. Thus, if monthly payments are first received by a taxpayer on a calendar year basis in August, his total payments (to the extent that they reduce the guaranteed amount) for the taxable year would be divided by 5 and multiplied by 12. The guaranteed amount would then be divided by the result of this computation to obtain the guarantee period. If the contract merely guarantees that proceeds from a unit or units of a fund shall be paid for a fixed number of years or the life (or lives) of an annuitant (or annuitants), whichever is the longer, the fixed number of years is the guarantee period. The appropriate percentage in Table III or VII shal be applied to whichever of the following is the smaller: (i) the investment in the contract; or (ii) the product of the payments received in the first taxable year, placed on an annual basis, multiplied by the number of years for which payment of the proceeds of a unit or units is guaranteed.

(2) The principles of this paragraph may be illustrated by the following examples:

Examples (1). Taxpayer A, a 50-year-old male purchases for $25,000, a contract which provides for variable monthly payments to be paid to him for his life. The contract also provides that if he should die before receiving payments for fifteen years, payments shall continue according to the original formula to his estate or beneficiary until payments have been made for that period. Beginning with the month of September, A receives payments which total $450 for the first taxable year of receipt. This amount, placed on an annual basis, is $1,350 ($450 divided by 4, or $112.50; $112.50 multiplied by 12, or $1,350). If there is no post-June 1986 investment in the contract, the guaranteed amount is considered to be $20,250 ($1,350×15), and the multiple from Table III (found in the same manner as in paragraph (b) of this section), 9 percent, applied to $20,250 (since this amount is less than the investment in the contract), results in a refund adjustment of $1,822.50. The latter amount, subtracted from the investment in the contract of $25,000, results in an adjusted investment in the contract of $23,177.50. If A dies before receiving payments for 15 years and the remaining payments are made to B, his beneficiary, B shall exclude the entire amount of such payments from his gross income until the amounts so received by B, together with the amounts received by A and excludable from A's gross income, equal or exceed $25,000. Any excess and any payments thereafter received by B shall be fully includible in gross income.

Example (2). Assume the same facts as in example (1), except that the total investment in the contract was made after June 30, 1986. The applicable multiple found in Table VII is 3 percent. When this is applied to the guaranteed amount of $20,250, it results in a refund adjustment of $607.50. The adjusted investment in the contract is $24,392.50 ($25,000−$607.50).

(e) *Adjustment of the investment in the contract where more than one annuity element is provided for a single consideration.* In the case of contracts to which paragraph (b) of § 1.72-6 applies for the purpose of allocating the investment in the contract to two or more annuity elements which are provided for a single consideration, if one or more of such elements involves a refund feature, the portion of the investment in the contract properly allocable to each such element shall be adjusted for the refund feature before aggregating all the investments in order to obtain the exclusion ratio which is to apply to the contract as a whole.

Example (1). If taxpayer A, an insured 70 years of age, upon maturity of an endowment policy which cost him a net amount of $86,000, elected a dual settlement consisting of (1) monthly payments for his life aggregating $4,146 per year with 10 years' payments certain, and (2) monthly payments for his 60 year old brother, B, aggregating $2,820 per year with 20 years' payments certain, the exclusion ratio to be used by both A and B if there is no post-June 1986 investment in the contract would be determined in the following manner:

A's expected return (A's payments per year of $4,146 multiplied by his life expectancy from Table 1 of 12.1)	$50,166.60
B's expected return (B's payments per year of $2,820 multiplied by his life expectancy from Table 1 of 18.2)	$51,324.00
Sum of expected returns to be used in determining exclusion ratio	$101,490.60
Percentage of total expected return attributable to A's expectancy of the ($50,166.60−$101,490.60)	49.4
Percentage of total expected return attributable to B's expectancy of the ($51,324−$101,490.60)	50.6
Portion of investment in the contract allocable to A's annuity (49.4 percent of $86,000)	$42,484.00
Portion of investment in the contract allocable to B's annuity (50.6 percent of $86,000)	$43,516.00
Value of the refund feature with respect to A's annuity (percentage from Table III for male, age 70, and duration 10, or 21 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract $41,460)	$8,707.00
A's allocable portion of the investment in the contract adjusted for refund feature ($42,484 less $8,707.00)	$33,777.00
Value of the refund feature with respect to B's annuity (percentage from Table III for male, age 60, and duration 20, or 25 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $43,516)	$10,879.00
B's allocable portion of the investment in the contract adjusted for refund feature ($43,516 less $10,879.00)	$32,637.00
Sum of A's and B's allocable portions of the investment in the contract after adjustment for the refund feature	$66,414.00
Exclusion ratio for the contract as a whole (total adjusted investment in the contract, $66,414, divided by the total expected return from above, $101,490.60) (percent)	65.4

Example (2). Assume the same facts as in example (1) except that the total investment in the contract was made after June 30, 1986. The exclusion ratio to be used by both A and B would be 56.9 percent, determined as follows:

A's expected return (A's payments per year of $4,146 multiplied by his life expectancy from Table V of 16.0)	$66,336.00
B's expected return (B's payments per year of $2,820 multiplied by his life expectancy from Table V of 24.2)	$68,244.00
Sum of expected returns to be used in determining exclusion ratio	$134,580.00
Percentage of total expected return attributable to A's expectancy of life ($66,336.00÷$134,580.00)	49.3
Percentage of total expected return attributable to B's expectancy of life ($68,244.00÷$134,580.00)	50.7
Portion of investment in the contract allocable to A's annuity (49.3 percent of $86,000)	$42,398.00
Portion of investment in the contract allocable to B's annuity (50.7 percent of $86,000)	$43,602.00
Value of the refund feature with respect to A's annuity (percentage from Table VII for age 70 and duration 10, or 11 percent, multiplied by lesser of the guaranteed amount and allocable portion of investment in the contract, $41,460)	$4,560.60
A's allocable portion of the investment in the contract adjusted for refund feature ($42,398 less $4,560.60)	$37,837.40
Value of the refund feature with respect to B's annuity (percentage from Table VII for age 60 and duration 20, or 11 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $43,602)	$4,796.22
B's allocable portion of the investment in the contract adjusted for refund feature ($43,602 less $4,796.22)	$38,805.78
Sum of A's and B's allocable portions of the investment in the contract after adjustment for the refund feature	$76,643.18
Exclusion ratio for the contract as a whole (total adjusted investment in the contract, $76,643.18, divided by the total expected return from above, $134,580.00) (percent)	56.9

(f) *Adjustment of investment in the contract with respect to contracts subject to § 1.72–6(d).* In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this section is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(vi).

Par. 6. Section 1.72–9 is amended by revising the introductory text preceding the tables and the concluding text following the tables and adding new Tables V, VI, VIA, VII, and VIII to read as follows:

§ 1.72–9 Tables.

The following tables are to be used in connection with computations under section 72 and the regulations thereunder. Tables I, II, IIA, III, and IV are to be used if the investment in the contract does not include a post-June 1986 investment in the contract (as defined in § 1.72–6(d)(3)). Tables V, VI, VIA, VII, and VIII are to be used if the investment in the contract includes a post-June 1986 investment in the contract (as defined in § 1.72–6(d)(3)). See § 1.72–6(d)(3) for rules treating the entire investment in a contract as post-June 1986 investment in a contract if the annuity starting date of the contract is after June 30, 1986, and the contract provides for a disqualifying form of payment of settlement, such as an option to receive a lump sum in full discharge of the obligation under the contract. In addition, see § 1.72–6(d) for special rules concerning the tables to be used and the separate computations required if the investment in the contract includes both a pre-July 1986 investment in the contract and a post-June 1986 investment in the contract and the election described in § 1.72–6(d)(6) is made with respect to the contract.

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TABLE V - ORDINARY LIFE ANNUITIES
ONE LIFE - EXPECTED RETURN MULTIPLES

AGE	MULTIPLE	AGE	MULTIPLE	AGE	MULTIPLE
5	76.6	42	40.6	79	10.0
6	75.6	43	39.6	80	9.5
7	74.7	44	38.7	81	8.9
8	73.7	45	37.7	82	8.4
9	72.7	46	36.8	83	7.9
10	71.7	47	35.9	84	7.4
11	70.7	48	34.9	85	6.9
12	69.7	49	34.0	86	6.5
13	68.8	50	33.1	87	6.1
14	67.8	51	32.2	88	5.7
15	66.8	52	31.3	89	5.3
16	65.8	53	30.4	90	5.0
17	64.8	54	29.5	91	4.7
18	63.9	55	28.6	92	4.4
19	62.9	56	27.7	93	4.1
20	61.9	57	26.8	94	3.9
21	60.9	58	25.9	95	3.7
22	59.9	59	25.0	96	3.4
23	59.0	60	24.2	97	3.2
24	58.0	61	23.3	98	3.0
25	57.0	62	22.5	99	2.8
26	56.0	63	21.6	100	2.7
27	55.1	64	20.8	101	2.5
28	54.1	65	20.0	102	2.3
29	53.1	66	19.2	103	2.1
30	52.2	67	18.4	104	1.9
31	51.2	68	17.6	105	1.8
32	50.2	69	16.8	106	1.6
33	49.3	70	16.0	107	1.4
34	48.3	71	15.3	108	1.3
35	47.3	72	14.6	109	1.1
36	46.4	73	13.9	110	1.0
37	45.4	74	13.2	111	.9
38	44.4	75	12.5	112	.8
39	43.5	76	11.9	113	.7
40	42.5	77	11.2	114	.6
41	41.5	78	10.6	115	.5

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	5	6	7	8	9	10	11	12	13	14
5	83.7	83.2	82.9	82.4	82.0	81.6	81.2	80.8	80.6	80.3
6	83.2	82.7	82.3	81.8	81.4	80.9	80.5	80.2	79.9	79.6
7	82.9	82.3	81.9	81.4	80.9	80.4	80.0	79.6	79.3	79.0
8	82.4	81.8	81.4	80.8	80.3	79.9	79.4	79.0	78.7	78.3
9	82.0	81.4	80.9	80.3	79.8	79.3	78.8	78.4	78.1	77.7
10	81.6	80.9	80.4	79.9	79.3	78.8	78.3	77.8	77.5	77.0
11	81.2	80.5	80.0	79.4	78.8	78.3	77.8	77.3	76.9	76.4
12	80.8	80.2	79.6	79.0	78.4	77.8	77.3	76.7	76.3	75.8
13	80.6	79.9	79.3	78.7	78.1	77.5	76.9	76.3	75.9	75.4
14	80.3	79.6	79.0	78.3	77.7	77.0	76.4	75.8	75.4	74.9
15	80.0	79.3	78.6	77.9	77.3	76.6	76.0	75.4	74.9	74.4
16	79.7	79.0	78.3	77.6	76.9	76.2	75.6	75.0	74.5	73.9
17	79.5	78.7	78.0	77.3	76.6	75.9	75.2	74.6	74.0	73.4
18	79.3	78.5	77.9	77.1	76.4	75.6	74.9	74.3	73.7	73.1
19	79.1	78.3	77.6	76.8	76.1	75.3	74.6	73.9	73.3	72.7
20	78.9	78.1	77.4	76.6	75.8	75.0	74.3	73.6	73.0	72.3
21	78.7	77.8	77.1	76.3	75.5	74.8	74.0	73.3	72.6	71.9
22	78.5	77.7	76.9	76.1	75.3	74.5	73.7	73.0	72.3	71.6
23	78.4	77.6	76.8	76.0	75.2	74.3	73.6	72.8	72.1	71.4
24	78.3	77.4	76.6	75.8	74.9	74.1	73.3	72.5	71.8	71.1
25	78.1	77.2	76.5	75.6	74.7	73.9	73.1	72.3	71.6	70.8
26	78.0	77.1	76.3	75.4	74.6	73.7	72.9	72.0	71.3	70.5
27	77.9	77.0	76.2	75.4	74.5	73.6	72.8	71.9	71.2	70.4
28	77.8	76.9	76.1	75.2	74.3	73.4	72.6	71.7	71.0	70.2
29	77.7	76.8	76.0	75.1	74.2	73.3	72.4	71.5	70.8	69.9
30	77.7	76.8	75.9	75.0	74.1	73.2	72.3	71.5	70.7	69.8
31	77.6	76.6	75.8	74.9	74.0	73.1	72.2	71.3	70.5	69.7
32	77.5	76.5	75.7	74.8	73.9	72.9	72.0	71.1	70.4	69.5
33	77.5	76.5	75.7	74.8	73.8	72.9	72.0	71.1	70.3	69.4
34	77.4	76.4	75.6	74.6	73.7	72.8	71.9	71.0	70.1	69.3
35	77.3	76.3	75.5	74.5	73.6	72.7	71.7	70.8	70.0	69.1
36	77.3	76.3	75.5	74.5	73.6	72.7	71.7	70.8	70.0	69.1
37	77.2	76.3	75.4	74.5	73.5	72.6	71.8	70.7	69.9	68.9
38	77.1	76.2	75.3	74.4	73.4	72.5	71.5	70.6	69.7	68.8
39	77.2	76.2	75.3	74.4	73.4	72.5	71.5	70.6	69.7	68.8
40	77.1	76.1	75.2	74.3	73.3	72.4	71.4	70.5	69.6	68.7
41	77.0	76.0	75.2	74.2	73.2	72.3	71.3	70.4	69.5	68.6
42	77.0	76.1	75.2	74.2	73.2	72.3	71.3	70.4	69.5	68.6
43	77.0	76.0	75.1	74.1	73.2	72.2	71.2	70.3	69.4	68.4
44	77.0	76.0	75.1	74.1	73.2	72.2	71.2	70.3	69.4	68.4
45	76.9	75.9	75.0	74.1	73.1	72.1	71.1	70.2	69.3	68.3
46	76.9	75.9	75.0	74.1	73.1	72.1	71.1	70.2	69.3	68.3
47	76.9	75.9	75.1	74.1	73.1	72.1	71.1	70.2	69.3	68.3
48	76.8	75.8	75.0	74.0	73.0	72.0	71.0	70.1	69.2	68.2
49	76.8	75.8	75.0	74.0	73.0	72.0	71.0	70.0	69.2	68.2
50	76.8	75.8	75.0	74.0	73.0	72.0	71.0	70.0	69.2	68.2
51	76.8	75.8	75.0	74.0	73.0	72.0	71.0	70.0	69.1	68.2
52	76.8	75.8	74.9	74.0	73.0	72.0	71.0	70.0	69.1	68.2
53	76.8	75.8	74.9	73.9	73.0	72.0	71.0	70.0	69.1	68.1
54	76.8	75.8	74.9	73.9	72.9	72.0	71.0	70.0	69.1	68.1
55	76.8	75.8	74.9	73.9	72.9	71.9	70.9	70.0	69.1	68.1
56	76.8	75.8	74.9	73.9	72.9	71.9	70.9	69.9	69.0	68.0
57	76.7	75.7	74.8	73.9	72.9	71.9	70.9	69.9	69.0	68.0
58	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.9	69.0	68.0
59	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
60	76.7	75.7	74.8	73.8	72.8	71.9	70.9	69.9	69.0	68.0
61	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
62	76.7	75.7	74.8	73.8	72.8	71.8	70.9	69.9	69.0	68.0

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	5	6	7	8	9	10	11	12	13	14
63	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
64	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
65	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
66	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
67	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
68	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
69	76.6	75.6	74.7	73.8	72.8	71.8	70.8	69.8	68.9	67.9
70	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
71	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.9
72	76.6	75.6	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
73	76.6	75.6	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
74	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
75	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
76	76.6	75.6	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
77	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
78	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
79	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
80	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.9	67.9
81	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
82	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
83	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
84	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
85	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
86	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
87	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
88	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
89	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
90	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
91	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
92	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
93	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
94	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
95	76.6	75.6	74.7	73.7	72.7	71.7	70.8	69.8	68.9	67.9
96	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
97	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
98	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
99	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
100	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
101	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
102	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
103	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
104	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
105	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
106	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
107	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
108	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
109	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
110	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
111	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
112	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
113	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
114	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
115	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	15	16	17	18	19	20	21	22	23	24
15	73.8	73.3	72.8	72.5	72.1	71.7	71.3	70.9	70.7	70.3
16	73.3	72.8	72.3	71.9	71.5	71.0	70.6	70.2	70.0	69.6
17	72.8	72.3	71.8	71.4	70.9	70.4	70.0	69.6	69.3	68.9
18	72.5	71.9	71.4	70.9	70.4	69.9	69.5	69.1	68.7	68.4
19	72.1	71.5	70.9	70.4	69.9	69.4	68.9	68.4	68.1	67.7
20	71.7	71.0	70.4	69.9	69.4	68.9	68.3	67.9	67.5	67.1
21	71.3	70.6	70.0	69.5	68.9	68.3	67.8	67.3	66.9	66.5
22	70.9	70.2	69.6	69.1	68.4	67.9	67.3	66.8	66.4	65.9
23	70.7	70.0	69.3	68.7	68.1	67.5	66.9	66.4	65.9	65.4
24	70.3	69.6	68.9	68.4	67.7	67.1	66.5	65.9	65.4	64.9
25	70.0	69.3	68.6	68.0	67.3	66.7	66.0	65.4	64.9	64.4
26	69.8	69.0	68.3	67.6	66.9	66.3	65.6	65.0	64.5	63.9
27	69.6	68.8	68.1	67.4	66.7	66.0	65.3	64.7	64.1	63.5
28	69.4	68.6	67.8	67.1	66.4	65.7	65.0	64.3	63.7	63.1
29	69.1	68.3	67.5	66.8	66.1	65.3	64.6	63.9	63.3	62.7
30	69.0	68.2	67.4	66.7	65.9	65.1	64.4	63.7	63.1	62.4
31	68.8	68.0	67.1	66.4	65.6	64.8	64.1	63.3	62.7	62.0
32	68.6	67.8	66.9	66.2	65.4	64.6	63.8	63.0	62.4	61.7
33	68.5	67.7	66.8	66.1	65.2	64.4	63.6	62.9	62.2	61.4
34	68.4	67.5	66.6	65.9	65.0	64.2	63.4	62.6	61.9	61.1
35	68.2	67.3	66.4	65.7	64.8	64.0	63.1	62.3	61.6	60.9
36	68.2	67.3	66.4	65.6	64.7	63.9	63.0	62.2	61.5	60.7
37	68.0	67.1	66.2	65.4	64.5	63.7	62.8	62.0	61.2	60.4
38	67.9	67.0	66.1	65.3	64.4	63.5	62.6	61.8	61.0	60.2
39	67.9	66.9	66.0	65.2	64.3	63.4	62.5	61.7	60.9	60.1
40	67.7	66.8	65.9	65.1	64.2	63.3	62.4	61.5	60.7	59.9
41	67.6	66.7	65.8	64.9	64.0	63.1	62.2	61.3	60.5	59.7
42	67.6	66.7	65.7	64.9	64.0	63.1	62.1	61.2	60.5	59.6
43	67.5	66.5	65.6	64.8	63.8	62.9	62.0	61.1	60.3	59.4
44	67.5	66.5	65.6	64.7	63.8	62.9	61.9	61.0	60.2	59.3
45	67.4	66.4	65.5	64.6	63.7	62.7	61.8	60.9	60.1	59.2
46	67.4	66.4	65.4	64.6	63.6	62.7	61.8	60.8	60.0	59.1
47	67.4	66.4	65.4	64.6	63.6	62.7	61.7	60.8	60.0	59.0
48	67.2	66.3	65.3	64.4	63.5	62.5	61.6	60.6	59.8	58.9
49	67.2	66.3	65.3	64.4	63.5	62.5	61.5	60.6	59.8	58.8
50	67.2	66.2	65.3	64.4	63.4	62.5	61.5	60.6	59.7	58.8
51	67.2	66.2	65.2	64.4	63.4	62.4	61.5	60.5	59.7	58.7
52	67.2	66.2	65.2	64.3	63.4	62.4	61.4	60.5	59.6	58.7
53	67.2	66.2	65.2	64.3	63.3	62.4	61.4	60.4	59.6	58.6
54	67.1	66.1	65.2	64.3	63.3	62.3	61.4	60.4	59.5	58.6
55	67.1	66.1	65.1	64.2	63.3	62.3	61.3	60.3	59.5	58.5
56	67.1	66.1	65.1	64.2	63.2	62.3	61.3	60.3	59.4	58.5
57	67.0	66.0	65.1	64.2	63.2	62.2	61.2	60.2	59.4	58.4
58	67.0	66.0	65.0	64.1	63.1	62.2	61.2	60.2	59.3	58.3
59	66.9	66.0	65.0	64.1	63.1	62.1	61.1	60.1	59.3	58.3
60	67.0	66.0	65.0	64.1	63.1	62.2	61.2	60.2	59.3	58.3
61	66.9	65.9	65.0	64.1	63.1	62.1	61.1	60.1	59.2	58.3
62	67.0	66.0	65.0	64.1	63.1	62.1	61.1	60.2	59.3	58.3
63	66.9	65.9	64.9	64.0	63.0	62.1	61.1	60.1	59.2	58.2
64	66.9	65.9	64.9	64.1	63.1	62.1	61.1	60.1	59.2	58.2
65	66.9	66.0	65.0	64.1	63.1	62.1	61.1	60.1	59.2	58.2
66	66.9	66.0	65.0	64.1	63.1	62.1	61.1	60.1	59.2	58.2
67	66.9	65.9	64.9	64.0	63.1	62.1	61.1	60.1	59.2	58.2
68	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.2	58.2
69	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
70	66.8	65.8	64.8	63.9	62.9	61.9	61.0	60.0	59.1	58.1
71	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
72	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	15	16	17	18	19	20	21	22	23	24
73	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
74	66.8	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
75	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
76	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
77	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
78	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
79	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
80	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
81	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
82	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
83	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.1	58.1
84	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
85	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
86	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
87	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
88	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
89	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
90	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
91	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
92	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
93	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
94	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
95	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
96	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
97	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
98	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
99	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
100	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
101	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
102	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
103	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
104	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
105	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
106	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
107	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
108	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
109	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
110	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
111	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
112	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
113	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
114	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
115	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	25	26	27	28	29	30	31	32	33	34
25	63.8	63.3	62.9	62.5	62.0	61.7	61.3	61.0	60.7	60.4
26	63.3	62.8	62.4	61.9	61.4	61.1	60.7	60.3	60.0	59.7
27	62.9	62.4	61.9	61.4	60.9	60.6	60.1	59.7	59.4	59.1
28	62.5	61.9	61.4	60.9	60.4	60.0	59.5	59.1	58.8	58.4
29	62.0	61.4	60.9	60.4	59.8	59.4	58.9	58.5	58.1	57.7
30	61.7	61.1	60.6	60.0	59.4	59.0	58.5	58.0	57.6	57.2
31	61.3	60.7	60.1	59.5	58.9	58.5	57.9	57.4	57.0	56.6
32	61.0	60.3	59.7	59.1	58.5	58.0	57.4	56.9	56.5	56.0
33	60.7	60.0	59.4	58.8	58.1	57.6	57.0	56.5	56.0	55.5
34	60.4	59.7	59.1	58.4	57.7	57.2	56.6	56.0	55.5	55.0
35	60.1	59.3	58.7	58.0	57.3	56.8	56.1	55.5	55.0	54.5
36	59.9	59.1	58.5	57.8	57.1	56.5	55.8	55.2	54.7	54.1
37	59.6	58.9	58.2	57.4	56.7	56.1	55.4	54.8	54.2	53.6
38	59.4	58.6	57.9	57.1	56.4	55.8	55.0	54.4	53.8	53.2
39	59.2	58.4	57.7	56.9	56.2	55.5	54.8	54.1	53.5	52.8
40	59.0	58.2	57.5	56.7	55.9	55.2	54.5	53.7	53.1	52.4
41	58.8	58.0	57.2	56.4	55.6	54.9	54.2	53.4	52.8	52.1
42	58.7	57.8	57.1	56.3	55.4	54.7	54.0	53.2	52.5	51.8
43	58.5	57.6	56.9	56.0	55.2	54.5	53.7	52.9	52.2	51.5
44	58.4	57.5	56.8	55.9	55.1	54.3	53.5	52.7	52.0	51.2
45	58.2	57.4	56.6	55.7	54.8	54.1	53.3	52.4	51.7	50.9
46	58.2	57.3	56.5	55.6	54.7	54.0	53.1	52.3	51.6	50.7
47	58.1	57.2	56.4	55.5	54.6	53.8	53.0	52.1	51.4	50.6
48	57.9	57.0	56.2	55.3	54.4	53.6	52.7	51.9	51.1	50.3
49	57.9	57.0	56.1	55.2	54.3	53.5	52.6	51.8	51.0	50.1
50	57.8	56.9	56.1	55.1	54.2	53.4	52.5	51.6	50.9	50.0
51	57.8	56.8	56.0	55.1	54.1	53.3	52.4	51.5	50.7	49.9
52	57.7	56.8	55.9	55.0	54.1	53.2	52.3	51.4	50.6	49.7
53	57.7	56.7	55.9	54.9	54.0	53.1	52.2	51.3	50.5	49.6
54	57.6	56.6	55.8	54.8	53.9	53.1	52.1	51.2	50.4	49.5
55	57.5	56.6	55.7	54.8	53.8	53.0	52.0	51.1	50.3	49.4
56	57.5	56.5	55.7	54.7	53.8	52.9	52.0	51.0	50.2	49.3
57	57.4	56.5	55.6	54.6	53.7	52.8	51.9	50.9	50.1	49.2
58	57.4	56.4	55.5	54.6	53.6	52.7	51.8	50.8	50.0	49.1
59	57.3	56.3	55.5	54.5	53.5	52.7	51.7	50.7	49.9	49.0
60	57.3	56.4	55.5	54.5	53.5	52.7	51.7	50.8	49.9	49.0
61	57.3	56.3	55.4	54.4	53.5	52.6	51.6	50.7	49.8	48.9
62	57.3	56.3	55.4	54.5	53.5	52.6	51.6	50.7	49.8	48.9
63	57.2	56.2	55.4	54.4	53.4	52.5	51.5	50.6	49.7	48.7
64	57.2	56.2	55.4	54.4	53.4	52.5	51.5	50.6	49.7	48.7
65	57.2	56.2	55.4	54.4	53.4	52.5	51.5	50.6	49.7	48.7
66	57.2	56.2	55.3	54.4	53.4	52.5	51.5	50.5	49.7	48.7
67	57.2	56.2	55.3	54.3	53.3	52.5	51.5	50.5	49.6	48.6
68	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.5	49.6	48.6
69	57.1	56.1	55.2	54.3	53.3	52.4	51.4	50.4	49.5	48.5
70	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.5	48.5
71	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.4	49.5	48.5
72	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.4	49.5	48.5
73	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.5	48.5
74	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
75	57.0	56.0	55.1	54.2	53.2	52.3	51.3	50.3	49.4	48.4
76	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
77	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.4
78	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.4
79	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
80	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
81	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
82	57.0	56.0	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	25	26	27	28	29	30	31	32	33	34
83	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
84	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
85	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
86	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
87	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
88	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
89	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
90	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
91	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
92	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
93	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
94	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
95	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
96	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
97	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
98	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
99	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
100	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
101	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
102	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
103	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
104	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
105	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
106	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
107	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
108	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
109	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
110	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
111	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
112	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
113	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
114	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
115	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	35	36	37	38	39	40	41	42	43	44
35	53.9	53.5	53.0	52.5	52.2	51.8	51.4	51.1	50.7	50.5
36	53.5	53.1	52.5	52.1	51.7	51.2	50.8	50.5	50.1	49.9
37	53.0	52.5	52.0	51.5	51.1	50.6	50.2	49.8	49.4	49.2
38	52.5	52.1	51.5	50.9	50.5	50.0	49.6	49.2	48.8	48.5
39	52.2	51.7	51.1	50.5	50.1	49.6	49.1	48.7	48.2	47.9
40	51.8	51.2	50.6	50.0	49.6	49.0	48.5	48.1	47.6	47.2
41	51.4	50.8	50.2	49.6	49.1	48.5	47.9	47.5	47.0	46.6
42	51.1	50.5	49.8	49.2	48.7	48.1	47.5	47.1	46.5	46.1
43	50.7	50.1	49.4	48.8	48.2	47.6	47.0	46.5	46.0	45.5
44	50.5	49.9	49.2	48.5	47.9	47.2	46.6	46.1	45.5	45.1
45	50.2	49.5	48.8	48.1	47.5	46.8	46.2	45.6	45.0	44.6
46	50.0	49.3	48.5	47.8	47.2	46.5	45.8	45.3	44.6	44.1
47	49.8	49.1	48.3	47.5	46.9	46.2	45.5	44.9	44.3	43.8
48	49.5	48.8	48.0	47.2	46.6	45.8	45.1	44.5	43.8	43.3
49	49.3	48.6	47.8	47.0	46.3	45.6	44.8	44.2	43.5	42.9
50	49.1	48.4	47.6	46.8	46.1	45.3	44.6	43.9	43.2	42.6
51	49.0	48.2	47.4	46.6	45.9	45.1	44.3	43.6	42.9	42.3
52	48.9	48.1	47.2	46.4	45.7	44.9	44.1	43.4	42.6	42.0
53	48.7	47.9	47.1	46.2	45.5	44.7	43.8	43.1	42.4	41.7
54	48.6	47.8	46.9	46.1	45.3	44.5	43.6	42.9	42.1	41.4
55	48.5	47.7	46.8	45.9	45.1	44.3	43.4	42.7	41.9	41.2
56	48.3	47.5	46.6	45.8	45.0	44.1	43.2	42.5	41.7	41.0
57	48.2	47.4	46.5	45.6	44.8	43.9	43.1	42.3	41.5	40.7
58	48.1	47.3	46.4	45.5	44.7	43.8	42.9	42.1	41.3	40.5
59	48.0	47.2	46.3	45.3	44.5	43.6	42.7	42.0	41.1	40.3
60	48.0	47.2	46.2	45.3	44.5	43.6	42.7	41.9	41.0	40.2
61	47.9	47.1	46.1	45.2	44.4	43.4	42.5	41.7	40.8	40.0
62	47.9	47.0	46.1	45.2	44.3	43.4	42.5	41.7	40.8	40.0
63	47.8	46.9	46.0	45.0	44.2	43.3	42.3	41.5	40.6	39.8
64	47.8	46.9	46.0	45.0	44.2	43.2	42.3	41.4	40.5	39.7
65	47.7	46.9	45.9	45.0	44.1	43.2	42.2	41.4	40.5	39.6
66	47.7	46.8	45.9	44.9	44.1	43.1	42.2	41.3	40.4	39.5
67	47.7	46.8	45.8	44.9	44.0	43.0	42.1	41.2	40.3	39.5
68	47.6	46.7	45.8	44.8	43.9	43.0	42.0	41.2	40.2	39.4
69	47.6	46.7	45.7	44.7	43.9	42.9	41.9	41.1	40.1	39.3
70	47.5	46.6	45.6	44.7	43.8	42.8	41.9	41.0	40.0	39.2
71	47.5	46.6	45.6	44.7	43.8	42.8	41.8	41.0	40.0	39.1
72	47.5	46.6	45.6	44.7	43.8	42.8	41.8	41.0	40.0	39.1
73	47.5	46.6	45.6	44.6	43.7	42.8	41.8	40.9	39.9	39.1
74	47.4	46.6	45.6	44.6	43.7	42.7	41.7	40.9	39.9	39.0
75	47.4	46.5	45.5	44.5	43.7	42.7	41.7	40.8	39.8	39.0
76	47.4	46.5	45.6	44.6	43.7	42.7	41.7	40.8	39.9	39.0
77	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.8	38.9
78	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.9
79	47.3	46.4	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
80	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.8	39.8	38.9
81	47.3	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
82	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
83	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
84	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
85	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
86	47.3	46.4	45.4	44.4	43.6	42.6	41.6	40.7	39.7	38.8
87	47.3	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
88	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.7	39.7	38.8
89	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
90	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
91	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.7	38.8
92	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	35	36	37	38	39	40	41	42	43	44
93	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
94	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
95	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
96	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
97	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
98	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
99	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
100	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.7	38.8
101	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
102	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
103	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
104	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
105	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
106	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
107	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
108	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
109	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
110	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
111	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
112	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
113	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
114	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
115	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	45	46	47	48	49	50	51	52	53	54
45	44.0	43.6	43.1	42.6	42.3	41.9	41.6	41.3	41.0	40.7
46	43.6	43.1	42.7	42.1	41.7	41.4	41.0	40.7	40.3	40.0
47	43.1	42.7	42.2	41.6	41.2	40.8	40.4	40.1	39.7	39.4
48	42.6	42.1	41.6	41.1	40.6	40.2	39.8	39.4	39.0	38.7
49	42.3	41.7	41.2	40.6	40.1	39.7	39.3	38.8	38.5	38.1
50	41.9	41.4	40.8	40.2	39.7	39.2	38.8	38.3	37.9	37.5
51	41.6	41.0	40.4	39.8	39.3	38.8	38.3	37.8	37.4	37.0
52	41.3	40.7	40.1	39.4	38.8	38.3	37.8	37.3	36.9	36.4
53	41.0	40.3	39.7	39.0	38.5	37.9	37.4	36.9	36.4	35.9
54	40.7	40.0	39.4	38.7	38.1	37.5	37.0	36.4	35.9	35.4
55	40.4	39.7	39.1	38.4	37.7	37.1	36.6	36.0	35.5	34.9
56	40.2	39.5	38.8	38.0	37.4	36.8	36.2	35.6	35.0	34.5
57	39.9	39.2	38.5	37.7	37.1	36.4	35.8	35.2	34.6	34.1
58	39.7	39.0	38.3	37.5	36.8	36.1	35.5	34.8	34.2	33.7
59	39.5	38.7	38.0	37.2	36.5	35.8	35.1	34.5	33.9	33.3
60	39.4	38.6	37.9	37.0	36.3	35.6	34.9	34.3	33.6	33.0
61	39.2	38.4	37.6	36.8	36.1	35.3	34.6	34.0	33.3	32.6
62	39.1	38.3	37.5	36.7	35.9	35.2	34.5	33.8	33.1	32.4
63	38.9	38.1	37.3	36.4	35.7	34.9	34.2	33.5	32.8	32.1
64	38.8	38.0	37.2	36.3	35.5	34.8	34.0	33.3	32.6	31.8
65	38.7	37.9	37.1	36.2	35.4	34.6	33.9	33.1	32.4	31.6
66	38.6	37.8	37.0	36.1	35.3	34.5	33.7	32.9	32.2	31.4
67	38.5	37.7	36.9	36.0	35.1	34.3	33.5	32.8	32.0	31.2
68	38.4	37.6	36.8	35.8	35.0	34.2	33.4	32.6	31.8	31.0
69	38.3	37.5	36.6	35.7	34.9	34.1	33.2	32.4	31.6	30.9
70	38.2	37.4	36.5	35.6	34.7	33.9	33.1	32.3	31.5	30.7
71	38.2	37.3	36.5	35.5	34.7	33.9	33.0	32.2	31.4	30.6
72	38.2	37.3	36.4	35.5	34.6	33.8	33.0	32.1	31.3	30.5
73	38.1	37.2	36.4	35.4	34.6	33.7	32.9	32.0	31.2	30.4
74	38.1	37.2	36.3	35.4	34.5	33.6	32.8	31.9	31.1	30.3
75	38.0	37.1	36.2	35.3	34.4	33.5	32.7	31.8	31.0	30.1
76	38.0	37.1	36.2	35.3	34.4	33.5	32.7	31.8	31.0	30.1
77	37.9	37.0	36.1	35.2	34.3	33.4	32.6	31.7	30.8	30.0
78	37.9	37.0	36.1	35.1	34.3	33.4	32.5	31.7	30.8	29.9
79	37.8	37.0	36.1	35.1	34.2	33.3	32.5	31.6	30.7	29.9
80	37.9	37.0	36.1	35.1	34.3	33.4	32.5	31.6	30.8	29.9
81	37.8	36.9	36.1	35.1	34.2	33.3	32.4	31.5	30.7	29.8
82	37.8	37.0	36.1	35.1	34.2	33.3	32.4	31.5	30.7	29.8
83	37.8	36.9	36.1	35.1	34.2	33.3	32.4	31.5	30.6	29.8
84	37.8	36.9	36.0	35.0	34.1	33.3	32.4	31.5	30.6	29.7
85	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.7
86	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.6	29.7
87	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.7
88	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
89	37.7	36.8	35.9	34.9	34.0	33.1	32.3	31.4	30.5	29.6
90	37.7	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
91	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
92	37.7	36.8	35.9	35.0	34.1	33.2	32.3	31.4	30.5	29.6
93	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
94	37.7	36.8	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
95	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
96	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
97	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
98	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
99	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
100	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
101	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
102	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	45	46	47	48	49	50	51	52	53	54
103	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
104	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
105	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
106	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
107	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
108	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
109	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
110	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
111	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
112	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
113	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
114	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
115	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	55	56	57	58	59	60	61	62	63	64
55	34.5	34.0	33.5	33.1	32.7	32.4	32.0	31.7	31.4	31.1
56	34.0	33.5	33.0	32.5	32.1	31.8	31.4	31.1	30.7	30.5
57	33.5	33.0	32.5	32.0	31.5	31.2	30.8	30.5	30.1	29.8
58	33.1	32.5	32.0	31.5	31.0	30.6	30.2	29.9	29.5	29.2
59	32.7	32.1	31.5	31.0	30.5	30.1	29.6	29.3	28.9	28.5
60	32.4	31.8	31.2	30.6	30.1	29.7	29.2	28.8	28.4	28.0
61	32.0	31.4	30.8	30.2	29.6	29.2	28.7	28.3	27.8	27.4
62	31.7	31.1	30.5	29.9	29.3	28.8	28.3	27.9	27.3	27.0
63	31.4	30.7	30.1	29.5	28.9	28.4	27.8	27.3	26.8	26.4
64	31.1	30.5	29.8	29.2	28.5	28.0	27.4	27.0	26.4	26.0
65	30.9	30.2	29.5	28.9	28.2	27.7	27.1	26.6	26.0	25.5
66	30.7	30.0	29.3	28.6	27.9	27.4	26.7	28.2	25.6	25.1
67	30.5	29.8	29.0	28.3	27.6	27.1	26.4	25.9	25.3	24.7
68	30.3	29.5	28.8	28.1	27.4	26.8	26.1	25.5	24.9	24.4
69	30.1	29.3	28.6	27.8	27.1	26.5	25.8	25.2	24.5	24.0
70	29.9	29.1	28.3	27.6	26.8	26.2	25.5	24.9	24.2	23.6
71	29.8	29.0	28.2	27.4	26.7	26.0	25.3	24.7	24.0	23.4
72	29.7	28.9	28.1	27.3	26.5	25.9	25.1	24.5	23.8	23.1
73	29.5	28.7	27.9	27.1	26.4	25.7	24.9	24.3	23.5	22.9
74	29.4	28.6	27.8	27.0	26.2	25.5	24.7	24.1	23.3	22.7
75	29.3	28.5	27.6	26.8	26.0	25.3	24.5	23.9	23.1	22.4
76	29.3	28.4	27.6	26.8	26.0	25.2	24.4	23.8	23.0	22.3
77	29.1	28.3	27.4	26.6	25.8	25.1	24.2	23.5	22.8	22.1
78	29.1	28.2	27.4	26.5	25.7	25.0	24.1	23.4	22.6	21.9
79	29.0	28.1	27.3	26.4	25.6	24.9	24.0	23.3	22.5	21.8
80	29.0	28.2	27.3	26.4	25.6	24.8	24.0	23.3	22.4	21.7
81	28.9	28.1	27.2	26.3	25.5	24.7	23.9	23.1	22.3	21.6
82	28.9	28.0	27.2	26.3	25.4	24.7	23.8	23.1	22.2	21.5
83	28.9	28.0	27.1	26.3	25.4	24.6	23.8	23.0	22.2	21.4
84	28.8	28.0	27.1	26.2	25.3	24.6	23.7	22.9	22.1	21.3
85	28.8	27.9	27.0	26.1	25.3	24.5	23.6	22.9	22.0	21.2
86	28.8	27.9	27.0	26.1	25.3	24.5	23.6	22.8	22.0	21.2
87	28.8	27.9	27.0	26.1	25.2	24.5	23.6	22.8	21.9	21.2
88	28.7	27.9	27.0	26.1	25.2	24.4	23.5	22.8	21.9	21.1
89	28.7	27.8	26.9	26.0	25.1	24.4	23.5	22.7	21.8	21.0
90	28.7	27.8	26.9	26.0	25.1	24.4	23.5	22.7	21.8	21.0
91	28.7	27.8	26.9	26.0	25.1	24.4	23.5	22.7	21.8	21.0
92	28.7	27.8	26.9	26.0	25.1	24.3	23.4	22.7	21.8	21.0
93	28.6	27.7	26.9	26.0	25.1	24.3	23.4	22.6	21.7	20.9
94	28.7	27.8	26.9	26.0	25.1	24.3	23.4	22.6	21.7	21.0
95	28.7	27.8	26.9	26.0	25.1	24.3	23.4	22.6	21.8	21.0
96	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.6	21.7	20.9
97	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.7	20.9
98	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
99	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
100	28.7	27.8	26.9	26.0	25.1	24.3	23.4	22.6	21.7	20.9
101	28.6	27.8	26.9	26.0	25.1	24.3	23.4	22.6	21.7	20.9
102	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.9
103	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
104	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
105	28.6	27.7	26.8	25.9	25.0	24.2	23.4	22.6	21.7	20.9
106	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
107	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
108	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
109	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
110	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
111	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
112	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	55	56	57	58	59	60	61	62	63	64
113	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
114	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
115	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	65	66	67	68	69	70	71	72	73	74
65	25.1	24.7	24.3	23.9	23.5	23.1	22.8	22.6	22.3	22.0
66	24.7	24.2	23.8	23.4	22.9	22.6	22.3	22.0	21.7	21.4
67	24.3	23.8	23.3	22.9	22.4	22.0	21.7	21.4	21.1	20.8
68	23.9	23.4	22.9	22.4	21.9	21.5	21.2	20.8	20.5	20.2
69	23.5	22.9	22.4	21.9	21.5	21.0	20.7	20.3	20.0	19.6
70	23.1	22.6	22.0	21.5	21.0	20.5	20.1	19.8	19.4	19.1
71	22.8	22.3	21.7	21.2	20.7	20.1	19.7	19.4	19.0	18.6
72	22.6	22.0	21.4	20.8	20.3	19.8	19.4	19.0	18.6	18.2
73	22.3	21.7	21.1	20.5	20.0	19.4	19.0	18.6	18.1	17.7
74	22.0	21.4	20.8	20.2	19.6	19.1	18.6	18.2	17.7	17.3
75	21.8	21.2	20.5	19.9	19.3	18.7	18.3	17.8	17.3	16.9
76	21.6	21.0	20.4	19.7	19.1	18.5	18.0	17.5	17.0	16.6
77	21.4	20.7	20.1	19.4	18.8	18.2	17.7	17.2	16.7	16.2
78	21.2	20.6	19.9	19.2	18.6	17.9	17.4	16.9	16.4	15.9
79	21.1	20.4	19.7	19.0	18.4	17.7	17.2	16.6	16.1	15.6
80	21.0	20.3	19.6	18.9	18.3	17.6	17.0	16.5	15.9	15.4
81	20.9	20.1	19.4	18.7	18.0	17.4	16.8	16.2	15.7	15.1
82	20.8	20.1	19.3	18.6	17.9	17.2	16.6	16.1	15.5	14.9
83	20.7	20.0	19.2	18.5	17.8	17.1	16.5	15.9	15.3	14.7
84	20.6	19.9	19.1	18.4	17.7	17.0	16.3	15.7	15.1	14.6
85	20.5	19.7	19.0	18.3	17.5	16.8	16.2	15.6	15.0	14.4
86	20.5	19.7	19.0	18.2	17.5	16.7	16.1	15.5	14.9	14.3
87	20.4	19.7	18.9	18.1	17.4	16.7	16.0	15.4	14.8	14.1
88	20.4	19.6	18.8	18.1	17.3	16.6	15.9	15.3	14.6	14.0
89	20.3	19.5	18.7	18.0	17.2	16.5	15.8	15.2	14.5	13.9
90	20.3	19.5	18.7	18.0	17.2	16.4	15.8	15.1	14.5	13.8
91	20.2	19.5	18.7	17.9	17.2	16.4	15.7	15.1	14.4	13.8
92	20.2	19.4	18.7	17.9	17.1	16.3	15.7	15.0	14.4	13.7
93	20.2	19.4	18.6	17.8	17.0	16.3	15.6	14.9	14.3	13.6
94	20.2	19.4	18.6	17.8	17.1	16.3	15.6	14.9	14.3	13.6
95	20.2	19.4	18.6	17.8	17.1	16.3	15.6	14.9	14.3	13.6
96	20.1	19.3	18.5	17.7	16.9	16.2	15.5	14.8	14.1	13.5
97	20.1	19.3	18.5	17.7	16.9	16.1	15.5	14.8	14.1	13.4
98	20.1	19.3	18.5	17.7	16.9	16.1	15.4	14.7	14.1	13.4
99	20.0	19.2	18.4	17.7	16.9	16.1	15.4	14.7	14.0	13.4
100	20.1	19.3	18.5	17.7	16.9	16.2	15.5	14.8	14.1	13.4
101	20.1	19.3	18.5	17.7	16.9	16.1	15.4	14.7	14.1	13.4
102	20.1	19.3	18.5	17.7	16.9	16.1	15.4	14.7	14.0	13.3
103	20.0	19.2	18.4	17.6	16.8	16.1	15.4	14.7	14.0	13.3
104	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
105	20.1	19.3	18.5	17.7	16.9	16.1	15.4	14.7	14.0	13.3
106	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	14.0	13.3
107	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
108	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
109	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
110	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
111	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
112	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
113	20.0	19.2	18.4	17.6	16.8	16.1	15.4	14.7	14.0	13.3
114	20.0	19.2	18.4	17.6	16.8	16.0	15.4	14.7	14.0	13.3
115	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	75	76	77	78	79	80	81	82	83	84
75	16.4	16.1	15.7	15.4	15.1	14.9	14.6	14.4	14.2	14.0
76	16.1	15.8	15.3	15.0	14.7	14.5	14.1	13.9	13.7	13.5
77	15.7	15.3	14.9	14.5	14.2	13.9	13.6	13.4	13.2	12.9
78	15.4	15.0	14.5	14.2	13.8	13.5	13.2	13.0	12.7	12.5
79	15.1	14.7	14.2	13.8	13.4	13.2	12.8	12.5	12.3	12.0
80	14.9	14.5	13.9	13.5	13.2	12.9	12.5	12.2	11.9	11.7
81	14.6	14.1	13.6	13.2	12.8	12.5	12.1	11.8	11.5	11.2
82	14.4	13.9	13.4	13.0	12.5	12.2	11.8	11.5	11.2	10.9
83	14.2	13.7	13.2	12.7	12.3	11.9	11.5	11.2	10.9	10.6
84	14.0	13.5	12.9	12.5	12.0	11.7	11.2	10.9	10.6	10.2
85	13.8	13.3	12.7	12.2	11.7	11.4	10.9	10.6	10.2	9.9
86	13.6	13.1	12.6	12.1	11.6	11.2	10.7	10.4	10.0	9.7
87	13.5	13.0	12.4	11.9	11.4	11.0	10.6	10.2	9.8	9.4
88	13.4	12.9	12.3	11.8	11.3	10.9	10.4	10.0	9.6	9.2
89	13.3	12.7	12.1	11.6	11.1	10.7	10.2	9.8	9.4	9.0
90	13.2	12.7	12.0	11.5	11.0	10.6	10.1	9.6	9.2	8.9
91	13.1	12.6	11.9	11.4	10.9	10.5	9.9	9.5	9.1	8.7
92	13.0	12.5	11.9	11.3	10.8	10.3	9.8	9.4	9.0	8.6
93	12.9	12.4	11.7	11.2	10.7	10.2	9.7	9.3	8.8	8.4
94	12.9	12.4	11.7	11.2	10.6	10.2	9.6	9.2	8.8	8.3
95	12.9	12.4	11.7	11.1	10.6	10.1	9.6	9.1	8.7	8.3
96	12.8	12.2	11.6	11.0	10.4	10.0	9.4	9.0	8.5	8.1
97	12.8	12.2	11.5	10.9	10.4	9.9	9.4	8.9	8.5	8.0
98	12.7	12.1	11.5	10.9	10.3	9.9	9.3	8.8	8.4	7.9
99	12.7	12.1	11.4	10.8	10.3	9.8	9.2	8.8	8.3	7.9
100	12.7	12.1	11.5	10.9	10.3	9.8	9.3	8.8	8.3	7.9
101	12.7	12.1	11.4	10.8	10.3	9.8	9.2	8.7	8.3	7.8
102	12.6	12.1	11.4	10.8	10.2	9.7	9.2	8.7	8.2	7.7
103	12.6	12.0	11.3	10.7	10.2	9.7	9.1	8.6	8.1	7.7
104	12.6	12.0	11.3	10.7	10.1	9.6	9.0	8.6	8.1	7.6
105	12.6	12.0	11.3	10.7	10.2	9.7	9.1	8.6	8.1	7.6
106	12.6	12.0	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.6
107	12.5	11.9	11.2	10.6	10.0	9.5	9.0	8.5	8.0	7.5
108	12.5	12.0	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.5
109	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	7.9	7.4
110	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	7.9	7.4
111	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	8.0	7.5
112	12.5	11.9	11.2	10.7	10.1	9.6	9.0	8.5	8.0	7.5
113	12.6	12.0	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.5
114	12.6	12.0	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.5
115	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	7.9	7.4

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	85	86	87	88	89	90	91	92	93	94
85	9.6	9.3	9.1	8.8	8.6	8.5	8.3	8.1	8.0	7.9
86	9.3	9.1	8.8	8.6	8.3	8.2	8.0	7.8	7.7	7.6
87	9.1	8.8	8.6	8.3	8.0	7.9	7.7	7.5	7.4	7.3
88	8.8	8.6	8.3	8.0	7.8	7.6	7.4	7.2	7.0	7.0
89	8.6	8.3	8.0	7.8	7.5	7.3	7.1	6.9	6.7	6.6
90	8.5	8.2	7.9	7.6	7.3	7.1	6.9	6.7	6.5	6.4
91	8.3	8.0	7.7	7.4	7.1	6.9	6.7	6.5	6.3	6.2
92	8.1	7.8	7.5	7.2	6.9	6.7	6.5	6.3	6.1	6.0
93	8.0	7.7	7.4	7.0	6.7	6.5	6.3	6.1	5.9	5.7
94	7.9	7.6	7.3	7.0	6.6	6.4	6.2	6.0	5.7	5.6
95	7.8	7.5	7.2	6.9	6.5	6.3	6.1	5.9	5.6	5.5
96	7.7	7.3	7.0	6.7	6.3	6.1	5.9	5.6	5.4	5.3
97	7.6	7.2	6.9	6.6	6.2	6.0	5.7	5.5	5.3	5.1
98	7.5	7.1	6.8	6.5	6.1	5.9	5.6	5.4	5.1	5.0
99	7.4	7.1	6.7	6.4	6.0	5.8	5.5	5.3	5.0	4.9
100	7.4	7.1	6.7	6.4	6.0	5.8	5.5	5.2	5.0	4.8
101	7.3	7.0	6.6	6.3	5.9	5.6	5.4	5.1	4.9	4.7
102	7.3	6.9	6.5	6.2	5.8	5.5	5.3	5.0	4.8	4.6
103	7.2	6.8	6.4	6.1	5.7	5.4	5.2	4.9	4.7	4.5
104	7.1	6.7	6.4	6.0	5.6	5.4	5.1	4.8	4.5	4.4
105	7.1	6.8	6.4	6.0	5.6	5.4	5.1	4.8	4.5	4.4
106	7.1	6.7	6.3	5.9	5.5	5.3	5.0	4.7	4.4	4.3
107	7.0	6.6	6.2	5.8	5.5	5.2	4.9	4.6	4.3	4.1
108	7.0	6.6	6.2	5.9	5.5	5.2	4.9	4.6	4.3	4.1
109	6.9	6.5	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
110	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
111	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
112	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
113	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
114	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
115	6.9	6.5	6.1	5.7	5.3	5.0	4.7	4.4	4.1	3.9

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	95	96	97	98	99	100	101	102	103	104
95	5.4	5.1	5.0	4.9	4.7	4.7	4.6	4.4	4.3	4.2
96	5.1	4.9	4.7	4.6	4.5	4.4	4.3	4.2	4.0	3.9
97	5.0	4.7	4.6	4.5	4.3	4.3	4.1	4.0	3.9	3.8
98	4.9	4.6	4.5	4.3	4.2	4.1	4.0	3.8	3.7	3.6
99	4.7	4.5	4.3	4.2	4.0	4.0	3.8	3.7	3.5	3.4
100	4.7	4.4	4.3	4.1	4.0	3.9	3.8	3.6	3.5	3.3
101	4.6	4.3	4.1	4.0	3.8	3.8	3.6	3.5	3.3	3.2
102	4.4	4.2	4.0	3.8	3.7	3.6	3.5	3.3	3.2	3.0
103	4.3	4.0	3.9	3.7	3.5	3.5	3.3	3.2	3.0	2.9
104	4.2	3.9	3.8	3.6	3.4	3.3	3.2	3.0	2.9	2.7
105	4.2	3.9	3.7	3.6	3.4	3.3	3.1	3.0	2.8	2.7
106	4.1	3.8	3.6	3.4	3.3	3.2	3.0	2.8	2.7	2.5
107	4.0	3.7	3.5	3.3	3.1	3.1	2.9	2.7	2.5	2.4
108	4.0	3.7	3.5	3.3	3.1	3.0	2.8	2.7	2.5	2.3
109	3.8	3.6	3.4	3.2	3.0	2.9	2.7	2.5	2.4	2.2
110	3.8	3.5	3.4	3.2	3.0	2.9	2.7	2.5	2.3	2.1
111	3.8	3.5	3.3	3.1	2.9	2.9	2.7	2.5	2.3	2.1
112	3.8	3.5	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1
113	3.8	3.5	3.3	3.1	2.9	2.8	2.6	2.4	2.2	2.0
114	3.8	3.5	3.3	3.1	2.9	2.8	2.6	2.4	2.2	2.0
115	3.7	3.4	3.2	3.0	2.8	2.7	2.5	2.3	2.1	1.9

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	105	106	107	108	109	110	111	112	113	114	115
105	26	24	23	22	21	21	20	20	19	19	18
106	24	23	21	21	19	19	18	18	17	17	16
107	23	21	20	19	18	17	16	16	15	15	14
108	22	21	19	18	17	16	16	15	15	14	13
109	21	19	18	17	15	14	14	13	13	12	11
110	21	19	17	16	14	14	13	12	12	11	10
111	20	18	16	16	14	13	12	12	11	10	9
112	20	18	16	15	13	12	12	11	10	9	8
113	19	17	15	15	13	12	11	10	9	8	7
114	19	17	15	14	12	11	10	9	8	7	6
115	18	16	14	13	11	10	9	8	7	6	5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	5	6	7	8	9	10	11	12	13	14
5	69.5	69.0	68.4	67.9	67.3	66.7	66.1	65.5	64.8	64.1
6	69.0	68.5	68.0	67.5	66.9	66.4	65.8	65.1	64.5	63.8
7	68.4	68.0	67.5	67.0	66.5	66.0	65.4	64.8	64.2	63.5
8	67.9	67.5	67.0	66.6	66.1	65.5	65.0	64.4	63.8	63.2
9	67.3	66.9	66.5	66.1	65.6	65.1	64.6	64.0	63.4	62.8
10	66.7	66.4	66.0	65.5	65.1	64.6	64.1	63.6	63.0	62.5
11	66.1	65.8	65.4	65.0	64.6	64.1	63.6	63.1	62.6	62.1
12	65.5	65.1	64.8	64.4	64.0	63.6	63.1	62.7	62.2	61.7
13	64.8	64.5	64.2	63.8	63.4	63.0	62.6	62.2	61.7	61.2
14	64.1	63.8	63.5	63.2	62.8	62.5	62.1	61.7	61.2	60.7
15	63.4	63.1	62.9	62.6	62.2	61.9	61.5	61.1	60.7	60.2
16	62.7	62.4	62.2	61.9	61.6	61.3	60.9	60.5	60.1	59.7
17	61.9	61.7	61.5	61.2	60.9	60.6	60.3	59.9	59.6	59.2
18	61.2	61.0	60.7	60.5	60.2	60.0	59.7	59.3	59.0	58.6
19	60.4	60.2	60.0	59.8	59.5	59.3	59.0	58.7	58.4	58.0
20	59.6	59.4	59.2	59.0	58.8	58.6	58.3	58.0	57.7	57.4
21	58.8	58.7	58.5	58.3	58.1	57.8	57.6	57.3	57.1	56.8
22	58.0	57.8	57.7	57.5	57.3	57.1	56.9	56.6	56.4	56.1
23	57.2	57.0	56.9	56.7	56.5	56.4	56.1	55.9	55.7	55.4
24	56.3	56.2	56.1	55.9	55.8	55.6	55.4	55.2	55.0	54.7
25	55.5	55.4	55.2	55.1	55.0	54.8	54.6	54.4	54.2	54.0
26	54.6	54.5	54.4	54.3	54.1	54.0	53.8	53.7	53.5	53.3
27	53.8	53.7	53.6	53.4	53.3	53.2	53.0	52.9	52.7	52.5
28	52.9	52.8	52.7	52.6	52.5	52.4	52.2	52.1	51.9	51.7
29	52.0	51.9	51.8	51.7	51.6	51.5	51.4	51.3	51.1	51.0
30	51.1	51.0	51.0	50.9	50.8	50.7	50.6	50.4	50.3	50.2
31	50.2	50.2	50.1	50.0	49.9	49.8	49.7	49.6	49.5	49.3
32	49.3	49.3	49.2	49.1	49.0	49.0	48.9	48.8	48.6	48.5
33	48.4	48.4	48.3	48.2	48.2	48.1	48.0	47.9	47.8	47.7
34	47.5	47.5	47.4	47.4	47.3	47.2	47.1	47.0	47.0	46.8
35	46.6	46.6	46.5	46.5	46.4	46.3	46.3	46.2	46.1	46.0
36	45.7	45.7	45.6	45.6	45.5	45.4	45.4	45.3	45.2	45.1
37	44.8	44.7	44.7	44.6	44.6	44.5	44.5	44.4	44.3	44.3
38	43.9	43.8	43.8	43.7	43.7	43.6	43.6	43.5	43.5	43.4
39	42.9	42.9	42.9	42.8	42.8	42.7	42.7	42.6	42.6	42.5
40	42.0	42.0	42.0	41.9	41.9	41.8	41.8	41.7	41.7	41.6
41	41.1	41.1	41.0	41.0	41.0	40.9	40.9	40.8	40.8	40.7
42	40.2	40.1	40.1	40.1	40.1	40.0	40.0	39.9	39.9	39.8
43	39.2	39.2	39.2	39.2	39.1	39.1	39.1	39.0	39.0	39.0
44	38.3	38.3	38.3	38.3	38.2	38.2	38.2	38.1	38.1	38.1
45	37.4	37.4	37.4	37.3	37.3	37.3	37.3	37.2	37.2	37.2
46	36.5	36.5	36.5	36.4	36.4	36.4	36.4	36.3	36.3	36.3
47	35.6	35.6	35.5	35.5	35.5	35.5	35.5	35.4	35.4	35.4
48	34.7	34.7	34.6	34.6	34.6	34.6	34.6	34.5	34.5	34.5
49	33.8	33.8	33.7	33.7	33.7	33.7	33.7	33.7	33.6	33.6
50	32.9	32.9	32.8	32.8	32.8	32.8	32.8	32.8	32.7	32.7
51	32.0	32.0	31.9	31.9	31.9	31.9	31.9	31.9	31.9	31.8
52	31.1	31.1	31.1	31.0	31.0	31.0	31.0	31.0	31.0	30.9
53	30.2	30.2	30.2	30.2	30.1	30.1	30.1	30.1	30.1	30.1
54	29.3	29.3	29.3	29.3	29.3	29.2	29.2	29.2	29.2	29.2
55	28.4	28.4	28.4	28.4	28.4	28.4	28.4	28.3	28.3	28.3
56	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5
57	26.7	26.7	26.7	26.6	26.6	26.6	26.6	26.6	26.6	26.6
58	25.8	25.8	25.8	25.8	25.8	25.8	25.8	25.7	25.7	25.7
59	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9
60	24.1	24.1	24.1	24.1	24.1	24.0	24.0	24.0	24.0	24.0
61	23.2	23.2	23.2	23.2	23.2	23.2	23.2	23.2	23.2	23.2
62	22.4	22.4	22.4	22.4	22.4	22.4	22.3	22.3	22.3	22.3

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	5	6	7	8	9	10	11	12	13	14
63	21.5	21.5	21.5	21.5	21.5	21.5	21.5	21.5	21.5	21.5
64	20.7	20.7	20.7	20.7	20.7	20.7	20.7	20.7	20.7	20.7
65	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9
66	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1
67	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3
68	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5
69	16.8	16.8	16.8	16.7	16.7	16.7	16.7	16.7	16.7	16.7
70	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0
71	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.2
72	14.6	14.6	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5
73	13.9	13.9	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8
74	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2
75	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
76	11.9	11.9	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.4	9.4
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.7	3.7	3.7	3.7	3.7	3.7	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	15	16	17	18	19	20	21	22	23	24
15	59.8	59.3	58.8	58.2	57.6	57.0	56.4	55.8	55.1	54.5
16	59.3	58.8	58.3	57.8	57.2	56.7	56.1	55.5	54.8	54.2
17	58.8	58.3	57.8	57.3	56.8	56.3	55.7	55.1	54.5	53.9
18	58.2	57.8	57.3	56.9	56.4	55.9	55.3	54.7	54.2	53.5
19	57.6	57.2	56.8	56.4	55.9	55.4	54.9	54.4	53.8	53.2
20	57.0	56.7	56.3	55.9	55.4	54.9	54.5	53.9	53.4	52.8
21	56.4	56.1	55.7	55.3	54.9	54.5	54.0	53.5	53.0	52.4
22	55.8	55.5	55.1	54.7	54.4	53.9	53.5	53.0	52.5	52.0
23	55.1	54.8	54.5	54.2	53.8	53.4	53.0	52.5	52.1	51.6
24	54.5	54.2	53.9	53.5	53.2	52.8	52.4	52.0	51.6	51.1
25	53.8	53.5	53.2	52.9	52.6	52.2	51.9	51.5	51.1	50.6
26	53.0	52.8	52.5	52.3	52.0	51.6	51.3	50.9	50.5	50.1
27	52.3	52.1	51.8	51.6	51.3	51.0	50.7	50.3	50.0	49.6
28	51.5	51.3	51.1	50.9	50.6	50.3	50.0	49.7	49.4	49.0
29	50.8	50.6	50.4	50.2	49.9	49.7	49.4	49.1	48.8	48.4
30	50.0	49.8	49.6	49.4	49.2	49.0	48.7	48.4	48.1	47.8
31	49.2	49.0	48.9	48.7	48.5	48.3	48.0	47.8	47.5	47.2
32	48.4	48.2	48.1	47.9	47.7	47.5	47.3	47.1	46.8	46.5
33	47.6	47.4	47.3	47.1	47.0	46.8	46.6	46.3	46.1	45.9
34	46.7	46.6	46.5	46.3	46.2	46.0	45.8	45.6	45.4	45.2
35	45.9	45.8	45.7	45.5	45.4	45.2	45.1	44.9	44.7	44.4
36	45.0	44.9	44.8	44.7	44.6	44.4	44.3	44.1	43.9	43.7
37	44.2	44.1	44.0	43.9	43.8	43.6	43.5	43.3	43.2	43.0
38	43.3	43.2	43.1	43.0	42.9	42.8	42.7	42.5	42.4	42.2
39	42.4	42.4	42.3	42.2	42.1	42.0	41.9	41.7	41.6	41.4
40	41.6	41.5	41.4	41.3	41.2	41.1	41.0	40.9	40.8	40.6
41	40.7	40.6	40.5	40.5	40.4	40.3	40.2	40.1	40.0	39.8
42	39.8	39.7	39.7	39.6	39.5	39.4	39.4	39.3	39.1	39.0
43	38.9	38.9	38.8	38.7	38.7	38.6	38.5	38.4	38.3	38.2
44	38.0	38.0	37.9	37.9	37.8	37.7	37.7	37.6	37.5	37.4
45	37.1	37.1	37.0	37.0	36.9	36.9	36.8	36.7	36.6	36.5
46	36.2	36.2	36.2	36.1	36.1	36.0	35.9	35.9	35.8	35.7
47	35.3	35.3	35.3	35.2	35.2	35.1	35.1	35.0	34.9	34.9
48	34.5	34.4	34.4	34.4	34.3	34.3	34.2	34.2	34.1	34.0
49	33.6	33.5	33.5	33.5	33.4	33.4	33.4	33.3	33.2	33.2
50	32.7	32.7	32.6	32.6	32.6	32.5	32.5	32.4	32.4	32.3
51	31.8	31.8	31.8	31.7	31.7	31.7	31.6	31.6	31.5	31.5
52	30.9	30.9	30.9	30.9	30.8	30.8	30.8	30.7	30.7	30.6
53	30.0	30.0	30.0	30.0	30.0	29.9	29.9	29.9	29.8	29.8
54	29.2	29.2	29.1	29.1	29.1	29.1	29.0	29.0	29.0	28.9
55	28.3	28.3	28.3	28.3	28.2	28.2	28.2	28.2	28.1	28.1
56	27.4	27.4	27.4	27.4	27.4	27.3	27.3	27.3	27.3	27.2
57	26.6	26.6	26.5	26.5	26.5	26.5	26.5	26.5	26.4	26.4
58	25.7	25.7	25.7	25.7	25.7	25.6	25.6	25.6	25.6	25.6
59	24.9	24.8	24.8	24.8	24.8	24.8	24.8	24.8	24.7	24.7
60	24.0	24.0	24.0	24.0	24.0	23.9	23.9	23.9	23.9	23.9
61	23.2	23.2	23.1	23.1	23.1	23.1	23.1	23.1	23.1	23.0
62	22.3	22.3	22.3	22.3	22.3	22.3	22.3	22.2	22.2	22.2
63	21.5	21.5	21.5	21.5	21.5	21.4	21.4	21.4	21.4	21.4
64	20.7	20.7	20.7	20.6	20.6	20.6	20.6	20.6	20.6	20.6
65	19.9	19.8	19.8	19.8	19.8	19.8	19.8	19.8	19.8	19.8
66	19.1	19.0	19.0	19.0	19.0	19.0	19.0	19.0	19.0	19.0
67	18.3	18.3	18.3	18.3	18.2	18.2	18.2	18.2	18.2	18.2
68	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.4	17.4
69	16.7	16.7	16.7	16.7	16.7	16.7	16.7	16.7	16.7	16.7
70	16.0	16.0	16.0	16.0	16.0	16.0	15.9	15.9	15.9	15.9
71	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2
72	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	15	16	17	18	19	20	21	22	23	24
73	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8
74	13.2	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1
75	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
76	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.8	7.8
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	25	26	27	28	29	30	31	32	33	34
25	50.2	49.7	49.2	48.6	48.1	47.5	46.9	46.2	45.6	44.9
26	49.7	49.2	48.7	48.2	47.7	47.1	46.5	45.9	45.3	44.6
27	49.2	48.7	48.3	47.8	47.3	46.7	46.2	45.6	45.0	44.3
28	48.6	48.2	47.8	47.3	46.8	46.3	45.8	45.2	44.6	44.0
29	48.1	47.7	47.3	46.8	46.4	45.9	45.4	44.8	44.3	43.7
30	47.5	47.1	46.7	46.3	45.9	45.4	44.9	44.4	43.9	43.3
31	46.9	46.5	46.2	45.8	45.4	44.9	44.5	44.0	43.5	42.9
32	46.2	45.9	45.6	45.2	44.8	44.4	44.0	43.5	43.0	42.5
33	45.6	45.3	45.0	44.6	44.3	43.9	43.5	43.0	42.6	42.1
34	44.9	44.6	44.3	44.0	43.7	43.3	42.9	42.5	42.1	41.6
35	44.2	44.0	43.7	43.4	43.1	42.7	42.4	42.0	41.6	41.1
36	43.5	43.3	43.0	42.7	42.4	42.1	41.8	41.4	41.0	40.6
37	42.8	42.5	42.3	42.1	41.8	41.5	41.2	40.8	40.5	40.1
38	42.0	41.8	41.6	41.4	41.1	40.8	40.6	40.2	39.9	39.5
39	41.3	41.1	40.9	40.7	40.4	40.2	39.9	39.6	39.3	39.0
40	40.5	40.3	40.1	39.9	39.7	39.5	39.2	39.0	38.7	38.4
41	39.7	39.5	39.4	39.2	39.0	38.8	38.5	38.3	38.0	37.7
42	38.9	38.8	38.6	38.4	38.3	38.1	37.8	37.6	37.4	37.1
43	38.1	38.0	37.8	37.7	37.5	37.3	37.1	36.9	36.7	36.4
44	37.3	37.2	37.0	36.9	36.7	36.6	36.4	36.2	36.0	35.8
45	36.5	36.3	36.2	36.1	36.0	35.8	35.6	35.5	35.3	35.1
46	35.6	35.5	35.4	35.3	35.2	35.0	34.9	34.7	34.5	34.4
47	34.8	34.7	34.6	34.5	34.4	34.3	34.1	34.0	33.8	33.6
48	34.0	33.9	33.8	33.7	33.6	33.5	33.4	33.2	33.1	32.9
49	33.1	33.0	33.0	32.9	32.8	32.7	32.6	32.4	32.3	32.2
50	32.3	32.2	32.1	32.1	32.0	31.9	31.8	31.7	31.5	31.4
51	31.4	31.4	31.3	31.2	31.2	31.1	31.0	30.9	30.8	30.6
52	30.6	30.5	30.5	30.4	30.3	30.3	30.2	30.1	30.0	29.9
53	29.7	29.7	29.6	29.6	29.5	29.5	29.4	29.3	29.2	29.1
54	28.9	28.9	28.8	28.8	28.7	28.6	28.6	28.5	28.4	28.3
55	28.1	28.0	28.0	27.9	27.9	27.8	27.8	27.7	27.6	27.5
56	27.2	27.2	27.1	27.1	27.0	27.0	26.9	26.9	26.8	26.7
57	26.4	26.3	26.3	26.3	26.2	26.2	26.1	26.1	26.0	25.9
58	25.5	25.5	25.5	25.4	25.4	25.4	25.3	25.3	25.2	25.1
59	24.7	24.7	24.6	24.6	24.6	24.5	24.5	24.5	24.4	24.3
60	23.9	23.8	23.8	23.8	23.8	23.7	23.7	23.6	23.6	23.5
61	23.0	23.0	23.0	23.0	22.9	22.9	22.9	22.8	22.8	22.7
62	22.2	22.2	22.2	22.1	22.1	22.1	22.1	22.0	22.0	21.9
63	21.4	21.4	21.3	21.3	21.3	21.3	21.3	21.2	21.2	21.2
64	20.6	20.6	20.5	20.5	20.5	20.5	20.5	20.4	20.4	20.4
65	19.8	19.8	19.7	19.7	19.7	19.7	19.7	19.6	19.6	19.6
66	19.0	19.0	19.0	18.9	18.9	18.9	18.9	18.9	18.8	18.8
67	18.2	18.2	18.2	18.2	18.2	18.1	18.1	18.1	18.1	18.1
68	17.4	17.4	17.4	17.4	17.4	17.4	17.4	17.3	17.3	17.3
69	16.7	16.7	16.7	16.6	16.6	16.6	16.6	16.6	16.6	16.6
70	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.8	15.8
71	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.1	15.1	15.1
72	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.4	14.4	14.4
73	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.7	13.7
74	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1
75	12.5	12.5	12.5	12.4	12.4	12.4	12.4	12.4	12.4	12.4
76	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.1
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.5
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	25	26	27	28	29	30	31	32	33	34
83	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	35	36	37	38	39	40	41	42	43	44
35	40.7	40.2	39.7	39.2	38.6	38.0	37.4	36.8	36.2	35.5
36	40.2	39.7	39.3	38.7	38.2	37.7	37.1	36.5	35.9	35.2
37	39.7	39.3	38.8	38.3	37.8	37.3	36.7	36.2	35.6	34.9
38	39.2	38.7	38.3	37.9	37.4	36.9	36.3	35.8	35.2	34.6
39	38.6	38.2	37.8	37.4	36.9	36.4	35.9	35.4	34.9	34.3
40	38.0	37.7	37.3	36.9	36.4	36.0	35.5	35.0	34.5	34.0
41	37.4	37.1	36.7	36.3	35.9	35.5	35.1	34.6	34.1	33.6
42	36.8	36.5	36.2	35.8	35.4	35.0	34.6	34.1	33.7	33.2
43	36.2	35.9	35.6	35.2	34.9	34.5	34.1	33.7	33.2	32.8
44	35.5	35.2	34.9	34.6	34.3	34.0	33.6	33.2	32.8	32.3
45	34.8	34.6	34.3	34.0	33.7	33.4	33.0	32.7	32.3	31.8
46	34.1	33.9	33.7	33.4	33.1	32.8	32.5	32.1	31.8	31.4
47	33.4	33.2	33.0	32.8	32.5	32.2	31.9	31.6	31.2	30.8
48	32.7	32.5	32.3	32.1	31.8	31.6	31.3	31.0	30.7	30.3
49	32.0	31.8	31.6	31.4	31.2	30.9	30.7	30.4	30.1	29.8
50	31.3	31.1	30.9	30.7	30.5	30.3	30.0	29.8	29.5	29.2
51	30.5	30.4	30.2	30.0	29.8	29.6	29.4	29.2	28.9	28.6
52	29.7	29.6	29.5	29.3	29.1	28.9	28.7	28.5	28.3	28.0
53	29.0	28.9	28.7	28.6	28.4	28.2	28.1	27.9	27.6	27.4
54	28.2	28.1	28.0	27.8	27.7	27.5	27.4	27.2	27.0	26.8
55	27.4	27.3	27.2	27.1	27.0	26.8	26.7	26.5	26.3	26.1
56	26.7	26.6	26.5	26.3	26.2	26.1	26.0	25.8	25.6	25.4
57	25.9	25.8	25.7	25.6	25.5	25.4	25.2	25.1	24.9	24.8
58	25.1	25.0	24.9	24.8	24.7	24.6	24.5	24.4	24.2	24.1
59	24.3	24.2	24.1	24.1	24.0	23.9	23.8	23.6	23.5	23.4
60	23.5	23.4	23.4	23.3	23.2	23.1	23.0	22.9	22.8	22.7
61	22.7	22.6	22.6	22.5	22.4	22.4	22.3	22.2	22.1	22.0
62	21.9	21.9	21.8	21.7	21.7	21.6	21.5	21.4	21.3	21.2
63	21.1	21.1	21.0	21.0	20.9	20.8	20.8	20.7	20.6	20.5
64	20.3	20.3	20.2	20.2	20.1	20.1	20.0	20.0	19.9	19.8
65	19.6	19.5	19.5	19.4	19.4	19.3	19.3	19.2	19.1	19.1
66	18.8	18.8	18.7	18.7	18.6	18.6	18.5	18.5	18.4	18.4
67	18.0	18.0	18.0	17.9	17.9	17.9	17.8	17.8	17.7	17.6
68	17.3	17.3	17.2	17.2	17.2	17.1	17.1	17.0	17.0	16.9
69	16.5	16.5	16.5	16.5	16.4	16.4	16.4	16.3	16.3	16.2
70	15.8	15.8	15.8	15.7	15.7	15.7	15.6	15.6	15.6	15.5
71	15.1	15.1	15.1	15.0	15.0	15.0	15.0	14.9	14.9	14.9
72	14.4	14.4	14.4	14.3	14.3	14.3	14.3	14.2	14.2	14.2
73	13.7	13.7	13.7	13.7	13.7	13.6	13.6	13.6	13.6	13.5
74	13.1	13.0	13.0	13.0	13.0	13.0	13.0	12.9	12.9	12.9
75	12.4	12.4	12.4	12.4	12.3	12.3	12.3	12.3	12.3	12.2
76	11.8	11.8	11.7	11.7	11.7	11.7	11.7	11.7	11.6	11.6
77	11.1	11.1	11.1	11.1	11.1	11.1	11.1	11.1	11.0	11.0
78	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.4
79	10.0	10.0	9.9	9.9	9.9	9.9	9.9	9.9	9.9	9.9
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.3	9.3	9.3
81	8.9	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8
82	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3
83	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8
84	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.4	6.4	6.4	6.4	6.4	6.4
87	6.1	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.6	5.6	5.6
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.6	4.6
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	35	36	37	38	39	40	41	42	43	44
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.6
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	45	46	47	48	49	50	51	52	53	54
45	31.4	30.9	30.5	30.0	29.4	28.9	28.3	27.7	27.1	26.5
46	30.9	30.5	30.0	29.6	29.1	28.5	28.0	27.4	26.9	26.3
47	30.5	30.0	29.6	29.2	28.7	28.2	27.7	27.1	26.6	26.0
48	30.0	29.6	29.2	28.7	28.3	27.8	27.3	26.8	26.3	25.7
49	29.4	29.1	28.7	28.3	27.9	27.4	26.9	26.5	25.9	25.4
50	28.9	28.5	28.2	27.8	27.4	27.0	26.5	26.1	25.6	25.1
51	28.3	28.0	27.7	27.3	26.9	26.5	26.1	25.7	25.2	24.7
52	27.7	27.4	27.1	26.8	26.5	26.1	25.7	25.3	24.8	24.4
53	27.1	26.9	26.6	26.3	25.9	25.6	25.2	24.8	24.4	24.0
54	26.5	26.3	26.0	25.7	25.4	25.1	24.7	24.4	24.0	23.6
55	25.9	25.7	25.4	25.1	24.9	24.6	24.2	23.9	23.5	23.2
56	25.2	25.0	24.8	24.6	24.3	24.0	23.7	23.4	23.1	22.7
57	24.6	24.4	24.2	24.0	23.7	23.5	23.2	22.9	22.6	22.2
58	23.9	23.7	23.5	23.3	23.1	22.9	22.6	22.4	22.1	21.7
59	23.2	23.1	22.9	22.7	22.5	22.3	22.1	21.8	21.5	21.2
60	22.5	22.4	22.2	22.1	21.9	21.7	21.5	21.2	21.0	20.7
61	21.8	21.7	21.6	21.4	21.2	21.1	20.9	20.6	20.4	20.2
62	21.1	21.0	20.9	20.7	20.6	20.4	20.2	20.0	19.8	19.6
63	20.4	20.3	20.2	20.1	19.9	19.8	19.6	19.4	19.2	19.0
64	19.7	19.6	19.5	19.4	19.3	19.1	19.0	18.8	18.6	18.5
65	19.0	18.9	18.8	18.7	18.6	18.5	18.3	18.2	18.0	17.9
66	18.3	18.2	18.1	18.0	17.9	17.8	17.7	17.6	17.4	17.3
67	17.6	17.5	17.4	17.3	17.3	17.2	17.1	16.9	16.8	16.7
68	16.9	16.8	16.7	16.7	16.6	16.5	16.4	16.3	16.2	16.1
69	16.2	16.1	16.1	16.0	15.9	15.8	15.8	15.7	15.6	15.4
70	15.5	15.4	15.4	15.3	15.3	15.2	15.1	15.0	14.9	14.8
71	14.8	14.8	14.7	14.7	14.6	14.5	14.5	14.4	14.3	14.2
72	14.1	14.1	14.1	14.0	14.0	13.9	13.8	13.8	13.7	13.6
73	13.5	13.5	13.4	13.4	13.3	13.3	13.2	13.2	13.1	13.0
74	12.8	12.8	12.8	12.7	12.7	12.7	12.6	12.6	12.5	12.4
75	12.2	12.2	12.2	12.1	12.1	12.1	12.0	12.0	11.9	11.9
76	11.6	11.6	11.6	11.5	11.5	11.5	11.4	11.4	11.3	11.3
77	11.0	11.0	11.0	10.9	10.9	10.9	10.8	10.8	10.8	10.7
78	10.4	10.4	10.4	10.4	10.3	10.3	10.3	10.2	10.2	10.2
79	9.9	9.8	9.8	9.8	9.8	9.8	9.7	9.7	9.7	9.6
80	9.3	9.3	9.3	9.3	9.2	9.2	9.2	9.2	9.1	9.1
81	8.8	8.8	8.7	8.7	8.7	8.7	8.7	8.7	8.6	8.6
82	8.3	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.1	8.1
83	7.8	7.8	7.7	7.7	7.7	7.7	7.7	7.7	7.7	7.6
84	7.3	7.3	7.3	7.3	7.3	7.2	7.2	7.2	7.2	7.2
85	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.7
86	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.3	6.3
87	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	5.9
88	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6
89	5.3	5.3	5.3	5.3	5.3	5.3	5.2	5.2	5.2	5.2
90	5.0	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9
91	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6
92	4.4	4.4	4.4	4.3	4.3	4.3	4.3	4.3	4.3	4.3
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	45	46	47	48	49	50	51	52	53	54
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	55	56	57	58	59	60	61	62	63	64
55	22.7	22.3	21.9	21.4	20.9	20.4	19.9	19.4	18.8	18.3
56	22.3	21.9	21.5	21.1	20.6	20.1	19.6	19.1	18.6	18.0
57	21.9	21.5	21.1	20.7	20.3	19.8	19.3	18.8	18.3	17.8
58	21.4	21.1	20.7	20.3	19.9	19.5	19.0	18.5	18.0	17.5
59	20.9	20.6	20.3	19.9	19.5	19.1	18.7	18.2	17.7	17.3
60	20.4	20.1	19.8	19.5	19.1	18.7	18.3	17.9	17.4	17.0
61	19.9	19.6	19.3	19.0	18.7	18.3	17.9	17.5	17.1	16.7
62	19.4	19.1	18.8	18.5	18.2	17.9	17.5	17.1	16.8	16.3
63	18.8	18.6	18.3	18.0	17.7	17.4	17.1	16.8	16.4	16.0
64	18.3	18.0	17.8	17.5	17.3	17.0	16.7	16.3	16.0	15.6
65	17.7	17.5	17.3	17.0	16.8	16.5	16.2	15.9	15.6	15.3
66	17.1	16.9	16.7	16.5	16.3	16.0	15.8	15.5	15.2	14.9
67	16.5	16.3	16.2	16.0	15.8	15.5	15.3	15.0	14.7	14.5
68	15.9	15.8	15.6	15.4	15.2	15.0	14.8	14.6	14.3	14.0
69	15.3	15.2	15.0	14.9	14.7	14.5	14.3	14.1	13.9	13.6
70	14.7	14.6	14.5	14.3	14.2	14.0	13.8	13.6	13.4	13.2
71	14.1	14.0	13.9	13.8	13.6	13.5	13.3	13.1	12.9	12.7
72	13.5	13.4	13.3	13.2	13.1	12.9	12.8	12.6	12.4	12.3
73	13.0	12.9	12.8	12.7	12.5	12.4	12.3	12.1	12.0	11.8
74	12.4	12.3	12.2	12.1	12.0	11.9	11.8	11.6	11.5	11.3
75	11.8	11.7	11.7	11.6	11.5	11.4	11.3	11.1	11.0	10.9
76	11.2	11.2	11.1	11.0	10.9	10.9	10.8	10.6	10.5	10.4
77	10.7	10.6	10.6	10.5	10.4	10.3	10.3	10.2	10.0	9.9
78	10.1	10.1	10.0	10.0	9.9	9.8	9.8	9.7	9.6	9.5
79	9.6	9.6	9.5	9.5	9.4	9.3	9.3	9.2	9.1	9.0
80	9.1	9.0	9.0	9.0	8.9	8.9	8.8	8.7	8.7	8.6
81	8.6	8.5	8.5	8.5	8.4	8.4	8.3	8.3	8.2	8.1
82	8.1	8.1	8.0	8.0	8.0	7.9	7.9	7.8	7.8	7.7
83	7.6	7.6	7.6	7.5	7.5	7.5	7.4	7.4	7.3	7.3
84	7.2	7.1	7.1	7.1	7.1	7.0	7.0	7.0	6.9	6.9
85	6.7	6.7	6.7	6.7	6.6	6.6	6.6	6.5	6.5	6.5
86	6.3	6.3	6.3	6.3	6.2	6.2	6.2	6.2	6.1	6.1
87	5.9	5.9	5.9	5.9	5.9	5.8	5.8	5.8	5.8	5.7
88	5.6	5.5	5.5	5.5	5.5	5.5	5.5	5.4	5.4	5.4
89	5.2	5.2	5.2	5.2	5.2	5.1	5.1	5.1	5.1	5.1
90	4.9	4.9	4.9	4.9	4.9	4.8	4.8	4.8	4.8	4.8
91	4.6	4.6	4.6	4.6	4.6	4.5	4.5	4.5	4.5	4.5
92	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.2	4.2	4.2
93	4.1	4.1	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
94	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.7
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.5	3.5
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.3	3.3	3.3
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.1	3.1
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
101	2.5	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.7	1.7	1.7
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	55	56	57	58	59	60	61	62	63	64
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	65	66	67	68	69	70	71	72	73	74
65	14.9	14.5	14.1	13.7	13.3	12.9	12.5	12.0	11.6	11.2
66	14.5	14.2	13.8	13.4	13.1	12.6	12.2	11.8	11.4	11.0
67	14.1	13.8	13.5	13.1	12.8	12.4	12.0	11.6	11.2	10.8
68	13.7	13.4	13.1	12.8	12.5	12.1	11.7	11.4	11.0	10.6
69	13.3	13.1	12.8	12.5	12.1	11.8	11.4	11.1	10.7	10.4
70	12.9	12.6	12.4	12.1	11.8	11.5	11.2	10.8	10.5	10.1
71	12.5	12.2	12.0	11.7	11.4	11.2	10.9	10.5	10.2	9.9
72	12.0	11.8	11.6	11.4	11.1	10.8	10.5	10.2	9.9	9.6
73	11.6	11.4	11.2	11.0	10.7	10.5	10.2	9.9	9.7	9.4
74	11.2	11.0	10.8	10.6	10.4	10.1	9.9	9.6	9.4	9.1
75	10.7	10.5	10.4	10.2	10.0	9.8	9.5	9.3	9.1	8.8
76	10.3	10.1	9.9	9.8	9.6	9.4	9.2	9.0	8.8	8.5
77	9.8	9.7	9.5	9.4	9.2	9.0	8.8	8.6	8.4	8.2
78	9.4	9.2	9.1	9.0	8.8	8.7	8.5	8.3	8.1	7.9
79	8.9	8.8	8.7	8.6	8.4	8.3	8.1	8.0	7.8	7.6
80	8.5	8.4	8.3	8.2	8.0	7.9	7.8	7.6	7.5	7.3
81	8.0	8.0	7.9	7.8	7.7	7.5	7.4	7.3	7.1	7.0
82	7.6	7.5	7.5	7.4	7.3	7.2	7.1	6.9	6.8	6.7
83	7.2	7.1	7.1	7.0	6.9	6.8	6.7	6.6	6.5	6.4
84	6.8	6.7	6.7	6.6	6.5	6.4	6.4	6.3	6.2	6.0
85	6.4	6.4	6.3	6.2	6.2	6.1	6.0	5.9	5.8	5.7
86	6.0	6.0	5.9	5.9	5.8	5.8	5.7	5.6	5.5	5.4
87	5.7	5.6	5.6	5.6	5.5	5.4	5.4	5.3	5.2	5.2
88	5.3	5.3	5.3	5.2	5.2	5.1	5.1	5.0	5.0	4.9
89	5.0	5.0	5.0	4.9	4.9	4.8	4.8	4.7	4.7	4.6
90	4.7	4.7	4.7	4.6	4.6	4.6	4.5	4.5	4.4	4.4
91	4.5	4.4	4.4	4.4	4.3	4.3	4.3	4.2	4.2	4.1
92	4.2	4.2	4.1	4.1	4.1	4.1	4.0	4.0	3.9	3.9
93	3.9	3.9	3.9	3.9	3.9	3.8	3.8	3.8	3.7	3.7
94	3.7	3.7	3.7	3.7	3.6	3.6	3.6	3.6	3.5	3.5
95	3.5	3.5	3.5	3.5	3.4	3.4	3.4	3.4	3.3	3.3
96	3.3	3.3	3.3	3.3	3.3	3.2	3.2	3.2	3.2	3.1
97	3.1	3.1	3.1	3.1	3.1	3.1	3.0	3.0	3.0	3.0
98	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.8	2.8
99	2.8	2.8	2.8	2.7	2.7	2.7	2.7	2.7	2.7	2.6
100	2.6	2.6	2.6	2.6	2.6	2.5	2.5	2.5	2.5	2.5
101	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.3	2.3
102	2.2	2.2	2.2	2.2	2.2	2.2	2.2	2.2	2.2	2.2
103	2.1	2.1	2.1	2.1	2.1	2.0	2.0	2.0	2.0	2.0
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.5
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.6	.6	.6	.6	.6
114	.6	.6	.6	.6	.6	.6	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	75	76	77	78	79	80	81	82	83	84
75	8.6	8.3	8.0	7.7	7.4	7.1	6.8	6.5	6.2	5.9
76	8.3	8.0	7.8	7.5	7.2	6.9	6.7	6.4	6.1	5.8
77	8.0	7.8	7.5	7.3	7.0	6.8	6.5	6.2	5.9	5.7
78	7.7	7.5	7.3	7.0	6.8	6.6	6.3	6.0	5.8	5.5
79	7.4	7.2	7.0	6.8	6.6	6.3	6.1	5.9	5.6	5.4
80	7.1	6.9	6.8	6.6	6.3	6.1	5.9	5.7	5.5	5.2
81	6.8	6.7	6.5	6.3	6.1	5.9	5.7	5.5	5.3	5.1
82	6.5	6.4	6.2	6.0	5.9	5.7	5.5	5.3	5.1	4.9
83	6.2	6.1	5.9	5.8	5.6	5.5	5.3	5.1	4.9	4.7
84	5.9	5.8	5.7	5.5	5.4	5.2	5.1	4.9	4.7	4.6
85	5.6	5.5	5.4	5.3	5.2	5.0	4.9	4.7	4.6	4.4
86	5.4	5.3	5.1	5.0	4.9	4.8	4.7	4.5	4.4	4.2
87	5.1	5.0	4.9	4.8	4.7	4.6	4.4	4.3	4.2	4.1
88	4.8	4.7	4.6	4.5	4.4	4.3	4.2	4.1	4.0	3.9
89	4.5	4.5	4.4	4.3	4.2	4.1	4.0	3.9	3.8	3.7
90	4.3	4.2	4.2	4.1	4.0	3.9	3.8	3.8	3.7	3.5
91	4.1	4.0	4.0	3.9	3.8	3.7	3.7	3.6	3.5	3.4
92	3.9	3.8	3.7	3.7	3.6	3.6	3.5	3.4	3.3	3.2
93	3.7	3.6	3.6	3.5	3.4	3.4	3.3	3.2	3.2	3.1
94	3.5	3.4	3.4	3.3	3.3	3.2	3.2	3.1	3.0	3.0
95	3.3	3.2	3.2	3.2	3.1	3.1	3.0	3.0	2.9	2.9
96	3.1	3.1	3.0	3.0	3.0	2.9	2.9	2.8	2.8	2.7
97	2.9	2.9	2.9	2.9	2.8	2.8	2.7	2.7	2.6	2.6
98	2.8	2.8	2.7	2.7	2.7	2.6	2.6	2.6	2.5	2.5
99	2.6	2.6	2.6	2.6	2.5	2.5	2.5	2.4	2.4	2.3
100	2.5	2.5	2.4	2.4	2.4	2.4	2.3	2.3	2.3	2.2
101	2.3	2.3	2.3	2.3	2.2	2.2	2.2	2.2	2.1	2.1
102	2.2	2.1	2.1	2.1	2.1	2.1	2.0	2.0	2.0	2.0
103	2.0	2.0	2.0	2.0	1.9	1.9	1.9	1.9	1.9	1.8
104	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.7	1.7
105	1.7	1.7	1.7	1.7	1.6	1.6	1.6	1.6	1.6	1.6
106	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.4
107	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.3	1.3	1.3
108	1.3	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.8	.8
112	.8	.8	.8	.7	.7	.7	.7	.7	.7	.7
113	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
114	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	85	86	87	88	89	90	91	92	93	94
85	42	41	39	38	36	34	33	32	30	29
86	41	39	38	36	35	33	32	31	29	28
87	39	38	36	35	34	32	31	30	28	27
88	38	36	35	34	32	31	30	29	28	26
89	36	35	34	32	31	30	29	28	27	26
90	34	33	32	31	30	29	28	27	26	25
91	33	32	31	30	29	28	27	26	25	24
92	32	31	30	29	28	27	26	25	24	23
93	30	29	28	28	27	26	25	24	23	23
94	29	28	27	26	26	25	24	23	23	22
95	28	27	26	25	25	24	23	22	22	21
96	26	26	25	24	24	23	22	22	21	20
97	25	25	24	23	23	22	22	21	20	20
98	24	24	23	22	22	21	21	20	20	19
99	23	22	22	21	21	20	20	19	19	18
100	22	21	21	20	20	19	19	19	18	18
101	21	20	20	19	19	19	18	18	17	17
102	19	19	19	18	18	18	17	17	16	16
103	18	18	18	17	17	17	16	16	15	15
104	17	17	16	16	16	15	15	15	15	14
105	16	15	15	15	15	14	14	14	14	13
106	14	14	14	14	14	13	13	13	13	12
107	13	13	13	13	12	12	12	12	12	12
108	12	12	12	11	11	11	11	11	11	11
109	11	11	10	10	10	10	10	10	10	10
110	9	9	9	9	9	9	9	9	9	9
111	8	8	8	8	8	8	8	8	8	8
112	7	7	7	7	7	7	7	7	7	7
113	6	6	6	6	6	6	6	6	6	6
114	5	5	5	5	5	5	5	5	5	5
115	5	5	5	5	5	5	5	5	5	5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	95	96	97	98	99	100	101	102	103	104
95	20	20	19	18	18	17	16	16	15	14
96	20	19	19	18	17	17	16	15	15	14
97	19	19	18	17	17	16	16	15	14	13
98	18	18	17	17	16	16	15	15	14	13
99	18	17	17	16	16	15	15	14	14	13
100	17	17	16	16	15	15	14	14	13	13
101	16	16	16	15	15	14	14	13	13	12
102	16	15	15	15	14	14	13	13	12	12
103	15	15	14	14	14	13	13	12	12	11
104	14	14	13	13	13	13	12	12	11	11
105	13	13	13	12	12	12	12	11	11	10
106	12	12	12	12	11	11	11	11	10	10
107	11	11	11	11	11	10	10	10	10	9
108	10	10	10	10	10	10	10	9	9	9
109	10	9	9	9	9	9	9	9	8	8
110	9	9	8	8	8	8	8	8	8	8
111	8	8	8	8	8	7	7	7	7	7
112	7	7	7	7	7	7	7	7	6	6
113	6	6	6	6	6	6	6	6	6	6
114	5	5	5	5	5	5	5	5	5	5
115	5	5	5	5	5	5	5	5	5	5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	105	106	107	108	109	110	111	112	113	114	115
105	1.0	1.0	.9	.9	.8	.7	.7	.6	.6	.5	.5
106	1.0	.9	.9	.8	.8	.7	.7	.6	.6	.5	.5
107	.9	.9	.8	.8	.7	.7	.7	.6	.6	.5	.5
108	.9	.8	.8	.8	.7	.7	.6	.6	.5	.5	.5
109	.8	.8	.7	.7	.7	.7	.6	.6	.5	.5	.5
110	.7	.7	.7	.7	.7	.6	.6	.6	.5	.5	.5
111	.7	.7	.7	.6	.6	.6	.6	.5	.5	.5	.5
112	.6	.6	.6	.6	.6	.6	.5	.5	.5	.5	.5
113	.6	.6	.6	.5	.5	.5	.5	.5	.5	.5	.5
114	.5	.5	.5	5	.5	.5	.5	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7 YEARS	8 YEARS	9 YEARS	10 YEARS
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0	0	0
13	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0
17	0	0	0	0	0	0	0	0	0	0
18	0	0	0	0	0	0	0	0	0	0
19	0	0	0	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0	0	0	0
21	0	0	0	0	0	0	0	0	0	0
22	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0
24	0	0	0	0	0	0	0	0	0	0
25	0	0	0	0	0	0	0	0	0	0
26	0	0	0	0	0	0	0	0	0	0
27	0	0	0	0	0	0	0	0	0	0
28	0	0	0	0	0	0	0	0	0	0
29	0	0	0	0	0	0	0	0	0	0
30	0	0	0	0	0	0	0	0	0	0
31	0	0	0	0	0	0	0	0	0	0
32	0	0	0	0	0	0	0	0	0	0
33	0	0	0	0	0	0	0	0	0	0
34	0	0	0	0	0	0	0	0	0	0
35	0	0	0	0	0	0	0	0	0	0
36	0	0	0	0	0	0	0	0	0	0
37	0	0	0	0	0	0	0	0	0	1
38	0	0	0	0	0	0	0	0	0	1
39	0	0	0	0	0	0	0	0	1	1
40	0	0	0	0	0	0	0	1	1	1
41	0	0	0	0	0	0	0	1	1	1
42	0	0	0	0	0	0	1	1	1	1
43	0	0	0	0	0	0	1	1	1	1
44	0	0	0	0	0	1	1	1	1	1
45	0	0	0	0	0	1	1	1	1	1
46	0	0	0	0	1	1	1	1	1	1
47	0	0	0	0	1	1	1	1	1	1
48	0	0	0	0	1	1	1	1	1	1
49	0	0	0	1	1	1	1	1	1	2
50	0	0	0	1	1	1	1	1	1	2
51	0	0	0	1	1	1	1	1	2	2
52	0	0	0	1	1	1	1	1	2	2
53	0	0	1	1	1	1	1	2	2	2
54	0	0	1	1	1	1	1	2	2	2
55	0	0	1	1	1	1	2	2	2	2
56	0	0	1	1	1	1	2	2	2	3
57	0	0	1	1	1	2	2	2	3	3
58	0	1	1	1	1	2	2	2	3	3
59	0	1	1	1	1	2	2	3	3	4
60	0	1	1	1	2	2	2	3	3	4

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7 YEARS	8 YEARS	9 YEARS	10 YEARS
61	0	1	1	1	2	2	3	3	4	4
62	0	1	1	2	2	2	3	4	4	5
63	0	1	1	2	2	3	3	4	5	5
64	0	1	1	2	2	3	4	4	5	6
65	0	1	2	2	3	3	4	5	6	6
66	1	1	2	2	3	4	5	5	6	7
67	1	1	2	3	3	4	5	6	7	8
68	1	1	2	3	4	5	6	7	8	9
69	1	1	2	3	4	5	6	7	8	10
70	1	2	3	4	5	6	7	8	9	11
71	1	2	3	4	5	6	8	9	10	12
72	1	2	3	4	6	7	8	10	11	13
73	1	2	4	5	6	8	9	11	13	14
74	1	3	4	5	7	9	10	12	14	16
75	1	3	4	6	8	9	11	13	15	17
76	2	3	5	7	9	10	12	15	17	19
77	2	4	5	7	9	12	14	16	18	21
78	2	4	6	8	10	13	15	18	20	23
79	2	4	7	9	11	14	17	19	22	25
80	2	5	7	10	13	15	18	21	24	27
81	3	5	8	11	14	17	20	23	26	29
82	3	6	9	12	15	19	22	25	28	32
83	3	7	10	13	17	20	24	27	31	34
84	4	7	11	15	19	22	26	30	33	37
85	4	8	12	16	20	24	28	32	36	40
86	4	9	13	18	22	27	31	35	39	42
87	5	10	15	20	24	29	33	37	41	45
88	5	11	16	21	26	31	36	40	44	48
89	6	12	18	23	28	33	38	43	47	50
90	7	13	19	25	31	36	41	45	49	53
91	7	14	21	27	33	38	43	48	52	55
92	8	15	22	29	35	40	45	50	54	58
93	9	17	24	31	37	43	48	52	56	60
94	9	18	26	33	39	45	50	54	58	62
95	10	19	27	35	41	47	52	57	60	64
96	11	20	29	36	43	49	54	59	62	66
97	11	21	30	38	45	51	56	61	64	68
98	12	23	32	40	47	53	58	63	66	69
99	13	24	34	42	49	55	60	65	68	71
100	14	26	36	44	52	58	63	67	70	73
101	14	27	38	47	54	60	65	69	72	75
102	15	29	40	49	56	62	67	71	74	77
103	17	31	42	52	59	65	69	73	76	78
104	18	33	45	55	62	67	72	75	78	80
105	19	36	48	58	65	70	74	77	80	82
106	21	38	51	61	68	73	77	79	82	84
107	23	42	55	64	71	75	79	81	84	85
108	25	45	58	67	73	78	81	83	85	87
109	28	49	62	71	76	80	83	85	87	88
110	31	52	66	74	79	82	85	87	88	89
111	34	57	70	77	82	85	87	88	90	91
112	37	61	73	80	84	87	88	90	91	92
113	41	66	77	83	86	88	90	91	92	93
114	45	70	80	85	88	90	92	93	93	94
115	50	75	83	88	90	92	93	94	94	95

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	11 YEARS	12 YEARS	13 YEARS	14 YEARS	15 YEARS	16 YEARS	17 YEARS	18 YEARS	19 YEARS	20 YEARS
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0	0	0
13	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0
17	0	0	0	0	0	0	0	0	0	0
18	0	0	0	0	0	0	0	0	0	0
19	0	0	0	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0	0	0	1
21	0	0	0	0	0	0	0	0	0	1
22	0	0	0	0	0	0	0	0	1	1
23	0	0	0	0	0	0	0	1	1	1
24	0	0	0	0	0	0	0	1	1	1
25	0	0	0	0	0	0	1	1	1	1
26	0	0	0	0	0	0	1	1	1	1
27	0	0	0	0	0	1	1	1	1	1
28	0	0	0	0	1	1	1	1	1	1
29	0	0	0	0	1	1	1	1	1	1
30	0	0	0	1	1	1	1	1	1	1
31	0	0	0	1	1	1	1	1	1	1
32	0	0	1	1	1	1	1	1	1	1
33	0	0	1	1	1	1	1	1	1	1
34	0	1	1	1	1	1	1	1	1	1
35	0	1	1	1	1	1	1	1	1	1
36	1	1	1	1	1	1	1	1	1	1
37	1	1	1	1	1	1	1	1	1	1
38	1	1	1	1	1	1	1	1	1	2
39	1	1	1	1	1	1	1	1	2	2
40	1	1	1	1	1	1	1	2	2	2
41	1	1	1	1	1	1	2	2	2	2
42	1	1	1	1	1	2	2	2	2	2
43	1	1	1	1	2	2	2	2	2	3
44	1	1	1	2	2	2	2	2	3	3
45	1	1	2	2	2	2	2	3	3	3
46	1	2	2	2	2	2	3	3	3	3
47	1	2	2	2	2	2	3	3	3	4
48	2	2	2	2	2	3	3	3	4	4
49	2	2	2	2	3	3	3	4	4	4
50	2	2	2	3	3	3	3	4	4	5
51	2	2	3	3	3	3	4	4	5	5
52	2	2	3	3	3	4	4	5	5	5
53	2	3	3	3	4	4	5	5	5	6
54	3	3	3	4	4	4	5	5	6	7
55	3	3	4	4	4	5	5	6	7	7
56	3	3	4	4	5	5	6	7	7	8
57	3	4	4	5	5	6	6	7	8	9
58	4	4	5	5	6	6	7	8	9	9
59	4	5	5	6	6	7	8	9	9	10
60	4	5	6	6	7	8	9	10	10	11

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	11 YEARS	12 YEARS	13 YEARS	14 YEARS	15 YEARS	16 YEARS	17 YEARS	18 YEARS	19 YEARS	20 YEARS
61	5	6	6	7	8	9	10	10	11	13
62	5	6	7	8	9	10	11	12	13	14
63	6	7	8	9	10	11	12	13	14	15
64	7	8	8	9	10	12	13	14	15	17
65	7	8	9	10	12	13	14	15	17	18
66	8	9	10	12	13	14	15	17	18	20
67	9	10	11	13	14	15	17	18	20	22
68	10	11	13	14	15	17	19	20	22	24
69	11	12	14	15	17	19	20	22	24	26
70	12	14	15	17	19	20	22	24	26	28
71	13	15	17	18	20	22	24	26	28	30
72	15	17	18	20	22	24	26	28	30	32
73	16	18	20	22	24	26	28	31	33	35
74	18	20	22	24	26	28	31	33	35	37
75	19	22	24	26	28	31	33	35	38	40
76	21	24	26	28	31	33	36	38	40	43
77	23	26	28	31	33	36	38	41	43	45
78	25	28	31	33	36	38	41	43	46	48
79	28	30	33	36	38	41	44	46	48	51
80	30	33	36	38	41	44	46	49	51	53
81	32	35	38	41	44	47	49	51	54	56
82	35	38	41	44	47	49	52	54	56	58
83	38	41	44	47	49	52	54	57	59	61
84	40	44	47	49	52	55	57	59	61	63
85	43	46	49	52	55	57	59	62	63	65
86	46	49	52	55	57	60	62	64	66	67
87	48	52	55	57	60	62	64	66	68	69
88	51	54	57	60	62	64	66	68	70	71
89	54	57	60	62	65	67	68	70	72	73
90	56	59	62	64	67	69	70	72	74	75
91	59	62	64	67	69	71	72	74	75	76
92	61	64	66	69	71	72	74	75	77	78
93	63	66	68	70	72	74	75	77	78	79
94	65	68	70	72	74	75	77	78	79	80
95	67	69	72	74	75	77	78	79	81	82
96	69	71	73	75	77	78	80	81	82	83
97	70	73	75	77	78	80	81	82	83	84
98	72	74	76	78	79	81	82	83	84	85
99	74	76	78	79	81	82	83	84	85	86
100	75	78	79	81	82	83	84	85	86	86
101	77	79	81	82	83	84	85	86	87	87
102	79	81	82	83	84	85	86	87	88	88
103	80	82	83	85	86	87	87	88	89	89
104	82	84	85	86	87	88	88	89	90	90
105	84	85	86	87	88	89	89	90	90	91
106	85	86	87	88	89	90	90	91	91	92
107	87	88	89	89	90	91	91	92	92	93
108	88	89	90	90	91	92	92	93	93	93
109	89	90	91	92	92	93	93	93	94	94
110	90	91	92	92	93	93	94	94	94	95
111	92	92	93	93	94	94	95	95	95	95
112	93	93	94	94	95	95	95	96	96	96
113	94	94	95	95	95	96	96	96	96	97
114	95	95	95	96	96	96	97	97	97	97
115	95	96	96	96	97	97	97	97	97	98

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	21 YEARS	22 YEARS	23 YEARS	24 YEARS	25 YEARS	26 YEARS	27 YEARS	28 YEARS	29 YEARS	30 YEARS
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	1
9	0	0	0	0	0	0	0	0	1	1
10	0	0	0	0	0	0	0	1	1	1
11	0	0	0	0	0	0	1	1	1	1
12	0	0	0	0	0	0	1	1	1	1
13	0	0	0	0	0	1	1	1	1	1
14	0	0	0	0	1	1	1	1	1	1
15	0	0	0	1	1	1	1	1	1	1
16	0	0	1	1	1	1	1	1	1	1
17	0	0	1	1	1	1	1	1	1	1
18	0	1	1	1	1	1	1	1	1	1
19	1	1	1	1	1	1	1	1	1	1
20	1	1	1	1	1	1	1	1	1	1
21	1	1	1	1	1	1	1	1	1	1
22	1	1	1	1	1	1	1	1	1	1
23	1	1	1	1	1	1	1	1	1	1
24	1	1	1	1	1	1	1	1	1	1
25	1	1	1	1	1	1	1	1	1	1
26	1	1	1	1	1	1	1	1	1	1
27	1	1	1	1	1	1	1	1	1	2
28	1	1	1	1	1	1	1	1	2	2
29	1	1	1	1	1	1	1	2	2	2
30	1	1	1	1	1	1	2	2	2	2
31	1	1	1	1	1	2	2	2	2	2
32	1	1	1	1	2	2	2	2	2	2
33	1	1	1	2	2	2	2	2	2	2
34	1	1	2	2	2	2	2	2	2	3
35	1	2	2	2	2	2	2	2	3	3
36	2	2	2	2	2	2	2	3	3	3
37	2	2	2	2	2	2	3	3	3	3
38	2	2	2	2	2	3	3	3	3	4
39	2	2	2	2	3	3	3	3	4	4
40	2	2	3	3	3	3	3	4	4	4
41	2	3	3	3	3	3	4	4	4	5
42	3	3	3	3	3	4	4	4	5	5
43	3	3	3	4	4	4	4	5	5	6
44	3	3	4	4	4	4	5	5	6	6
45	3	4	4	4	5	5	5	6	6	7
46	4	4	4	5	5	5	6	6	7	7
47	4	4	5	5	5	6	6	7	7	8
48	4	5	5	5	6	6	7	7	8	9
49	5	5	5	6	6	7	8	8	9	10
50	5	5	6	6	7	8	8	9	10	10
51	5	6	6	7	8	8	9	10	11	11
52	6	7	7	8	8	9	10	11	11	12
53	7	7	8	8	9	10	11	12	13	14
54	7	8	8	9	10	11	12	13	14	15
55	8	9	9	10	11	12	13	14	15	16
56	9	9	10	11	12	13	14	15	16	18
57	9	10	11	12	13	14	15	17	18	19
58	10	11	12	13	14	16	17	18	19	21
59	11	12	13	15	16	17	18	20	21	22
60	12	14	15	16	17	19	20	21	23	24

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	21 YEARS	22 YEARS	23 YEARS	24 YEARS	25 YEARS	26 YEARS	27 YEARS	28 YEARS	29 YEARS	30 YEARS
61	14	15	16	17	19	20	22	23	25	26
62	15	16	18	19	20	22	23	25	27	28
63	16	18	19	21	22	24	25	27	29	30
64	18	19	21	23	24	26	28	29	31	33
65	20	21	23	25	26	28	30	31	33	35
66	21	23	25	27	28	30	32	34	35	37
67	23	25	27	29	31	32	34	36	38	40
68	25	27	29	31	33	35	37	38	40	42
69	28	29	31	33	35	37	39	41	43	44
70	30	32	34	36	38	40	42	43	45	47
71	32	34	36	38	40	42	44	46	47	49
72	35	37	39	41	43	45	46	48	50	51
73	37	39	41	43	45	47	49	51	52	54
74	40	42	44	46	48	50	51	53	54	56
75	42	44	46	48	50	52	54	55	57	58
76	45	47	49	51	53	54	56	58	59	60
77	47	50	51	53	55	57	58	60	61	62
78	50	52	54	56	57	59	61	62	63	64
79	53	55	56	58	60	61	63	64	65	66
80	55	57	59	60	62	63	65	66	67	68
81	58	59	61	63	64	66	67	68	69	70
82	60	62	63	65	66	68	69	70	71	72
83	62	64	66	67	68	70	71	72	73	74
84	65	66	68	69	70	71	72	73	74	75
85	67	68	70	71	72	73	74	75	76	77
86	69	70	72	73	74	75	76	77	77	78
87	71	72	73	75	76	76	77	78	79	80
88	73	74	75	76	77	78	79	80	80	81
89	74	76	77	78	79	79	80	81	81	82
90	76	77	78	79	80	81	81	82	83	83
91	78	79	79	80	81	82	83	83	84	84
92	79	80	81	82	82	83	84	84	85	85
93	80	81	82	83	83	84	85	85	86	86
94	81	82	83	84	84	85	85	86	86	87
95	82	83	84	85	85	86	86	87	87	88
96	83	84	85	86	86	87	87	88	88	88
97	84	85	86	86	87	87	88	88	89	89
98	85	86	87	87	88	88	89	89	89	90
99	86	87	87	88	88	89	89	90	90	90
100	87	88	88	89	89	90	90	90	91	91
101	88	89	89	90	90	90	91	91	91	92
102	89	89	90	90	91	91	91	92	92	92
103	90	90	91	91	91	92	92	92	93	93
104	91	91	91	92	92	92	93	93	93	93
105	91	92	92	92	93	93	93	94	94	94
106	92	93	93	93	93	94	94	94	94	95
107	93	93	94	94	94	94	95	95	95	95
108	94	94	94	94	95	95	95	95	95	96
109	94	95	95	95	95	95	96	96	96	96
110	95	95	95	96	96	96	96	96	96	96
111	96	96	96	96	96	96	97	97	97	97
112	96	96	96	97	97	97	97	97	97	97
113	97	97	97	97	97	97	97	98	98	98
114	97	97	97	98	98	98	98	98	98	98
115	98	98	98	98	98	98	98	98	98	98

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	31 YEARS	32 YEARS	33 YEARS	34 YEARS	35 YEARS	36 YEARS	37 YEARS	38 YEARS	39 YEARS	40 YEARS
5	0	1	1	1	1	1	1	1	1	1
6	0	1	1	1	1	1	1	1	1	1
7	1	1	1	1	1	1	1	1	1	1
8	1	1	1	1	1	1	1	1	1	1
9	1	1	1	1	1	1	1	1	1	1
10	1	1	1	1	1	1	1	1	1	1
11	1	1	1	1	1	1	1	1	1	1
12	1	1	1	1	1	1	1	1	1	1
13	1	1	1	1	1	1	1	1	1	1
14	1	1	1	1	1	1	1	1	1	1
15	1	1	1	1	1	1	1	1	1	1
16	1	1	1	1	1	1	1	1	1	1
17	1	1	1	1	1	1	1	1	1	1
18	1	1	1	1	1	1	1	1	1	2
19	1	1	1	1	1	1	1	1	2	2
20	1	1	1	1	1	1	1	2	2	2
21	1	1	1	1	1	1	2	2	2	2
22	1	1	1	1	1	2	2	2	2	2
23	1	1	1	2	2	2	2	2	2	2
24	1	1	2	2	2	2	2	2	2	2
25	1	2	2	2	2	2	2	2	2	3
26	2	2	2	2	2	2	2	2	3	3
27	2	2	2	2	2	2	2	3	3	3
28	2	2	2	2	2	2	3	3	3	3
29	2	2	2	2	2	3	3	3	3	4
30	2	2	2	3	3	3	3	3	4	4
31	2	2	3	3	3	3	3	4	4	4
32	2	3	3	3	3	3	4	4	4	5
33	3	3	3	3	3	4	4	4	5	5
34	3	3	3	3	4	4	4	5	5	5
35	3	3	3	4	4	4	5	5	5	6
36	3	4	4	4	4	5	5	5	6	6
37	4	4	4	4	5	5	6	6	6	7
38	4	4	5	5	5	6	6	7	7	8
39	4	5	5	5	6	6	7	7	8	8
40	5	5	5	6	6	7	7	8	8	9
41	5	5	6	6	7	7	8	9	9	10
42	6	6	6	7	7	8	9	9	10	11
43	6	7	7	8	8	9	9	10	11	12
44	7	7	8	8	9	10	10	11	12	13
45	7	8	8	9	10	10	11	12	13	14
46	8	9	9	10	11	11	12	13	14	15
47	9	9	10	11	12	12	13	14	15	16
48	9	10	11	12	13	14	15	16	17	18
49	10	11	12	13	14	15	16	17	18	19
50	11	12	13	14	15	16	17	18	20	21
51	12	13	14	15	16	17	19	20	21	22
52	13	14	15	17	18	19	20	21	23	24
53	15	16	17	18	19	20	22	23	24	26
54	16	17	18	19	21	22	23	25	26	28
55	17	18	20	21	22	24	25	27	28	30
56	19	20	21	23	24	26	27	29	30	32
57	20	22	23	25	26	28	29	31	32	34
58	22	24	25	27	28	30	31	33	34	36
59	24	25	27	28	30	32	33	35	36	38
60	26	27	29	31	32	34	35	37	38	40

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	31 YEARS	32 YEARS	33 YEARS	34 YEARS	35 YEARS	36 YEARS	37 YEARS	38 YEARS	39 YEARS	40 YEARS
61	28	29	31	33	34	36	37	39	40	42
62	30	32	33	35	36	38	40	41	42	44
63	32	34	35	37	39	40	42	43	45	46
64	34	36	38	39	41	42	44	45	47	48
65	37	38	40	42	43	45	46	47	49	50
66	39	41	42	44	45	47	48	50	51	52
67	41	43	45	46	48	49	50	52	53	54
68	44	45	47	48	50	51	52	54	55	56
69	46	48	49	51	52	53	54	56	57	58
70	48	50	51	53	54	55	57	58	59	60
71	51	52	54	55	56	57	59	60	61	62
72	53	54	56	57	58	59	60	62	62	63
73	55	57	58	59	60	61	62	63	64	65
74	57	59	60	61	62	63	64	65	66	67
75	59	61	62	63	64	65	66	67	68	69
76	62	63	64	65	66	67	68	69	69	70
77	64	65	66	67	68	69	70	70	71	72
78	66	67	68	69	70	70	71	72	73	73
79	67	68	69	70	71	72	73	73	74	75
80	69	70	71	72	73	74	74	75	76	76
81	71	72	73	74	74	75	76	76	77	78
82	73	74	74	75	76	77	77	78	78	79
83	74	75	76	77	77	78	79	79	80	80
84	76	77	77	78	79	79	80	80	81	81
85	78	78	79	79	80	81	81	82	82	83
86	79	80	80	81	81	82	82	83	83	84
87	80	81	81	82	83	83	83	84	84	85
88	82	82	83	83	84	84	85	85	85	86
89	83	83	84	84	85	85	85	86	86	87
90	84	84	85	85	86	86	86	87	87	87
91	85	85	86	86	87	87	87	88	88	88
92	86	86	87	87	87	88	88	88	89	89
93	87	87	87	88	88	88	89	89	89	90
94	87	88	88	88	89	89	89	90	90	90
95	88	88	89	89	89	90	90	90	91	91
96	89	89	89	90	90	90	91	91	91	91
97	89	90	90	90	91	91	91	91	92	92
98	90	90	91	91	91	91	92	92	92	92
99	91	91	91	92	92	92	92	92	93	93
100	91	92	92	92	92	92	93	93	93	93
101	92	92	92	93	93	93	93	93	94	94
102	92	93	93	93	93	94	94	94	94	94
103	93	93	93	94	94	94	94	94	94	95
104	94	94	94	94	94	95	95	95	95	95
105	94	94	95	95	95	95	95	95	95	95
106	95	95	95	95	95	95	96	96	96	96
107	95	95	96	96	96	96	96	96	96	96
108	96	96	96	96	96	96	96	96	97	97
109	96	96	96	97	97	97	97	97	97	97
110	97	97	97	97	97	97	97	97	97	97
111	97	97	97	97	97	97	98	98	98	98
112	97	97	98	98	98	98	98	98	98	98
113	98	98	98	98	98	98	98	98	98	98
114	98	98	98	98	98	98	98	98	98	99
115	98	98	98	99	99	99	99	99	99	99

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7 YEARS	8 YEARS	9 YEARS	10 YEARS
5	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
6	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
7	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
8	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
9	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
10	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
11	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
12	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
13	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
14	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
15	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
16	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
17	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
18	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
19	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
20	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
21	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
22	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
23	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
24	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
25	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
26	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
27	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
28	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
29	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
30	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
31	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
32	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
33	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
34	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
35	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
36	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
37	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	9.9
38	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	9.9
39	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	9.9
40	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	8.9	9.9
41	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	8.9	9.9
42	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	8.9	9.9
43	1.0	2.0	3.0	4.0	5.0	6.0	7.0	7.9	8.9	9.9
44	1.0	2.0	3.0	4.0	5.0	6.0	7.0	7.9	8.9	9.9
45	1.0	2.0	3.0	4.0	5.0	6.0	7.0	7.9	8.9	9.9
46	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.9
47	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.9
48	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.9
49	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.8
50	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.9	9.8
51	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.9	9.8
52	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.8	9.8
53	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.8	9.8
54	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.9	8.8	9.8
55	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.7
56	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.7
57	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.7
58	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.7	9.7
59	1.0	2.0	3.0	4.0	4.9	5.9	6.8	7.8	8.7	9.6

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7 YEARS	8 YEARS	9 YEARS	10 YEARS
60	1.0	2.0	3.0	3.9	4.9	5.9	6.8	7.8	8.7	9.6
61	1.0	2.0	3.0	3.9	4.9	5.9	6.8	7.7	8.7	9.6
62	1.0	2.0	3.0	3.9	4.9	5.8	6.8	7.7	8.6	9.5
63	1.0	2.0	3.0	3.9	4.9	5.8	6.8	7.7	8.6	9.5
64	1.0	2.0	3.0	3.9	4.9	5.8	6.7	7.6	8.5	9.4
65	1.0	2.0	3.0	3.9	4.9	5.8	6.7	7.6	8.5	9.3
66	1.0	2.0	2.9	3.9	4.8	5.8	6.7	7.6	8.4	9.3
67	1.0	2.0	2.9	3.9	4.8	5.7	6.6	7.5	8.4	9.2
68	1.0	2.0	2.9	3.9	4.8	5.7	6.6	7.5	8.3	9.1
69	1.0	2.0	2.9	3.9	4.8	5.7	6.6	7.4	8.2	9.0
70	1.0	2.0	2.9	3.9	4.8	5.6	6.5	7.3	8.1	8.9
71	1.0	2.0	2.9	3.8	4.7	5.6	6.5	7.3	8.1	8.8
72	1.0	2.0	2.9	3.8	4.7	5.6	6.4	7.2	8.0	8.7
73	1.0	2.0	2.9	3.8	4.7	5.5	6.3	7.1	7.9	8.6
74	1.0	1.9	2.9	3.8	4.6	5.5	6.3	7.0	7.7	8.4
75	1.0	1.9	2.9	3.8	4.6	5.4	6.2	6.9	7.6	8.3
76	1.0	1.9	2.8	3.7	4.6	5.4	6.1	6.8	7.5	8.1
77	1.0	1.9	2.8	3.7	4.5	5.3	6.0	6.7	7.3	7.9
78	1.0	1.9	2.8	3.7	4.5	5.2	5.9	6.6	7.2	7.7
79	1.0	1.9	2.8	3.6	4.4	5.1	5.8	6.4	7.0	7.5
80	1.0	1.9	2.8	3.6	4.4	5.1	5.7	6.3	6.8	7.3
81	1.0	1.9	2.8	3.6	4.3	5.0	5.6	6.1	6.6	7.0
82	1.0	1.9	2.7	3.5	4.2	4.9	5.4	6.0	6.4	6.8
83	1.0	1.9	2.7	3.5	4.1	4.8	5.3	5.8	6.2	6.5
84	1.0	1.8	2.7	3.4	4.1	4.6	5.2	5.6	6.0	6.3
85	1.0	1.8	2.6	3.3	4.0	4.5	5.0	5.4	5.7	6.0
86	1.0	1.8	2.6	3.3	3.9	4.4	4.8	5.2	5.5	5.7
87	.9	1.8	2.5	3.2	3.8	4.3	4.7	5.0	5.3	5.5
88	.9	1.8	2.5	3.1	3.7	4.1	4.5	4.8	5.0	5.2
89	.9	1.8	2.5	3.1	3.6	4.0	4.3	4.6	4.8	4.9
90	.9	1.7	2.4	3.0	3.4	3.8	4.1	4.4	4.5	4.7
91	.9	1.7	2.4	2.9	3.3	3.7	4.0	4.2	4.3	4.4
92	.9	1.7	2.3	2.8	3.2	3.5	3.8	4.0	4.1	4.2
93	.9	1.7	2.3	2.7	3.1	3.4	3.6	3.8	3.9	4.0
94	.9	1.6	2.2	2.7	3.0	3.3	3.5	3.6	3.7	3.8
95	.9	1.6	2.2	2.6	2.9	3.1	3.3	3.4	3.5	3.6
96	.9	1.6	2.1	2.5	2.8	3.0	3.2	3.3	3.3	3.4
97	.9	1.6	2.1	2.4	2.7	2.9	3.0	3.1	3.2	3.2
98	.9	1.5	2.0	2.4	2.6	2.8	2.9	3.0	3.0	3.0
99	.9	1.5	2.0	2.3	2.5	2.6	2.7	2.8	2.8	2.8
100	.9	1.5	1.9	2.2	2.4	2.5	2.6	2.6	2.6	2.7
101	.8	1.4	1.8	2.1	2.3	2.4	2.4	2.5	2.5	2.5
102	.8	1.4	1.8	2.0	2.1	2.2	2.3	2.3	2.3	2.3
103	.8	1.4	1.7	1.9	2.0	2.1	2.1	2.1	2.1	2.1
104	.8	1.3	1.6	1.8	1.9	1.9	1.9	1.9	1.9	1.9
105	.8	1.3	1.5	1.7	1.7	1.8	1.8	1.8	1.8	1.8
106	.8	1.2	1.4	1.5	1.6	1.6	1.6	1.6	1.6	1.6
107	.7	1.1	1.3	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	.7	1.1	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	.7	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	.7	.9	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.6	.8	.9	.9	.9	.9	.9	.9	.9	.9
112	.6	.7	.8	.8	.8	.8	.8	.8	.8	.8
113	.6	.6	.7	.7	.7	.7	.7	.7	.7	.7
114	.5	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	11 YEARS	12 YEARS	13 YEARS	14 YEARS	15 YEARS	16 YEARS	17 YEARS	18 YEARS	19 YEARS	20 YEARS
5	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	19.9
6	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	19.9
7	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	19.9
8	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	18.9	19.9
9	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	18.9	19.9
10	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	18.9	19.9
11	11.0	12.0	13.0	14.0	15.0	16.0	17.0	17.9	18.9	19.9
12	11.0	12.0	13.0	14.0	15.0	16.0	17.0	17.9	18.9	19.9
13	11.0	12.0	13.0	14.0	15.0	16.0	17.0	17.9	18.9	19.9
14	11.0	12.0	13.0	14.0	15.0	16.0	16.9	17.9	18.9	19.9
15	11.0	12.0	13.0	14.0	15.0	16.0	16.9	17.9	18.9	19.9
16	11.0	12.0	13.0	14.0	15.0	16.0	16.9	17.9	18.9	19.9
17	11.0	12.0	13.0	14.0	15.0	15.9	16.9	17.9	18.9	19.9
18	11.0	12.0	13.0	14.0	15.0	15.9	16.9	17.9	18.9	19.9
19	11.0	12.0	13.0	14.0	15.0	15.9	16.9	17.9	18.9	19.9
20	11.0	12.0	13.0	14.0	14.9	15.9	16.9	17.9	18.9	19.9
21	11.0	12.0	13.0	14.0	14.9	15.9	16.9	17.9	18.9	19.9
22	11.0	12.0	13.0	14.0	14.9	15.9	16.9	17.9	18.9	19.9
23	11.0	12.0	13.0	13.9	14.9	15.9	16.9	17.9	18.9	19.9
24	11.0	12.0	13.0	13.9	14.9	15.9	16.9	17.9	18.9	19.9
25	11.0	12.0	13.0	13.9	14.9	15.9	16.9	17.9	18.9	19.9
26	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	19.9
27	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	19.9
28	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	19.8
29	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	19.8
30	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.9	18.8	19.8
31	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.9	18.8	19.8
32	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.8	18.8	19.8
33	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.8	18.8	19.8
34	10.9	11.9	12.9	13.9	14.9	15.9	16.8	17.8	18.8	19.8
35	10.9	11.9	12.9	13.9	14.9	15.9	16.8	17.8	18.8	19.7
36	10.9	11.9	12.9	13.9	14.9	15.8	16.8	17.8	18.8	19.7
37	10.9	11.9	12.9	13.9	14.9	15.8	16.8	17.8	18.7	19.7
38	10.9	11.9	12.9	13.9	14.8	15.8	16.8	17.8	18.7	19.7
39	10.9	11.9	12.9	13.9	14.8	15.8	16.8	17.7	18.7	19.6
40	10.9	11.9	12.9	13.8	14.8	15.8	16.7	17.7	18.7	19.6
41	10.9	11.9	12.9	13.8	14.8	15.8	16.7	17.7	18.6	19.6
42	10.9	11.9	12.8	13.8	14.8	15.7	16.7	17.6	18.6	19.5
43	10.9	11.9	12.8	13.8	14.8	15.7	16.7	17.6	18.6	19.5
44	10.9	11.8	12.8	13.8	14.7	15.7	16.6	17.6	18.5	19.4
45	10.9	11.8	12.8	13.8	14.7	15.7	16.6	17.5	18.5	19.4
46	10.9	11.8	12.8	13.7	14.7	15.6	16.6	17.5	18.4	19.3
47	10.8	11.8	12.8	13.7	14.7	15.6	16.5	17.5	18.4	19.3
48	10.8	11.8	12.7	13.7	14.6	15.6	16.5	17.4	18.3	19.2
49	10.8	11.8	12.7	13.7	14.6	15.5	16.4	17.4	18.3	19.2
50	10.8	11.7	12.7	13.6	14.6	15.5	16.4	17.3	18.2	19.1
51	10.8	11.7	12.7	13.6	14.5	15.4	16.3	17.2	18.1	19.0
52	10.8	11.7	12.6	13.6	14.5	15.4	16.3	17.2	18.0	18.9
53	10.7	11.7	12.6	13.5	14.4	15.3	16.2	17.1	18.0	18.8
54	10.7	11.6	12.6	13.5	14.4	15.3	16.2	17.0	17.9	18.7
55	10.7	11.6	12.5	13.4	14.3	15.2	16.1	16.9	17.8	18.6
56	10.7	11.6	12.5	13.4	14.3	15.1	16.0	16.8	17.6	18.4
57	10.6	11.5	12.4	13.3	14.2	15.1	15.9	16.7	17.5	18.3
58	10.6	11.5	12.4	13.3	14.1	15.0	15.8	16.6	17.4	18.1
59	10.6	11.4	12.3	13.2	14.0	14.9	15.7	16.4	17.2	17.9
60	10.5	11.4	12.3	13.1	13.9	14.7	15.5	16.3	17.0	17.7

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	11 YEARS	12 YEARS	13 YEARS	14 YEARS	15 YEARS	16 YEARS	17 YEARS	18 YEARS	19 YEARS	20 YEARS
61	10.5	11.3	12.2	13.0	13.8	14.6	15.4	16.1	16.8	17.5
62	10.4	11.3	12.1	12.9	13.7	14.5	15.2	15.9	16.6	17.2
63	10.3	11.2	12.0	12.8	13.6	14.3	15.0	15.7	16.3	17.0
64	10.3	11.1	11.9	12.7	13.4	14.1	14.8	15.5	16.1	16.7
65	10.2	11.0	11.8	12.5	13.2	13.9	14.6	15.2	15.8	16.3
66	10.1	10.9	11.6	12.4	13.1	13.7	14.4	14.9	15.5	16.0
67	10.0	10.8	11.5	12.2	12.9	13.5	14.1	14.7	15.2	15.6
68	9.9	10.6	11.4	12.0	12.7	13.3	13.8	14.3	14.8	15.3
69	9.8	10.5	11.2	11.8	12.4	13.0	13.5	14.0	14.4	14.8
70	9.6	10.3	11.0	11.6	12.2	12.7	13.2	13.7	14.0	14.4
71	9.5	10.2	10.8	11.4	11.9	12.4	12.9	13.3	13.8	13.9
72	9.4	10.0	10.6	11.2	11.7	12.1	12.5	12.9	13.2	13.5
73	9.2	9.8	10.4	10.9	11.4	11.8	12.1	12.5	12.7	13.0
74	9.0	9.6	10.1	10.6	11.0	11.4	11.7	12.0	12.3	12.5
75	8.8	9.4	9.9	10.3	10.7	11.0	11.3	11.6	11.8	12.0
76	8.6	9.1	9.6	10.0	10.3	10.6	10.9	11.1	11.3	11.4
77	8.4	8.9	9.3	9.7	10.0	10.2	10.5	10.6	10.8	10.9
78	8.2	8.6	9.0	9.3	9.6	9.8	10.0	10.2	10.3	10.4
79	7.9	8.3	8.7	9.0	9.2	9.4	9.5	9.7	9.8	9.8
80	7.7	8.0	8.3	8.6	8.8	9.0	9.1	9.2	9.3	9.3
81	7.4	7.7	8.0	8.2	8.4	8.5	8.6	8.7	8.8	8.8
82	7.1	7.4	7.6	7.8	8.0	8.1	8.2	8.2	8.3	8.3
83	6.8	7.1	7.3	7.4	7.5	7.6	7.7	7.8	7.8	7.8
84	6.5	6.7	6.9	7.0	7.1	7.2	7.3	7.3	7.3	7.4
85	6.2	6.4	6.6	6.7	6.7	6.8	6.8	6.9	6.9	6.9
86	5.9	6.1	6.2	6.3	6.4	6.4	6.4	6.5	6.5	6.5
87	5.6	5.8	5.9	5.9	6.0	6.0	6.0	6.1	6.1	6.1
88	5.3	5.4	5.5	5.6	5.6	5.6	5.7	5.7	5.7	5.7
89	5.1	5.1	5.2	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	4.8	4.9	4.9	4.9	5.0	5.0	5.0	5.0	5.0	5.0
91	4.5	4.6	4.6	4.6	4.7	4.7	4.7	4.7	4.7	4.7
92	4.3	4.3	4.3	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.0	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.8	3.8	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.7	3.7	3.7	3.7	3.7	3.7
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	21 YEARS	22 YEARS	23 YEARS	24 YEARS	25 YEARS	26 YEARS	27 YEARS	28 YEARS	29 YEARS	30 YEARS
5	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.9
6	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.9
7	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.9
8	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.8
9	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.8
10	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.8	29.8
11	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.8	29.8
12	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.8	28.8	29.8
13	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.8	28.8	29.8
14	20.9	21.9	22.9	23.9	24.9	25.9	26.8	27.8	28.8	29.8
15	20.9	21.9	22.9	23.9	24.9	25.9	26.8	27.8	28.8	29.8
16	20.9	21.9	22.9	23.9	24.9	25.8	26.8	27.8	28.8	29.8
17	20.9	21.9	22.9	23.9	24.9	25.8	26.8	27.8	28.8	29.8
18	20.9	21.9	22.9	23.9	24.8	25.8	26.8	27.8	28.8	29.7
19	20.9	21.9	22.9	23.9	24.8	25.8	26.8	27.8	28.8	29.7
20	20.9	21.9	22.9	23.8	24.8	25.8	26.8	27.8	28.7	29.7
21	20.9	21.9	22.9	23.8	24.8	25.8	26.8	27.8	28.7	29.7
22	20.9	21.9	22.8	23.8	24.8	25.8	26.8	27.7	28.7	29.7
23	20.9	21.9	22.8	23.8	24.8	25.8	26.7	27.7	28.7	29.7
24	20.9	21.8	22.8	23.8	24.8	25.8	26.7	27.7	28.7	29.6
25	20.9	21.8	22.8	23.8	24.8	25.7	26.7	27.7	28.6	29.6
26	20.8	21.8	22.8	23.8	24.8	25.7	26.7	27.7	28.6	29.6
27	20.8	21.8	22.8	23.8	24.7	25.7	26.7	27.6	28.6	29.5
28	20.8	21.8	22.8	23.7	24.7	25.7	26.6	27.6	28.6	29.5
29	20.8	21.8	22.8	23.7	24.7	25.7	26.6	27.6	28.5	29.5
30	20.8	21.8	22.7	23.7	24.7	25.6	26.6	27.5	28.5	29.4
31	20.8	21.8	22.7	23.7	24.6	25.6	26.6	27.5	28.4	29.4
32	20.8	21.7	22.7	23.7	24.6	25.6	26.5	27.5	28.4	29.3
33	20.8	21.7	22.7	23.6	24.6	25.5	26.5	27.4	28.4	29.3
34	20.7	21.7	22.7	23.6	24.6	25.5	26.4	27.4	28.3	29.2
35	20.7	21.7	22.6	23.6	24.5	25.5	26.4	27.3	28.2	29.2
36	20.7	21.6	22.6	23.5	24.5	25.4	26.3	27.3	28.2	29.1
37	20.7	21.6	22.6	23.5	24.4	25.4	26.3	27.2	28.1	29.0
38	20.6	21.6	22.5	23.4	24.4	25.3	26.2	27.1	28.0	28.9
39	20.6	21.5	22.5	23.4	24.3	25.2	26.1	27.0	27.9	28.8
40	20.6	21.5	22.4	23.3	24.3	25.2	26.1	27.0	27.8	28.7
41	20.5	21.4	22.4	23.3	24.2	25.1	26.0	26.9	27.7	28.6
42	20.5	21.4	22.3	23.2	24.1	25.0	25.9	26.8	27.6	28.5
43	20.4	21.3	22.2	23.2	24.0	24.9	25.8	26.6	27.5	28.3
44	20.4	21.3	22.2	23.1	24.0	24.8	25.7	26.5	27.3	28.2
45	20.3	21.2	22.1	23.0	23.9	24.7	25.6	26.4	27.2	28.0
46	20.2	21.1	22.0	22.9	23.8	24.6	25.4	26.2	27.0	27.8
47	20.2	21.1	21.9	22.8	23.6	24.5	25.3	26.1	26.8	27.6
48	20.1	21.0	21.8	22.7	23.5	24.3	25.1	25.9	26.6	27.4
49	20.0	20.9	21.7	22.6	23.4	24.2	25.0	25.7	26.4	27.1
50	19.9	20.8	21.6	22.4	23.2	24.0	24.8	25.5	26.2	26.9
51	19.8	20.7	21.5	22.3	23.1	23.8	24.6	25.3	25.9	26.6
52	19.7	20.6	21.4	22.1	22.9	23.6	24.3	25.0	25.7	26.3
53	19.6	20.4	21.2	22.0	22.7	23.4	24.1	24.7	25.3	25.9
54	19.5	20.3	21.0	21.8	22.5	23.2	23.8	24.4	25.0	25.6
55	19.3	20.1	20.8	21.6	22.2	22.9	23.5	24.1	24.6	25.2
56	19.2	19.9	20.6	21.3	22.0	22.6	23.2	23.7	24.3	24.7
57	19.0	19.7	20.4	21.1	21.7	22.3	22.8	23.4	23.8	24.3
58	18.8	19.5	20.2	20.8	21.4	21.9	22.5	22.9	23.4	23.8
59	18.6	19.3	19.9	20.5	21.1	21.6	22.0	22.5	22.9	23.2

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	21 YEARS	22 YEARS	23 YEARS	24 YEARS	25 YEARS	26 YEARS	27 YEARS	28 YEARS	29 YEARS	30 YEARS
60	18.4	19.0	19.6	20.2	20.7	21.2	21.6	22.0	22.4	22.7
61	18.1	18.7	19.3	19.8	20.3	20.7	21.1	21.5	21.8	22.1
62	17.8	18.4	18.9	19.4	19.9	20.3	20.6	21.0	21.2	21.5
63	17.5	18.1	18.5	19.0	19.4	19.8	20.1	20.4	20.6	20.8
64	17.2	17.7	18.1	18.6	18.9	19.3	19.5	19.8	20.0	20.2
65	16.8	17.3	17.7	18.1	18.4	18.7	18.9	19.2	19.3	19.5
66	16.5	16.9	17.3	17.6	17.9	18.1	18.3	18.5	18.7	18.8
67	16.1	16.4	16.8	17.1	17.3	17.5	17.7	17.9	18.0	18.1
68	15.6	16.0	16.3	16.5	16.7	16.9	17.1	17.2	17.3	17.4
69	15.2	15.5	15.7	16.0	16.1	16.3	16.4	16.5	16.6	16.7
70	14.7	15.0	15.2	15.4	15.5	15.7	15.8	15.8	15.9	15.9
71	14.2	14.4	14.6	14.8	14.9	15.0	15.1	15.2	15.2	15.2
72	13.7	13.9	14.1	14.2	14.3	14.4	14.4	14.5	14.5	14.5
73	13.2	13.3	13.5	13.6	13.7	13.7	13.8	13.8	13.8	13.9
74	12.6	12.8	12.9	13.0	13.0	13.1	13.1	13.1	13.2	13.2
75	12.1	12.2	12.3	12.4	12.4	12.5	12.5	12.5	12.5	12.5
76	11.5	11.6	11.7	11.8	11.8	11.8	11.8	11.9	11.9	11.9
77	11.0	11.1	11.1	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.4	10.5	10.5	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	9.9	9.9	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.5	9.5	9.5	9.5	9.5	9.5
81	8.8	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.3	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.8	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	31 YEARS	32 YEARS	33 YEARS	34 YEARS	35 YEARS	36 YEARS	37 YEARS	38 YEARS	39 YEARS	40 YEARS
5	30.8	31.8	32.8	33.8	34.8	35.8	36.8	37.7	38.7	39.7
6	30.8	31.8	32.8	33.8	34.8	35.8	36.8	37.7	38.7	39.7
7	30.8	31.8	32.8	33.8	34.8	35.8	36.7	37.7	38.7	39.7
8	30.8	31.8	32.8	33.8	34.8	35.7	36.7	37.7	38.7	39.7
9	30.8	31.8	32.8	33.8	34.8	35.7	36.7	37.7	38.7	39.6
10	30.8	31.8	32.8	33.8	34.7	35.7	36.7	37.7	38.6	39.6
11	30.8	31.8	32.8	33.8	34.7	35.7	36.7	37.7	38.6	39.6
12	30.8	31.8	32.8	33.7	34.7	35.7	36.7	37.6	38.6	39.6
13	30.8	31.8	32.7	33.7	34.7	35.7	36.6	37.6	38.6	39.5
14	30.8	31.8	32.7	33.7	34.7	35.7	36.6	37.6	38.6	39.5
15	30.8	31.7	32.7	33.7	34.7	35.6	36.6	37.6	38.5	39.5
16	30.8	31.7	32.7	33.7	34.6	35.6	36.6	37.5	38.5	39.4
17	30.7	31.7	32.7	33.7	34.6	35.6	36.5	37.5	38.5	39.4
18	30.7	31.7	32.7	33.6	34.6	35.6	36.5	37.5	38.4	39.4
19	30.7	31.7	32.6	33.6	34.6	35.5	36.5	37.4	38.4	39.3
20	30.7	31.7	32.6	33.6	34.5	35.5	36.4	37.4	38.3	39.3
21	30.7	31.6	32.6	33.6	34.5	35.5	36.4	37.4	38.3	39.2
22	30.6	31.6	32.6	33.5	34.5	35.4	36.4	37.3	38.2	39.2
23	30.6	31.6	32.5	33.5	34.4	35.4	36.3	37.3	38.2	39.1
24	30.6	31.5	32.5	33.5	34.4	35.3	36.3	37.2	38.1	39.0
25	30.6	31.5	32.5	33.4	34.3	35.3	36.2	37.1	38.1	39.0
26	30.5	31.5	32.4	33.4	34.3	35.2	36.2	37.1	38.0	38.9
27	30.5	31.4	32.4	33.3	34.2	35.2	36.1	37.0	37.9	38.8
28	30.5	31.4	32.3	33.3	34.2	35.1	36.0	36.9	37.8	38.7
29	30.4	31.4	32.3	33.2	34.1	35.0	35.9	36.8	37.7	38.6
30	30.4	31.3	32.2	33.1	34.1	35.0	35.8	36.7	37.6	38.5
31	30.3	31.2	32.2	33.1	34.0	34.9	35.8	36.6	37.5	38.3
32	30.3	31.2	32.1	33.0	33.9	34.8	35.6	36.5	37.4	38.2
33	30.2	31.1	32.0	32.9	33.8	34.7	35.5	36.4	37.2	38.0
34	30.1	31.0	31.9	32.8	33.7	34.6	35.4	36.2	37.1	37.9
35	30.1	31.0	31.8	32.7	33.6	34.4	35.3	36.1	36.9	37.7
36	30.0	30.9	31.7	32.6	33.5	34.3	35.1	35.9	36.7	37.4
37	29.9	30.8	31.6	32.5	33.3	34.1	34.9	35.7	36.5	37.2
38	29.8	30.7	31.5	32.3	33.2	34.0	34.7	35.5	36.2	37.0
39	29.7	30.5	31.4	32.2	33.0	33.8	34.5	35.3	36.0	36.7
40	29.6	30.4	31.2	32.0	32.8	33.6	34.3	35.0	35.7	36.4
41	29.4	30.2	31.0	31.8	32.6	33.3	34.1	34.7	35.4	36.0
42	29.3	30.1	30.9	31.6	32.4	33.1	33.8	34.4	35.1	35.7
43	29.1	29.9	30.7	31.4	32.1	32.8	33.5	34.1	34.7	35.3
44	28.9	29.7	30.5	31.2	31.9	32.5	33.2	33.8	34.3	34.9
45	28.8	29.5	30.2	30.9	31.6	32.2	32.8	33.4	33.9	34.4
46	28.5	29.3	30.0	30.6	31.3	31.9	32.4	33.0	33.5	33.9
47	28.3	29.0	29.7	30.3	30.9	31.5	32.0	32.5	33.0	33.4
48	28.1	28.7	29.4	30.0	30.6	31.1	31.6	32.1	32.5	32.9
49	27.8	28.4	29.0	29.6	30.2	30.7	31.1	31.5	31.9	32.3
50	27.5	28.1	28.7	29.2	29.7	30.2	30.6	31.0	31.4	31.7
51	27.2	27.8	28.3	28.8	29.3	29.7	30.1	30.4	30.7	31.0
52	26.8	27.4	27.9	28.4	28.8	29.2	29.5	29.8	30.1	30.3
53	26.5	27.0	27.4	27.9	28.3	28.6	28.9	29.2	29.4	29.6
54	26.1	26.5	27.0	27.4	27.7	28.0	28.3	28.5	28.7	28.9
55	25.6	26.1	26.5	26.8	27.1	27.4	27.6	27.8	28.0	28.1
56	25.2	25.6	25.9	26.2	26.5	26.7	26.9	27.1	27.2	27.3
57	24.7	25.0	25.3	25.6	25.8	26.0	26.2	26.3	26.5	26.5
58	24.1	24.4	24.7	25.0	25.2	25.3	25.5	25.6	25.7	25.7
59	23.6	23.8	24.1	24.3	24.4	24.6	24.7	24.8	24.9	24.9
60	23.0	23.2	23.4	23.6	23.7	23.8	23.9	24.0	24.0	24.1

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	31 YEARS	32 YEARS	33 YEARS	34 YEARS	35 YEARS	36 YEARS	37 YEARS	38 YEARS	39 YEARS	40 YEARS
61	22.3	22.5	22.7	22.9	23.0	23.1	23.1	23.2	23.2	23.3
62	21.7	21.9	22.0	22.1	22.2	22.3	22.3	22.4	22.4	22.4
63	21.0	21.1	21.3	21.4	21.4	21.5	21.5	21.6	21.6	21.6
64	20.3	20.4	20.5	20.6	20.6	20.7	20.7	20.7	20.8	20.8
65	19.6	19.7	19.8	19.8	19.9	19.9	19.9	19.9	19.9	20.0
66	18.9	19.0	19.0	19.1	19.1	19.1	19.1	19.1	19.1	19.1
67	18.2	18.2	18.3	18.3	18.3	18.3	18.3	18.3	18.4	18.4
68	17.4	17.5	17.5	17.5	17.5	17.6	17.6	17.6	17.6	17.6
69	16.7	16.7	16.8	16.8	16.8	16.8	16.8	16.8	16.8	16.8
70	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0
71	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3
72	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6
73	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9
74	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2
75	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
76	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

[1] The multiples in this table are not applicable to annuities for a term certain; for such cases see paragraph (c) of § 1.72-5.

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If the terms of the contract (a) involve a life or lives, (b) are such that the above tables cannot be correctly applied, and (c) the amounts received thereunder are at least partly "amounts received as an annuity" under a contract to which section 72 applies, the taxpayer may submit with his return an actuarial computation based upon the applicable annuity table (described below) with ages set back one year, showing the appropriate factors applied in his case, subject to the approval of the Commissioner upon examination of such return. The applicable annuity table is the 1937 Standard Annuity Table (if the investment in the contract does not include a post-June 1986 investment in the contract) or the gender-neutral version of the 1983 Basic Table (if the investment in the contract includes a post-June 1986 investment in the contract). In the case of a contract to which § 1.72-6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, the actuarial computation shall be based on both tables in accordance with the principles of § 1.72-6(d). Computations involving factors to compensate for the effects of contingencies other than mortality, such as marriage or remarriage, re-employment, recovery from disability, or the like, will not be approved.

Par. 7. Section § 1.72-11 is amended by revising paragraph (c) to read as follows:

§ 1.72-11 Amounts not received as annuity payments.

* * * * *

(c) *Amounts received in the nature of a refund of the consideration under a contract and in full discharge of the obligation thereof.* (1) Any amount received under a contract to which section 72 applies, if it is at least in part a refund of the consideration paid, including amounts payable to a beneficiary after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain or with a minimum amount which must be paid in any event, shall be considered an amount received in the nature of a refund of the consideration paid for such contract. If such an amount is in full discharge of an obligation to pay a fixed amount (whether in a lump sum or otherwise) or to pay amounts for a fixed number of years (including amounts described in paragraph (b)(3)(i) of § 1.72-2), it shall be included in the gross income of the recipient only to the extent that it, when added to amounts previously received under the contract which were excludable from gross income under the law applicable at the time of receipt, exceeds the aggregate of premiums or other consideration paid. See section 73(e)(2)(A). This paragraph shall not apply if the total of the amounts to be paid in discharge of the obligation can in any event exceed the total of the annuity payments which would otherwise fully discharge the obligation. For rules to be applied in such a case, see paragraph (e) of this section.

(2) The principles of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). A, a male employee, retired on December 31, 1954, at the age of 60. A life annuity of $75 per month was payable to him beginning January 31, 1955. The annuity contract guaranteed that if A did not live for at least ten years after his retirement his beneficiary, B, would receive the monthly payments for any balance of such ten year period which remained at the date of A's death. Under section 72, A was deemed to have paid $3,600 toward the cost of the annuity. A lived for five years after his retirement receiving a total of $4,500 in annuity payments. After A's death, B began receiving the monthly payments of $75 beginning with the January 31, 1960 payment. B will exclude such payments from his gross income throughout 1960, 1961, and 1962, and will exclude only $18 of the first payment in 1963 from his gross income for that year. Thereafter, B will include the entire amount of all such payments in his gross income for the taxable year of receipt. This result is determined as follows:

A's investment in the contract (unadjusted)		$3,600
Multiple from Table III of § 1.72-9 for male, age 60, where duration of guaranteed amount is 10 years (percent)	11	
Subtract value of the refund feature to the nearest dollar (11 percent of $3,600)		396
Investment in the contract adjusted for the present value of the refund feature without discount for interest		3,204
Aggregate of premiums or other consideration paid		3,600
A's exclusion ratio ($3,204÷$16,380 [$900×18.2]) (percent)	19.6	
Subtract amount excludable during five years A received payments (19.6 percent of $4,500 [$999×5])		882
Remainder of aggregate of premiums or other consideration paid excludable from gross income of B under section 72(e)		2,718

As a result of the above computation, the number of payments to B which will exhaust the remainder of consideration paid which is excludable from gross income of the recipient is 36$\frac{2}{25}$ ($2,718÷$75) and B will exclude the payments from his gross income for three years, then exclude only $18 of the first payment for the fourth year from his gross income, and thereafter include the entire amount of all payments he receives in his gross income.

Example (2). The facts are the same as in example (1), except that B, the beneficiary, elects to receive $50 per month for his life in lieu of the payments guaranteed under the original contractual obligation. Since such amounts will be received as an annuity and may, because of the length of time B may live, exceed the amount guaranteed, they are not amounts to which this paragraph applies. See paragraph (e) of this section.

Example (3). The facts are the same as in example (1), except that B, the beneficiary, elects to receive the remaining guaranteed amount in installments which are larger or smaller than the $75 per month provided until, under the terms of the contract, the guaranteed amount is exhausted. The rule of subparagraph (1) of this paragraph and the computation illustrated in example (1) apply to such installments since the total of such installments will not exceed the original amount guaranteed to be paid at A's death in any event.

Example (4). C pays $12,000 for a contract providing that he is to be paid an annuity of $1,000 per year for 15 years. His exclusion ratio is therefore 80 percent ($12,000-$15,000). He directs that the annuity is to be paid to D, his beneficiary, if he should die before the full 15 year period has expired. C dies after 5 years and D is paid $1,000 in 1960. D will include $200 ($1,000−$800 [80 percent of $1,000]) in his gross income for the taxable year in which he receives the $1,000 since section 72(e) and this section do not apply to the annuity payments made in accordance with the provisions and during the term of the contract. D will continue with the same exclusion ratio used by C (80 percent).

Example (5). In 1954, E paid $50,000 into a fund and was promised an annual income for life the amount of which would depend in part upon the earnings realized from the investment of the fund in accordance with an agreed formula. The contract also specified that if E should die before ten years had elasped, his beneficiary, F, would be paid the amounts determined annually under the formula until ten payments had been received by E and F together. E died in 1960, having received five payments totaling $30,000. Assuming that $22,000 of this amount was properly excludable from E's gross income prior to his death, F will exclude from his gross income the payments he receives until the taxable year in which his total receipts from the fund exceed $28,000 ($50,000−$22,000). F will include any excess over the $28,000 in his gross income for that taxable year. Thereafter, F will include in his gross income the entire amount of any payments made to him from the fund.

Example (6). Assume the facts are the same as in example (1), except that the total investment in the contract is made after June 30, 1986, that A is to receive payments under the life annuity contract beginning on January 31, 1987, and that B will begin to receive the

monthly payments on January 31, 1992. B will exlcude the $75 monthly payments from gross income throughout 1992, 1993, and 1994. B will exclude only the first two monthly payments and $21 of the third monthly payment in 1995. This is determined as follows:

A's investment in the contract (unadjusted)	$3,600
Multiple from Table VII, age 60, 10 years (percent)	4
Subtract value of the refund feature (4 percent of $3,600	$144
Investment in the contract adjusted for the present value of the refund feature without discount for interest	$3,456
Aggregate of preimuns or other consideration paid	$3,600.00
A's exclusion ration ($3,456÷$21,780 [$900×24.2]) (percent)	15.9
Subtract amount excludable during five years A received payments (15.9 percent of $4,500 [$900×5])	$715.50
Remainder of aggregate of premiums or other consideration paid excludable from gross income of B under section 72(e)	$2,884.50

As a result of the above computation, the number of payments to B which will exhaust the remainder of consideration paid which is excludable from gross income of the recipient is 3823/50 ($2,884.50÷75) and B will exclude the payments from gross income for three years, then exclude only the first two monthly payments and $34.50 of the third. Thereafter B shall include the entire amount of all payments received in gross income.

(3) For the purpose of applying the rule contained in subparagraph (1) of this paragraph, it is immaterial whether the recipient of the amount received in full discharge of the obligation is the same person as the recipient of amounts previously received under the contract which were excludable from gross income, except in the case of a contract transferred for a valuable consideration, with respect to which see paragraph (a) of § 1.72–10. For the limit on the tax, for taxable years beginning before January 1, 1964, attributable to the receipt of a lump sum to which this paragraph applies, see paragraph (g) of this section.

* * * * *

§ 1.403 [Amended]

Par. 8. Section 1.403(b)–1 (d)(4) is amended by adding the words "to a defined benefit plan" following the words "employer contributions" in the first sentence.

Par. 9. Section 1.403(b)–1 (d)(4)(ii) is amended by removing the words "the employee's sex and the".

Par. 10. Section 1.403(b)–1 (d)(4) is amended by revising Tables I and II and paragraph (d)(4)(iv) to read as follows:

§ 1.403(b)–1 Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school.

* * * * *

(d) *Exclusion allowance*——(1) * * *

(4) *Determination of excludable amounts by allocation of contributions.* * * *

(iv) The lesser of the number of years of service credited through the end of the taxable year or the number of years that the plan has been in existence at such time.

TABLE I.—VALUE AT NORMAL RETIREMENT AGES OF ANNUITY OF $1.00 PER ANNUM PAYABLE IN EQUAL MONTHLY INSTALLMENTS DURING THE LIFE OF THE EMPLOYEE

[For taxable years beginning after July 1, 1986]

Ages	Values
40	11.49
41	11.40
42	11.31
43	11.22
44	11.12
45	11.01
46	10.91
47	10.79
48	10.68
49	10.56
50	10.43
51	10.30
52	10.18
53	10.04
54	9.89
55	9.75
56	9.60
57	9.44
58	9.28
59	9.13
60	8.96
61	8.79
62	8.62
63	8.44
64	8.25
65	8.08
66	7.88
67	7.70
68	7.50
69	7.29
70	7.10
71	6.88
72	6.68
73	6.46
74	6.25
75	6.03
76	5.82
77	5.61
78	5.40
79	5.20
80	4.99

Note.—If the normal form of retirement benefit under the plan is other than a straight life annuity, the value from Table I above should be divided by the figure set forth below opposite the normal form of retirement benefit provided by the plan:

Annuity for 5 years certain and life thereafter	0.97
Annuity for 10 years certain and life thereafter	0.90
Annuity for 15 years certain and life thereafter	0.80
Annuity for 20 years certain and life thereafter	0.70
Life annuity with installment refund	0.80
Life annuity with cash refund [1]	0.75

[1] The term "cash refund" refers to refund of accumulated employer contributions, and does not refer to refund of employee contributions only, often referred to as "modified cash refund".

TABLE II.—LEVEL ANNUAL CONTRIBUTION WHICH WILL ACCUMULATE TO $1.00 AT END OF NUMBER OF YEARS

[For taxable years beginning after July 1, 1986]

Number of years	Amounts
1	$1.0000
2	.4808
3	.3080
4	.2219
5	.1705
6	.1363
7	.1121
8	.0940
9	.0801
10	.0690
11	.0601
12	.0527
13	.0465
14	.0413
15	.0368
16	.0330
17	.0296
18	.0267
19	.0241
20	.0219
21	.0198
22	.0180
23	.0164
24	.0150
25	.0137
26	.0125
27	.0114
28	.0105
29	.0096
30	.0088
31	.0081
32	.0075
33	.0069
34	.0063
35	.0058
36	.0053
37	.0049
38	.0045
39	.0042
40	.0039
41	.0036
42	.0033
43	.0030
44	0028
45	.0026
46	.0024
47	.0022
48	.0020
49	.0019
50	.0017

§ 1.401(a)–18 [Removed]

Par. 11. Section 1.401(a)–18 is removed.

§ 1.401(j)–1 through 1.401(j)–6 [Removed]

Par. 12. Sections 1.401(j)–1 through 1.401(j)–6 are removed.

PART 601—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 13. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

§ 602.101 [Amended]

Par. 14. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.72-6. . . [ ]".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86-6294 Filed 3-19-86; 10:39 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[LR-19-80]

Unisex Annuity Tables; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income.

DATES: The public hearing will be held on Wednesday, May 21, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, May 5, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-19-80), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 72 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the **Federal Register.**

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, May 5, 1986, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue:

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-6293 Filed 3-19-86; 10:39 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50545; FRL-2989-5]

Pentachloroethane; Proposed Determination of Significant New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of TSCA that would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of pentachloroethane (CAS Number 76-01-7) for any use. EPA believes that this action is necessary because pentachloroethane may be hazardous to human health, and any use of pentachloroethane may result in significant human exposure. The notice will furnish EPA with the information needed to evaluate an intended use, and the opportunity to protect against potentially adverse exposure to the chemical substance before it can occur.

DATE: Written comments should be submitted by May 23, 1986.

ADDRESS: Comments should bear the docket control number OPTS-50545 and should be addressed to: TSCA Public Information Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

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, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (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. This determination is made 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, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they commence the manufacture, import, or processing of the substance for that use.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to 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). EPA is proposing that these general provisions apply to this SNUR, except as provided in proposed § 721.497(b)(1). The general provisions are discussed in detail in the cited **Federal Register** document, and interested persons should refer to that document for further information.

III. Summary of This Proposed Rule

EPA is proposing to designate any use of pentachloroethane as a significant new use of the substance. This proposed rule would require persons who intend to manufacture, import, or process pentachloroethane for this significant new use to notify EPA at least 90 days before such manufacture, import, or processing.

The notice is generally subject to the same statutory requirements and procedures as a premanufacture notice (PMN) submitted under section 5(a)(1)(A) of TSCA. In particular, these include the information submission requirements of section 5(b) and (d)(2),

and the exemptions authorized by section 5(h). Once EPA has received a significant new use notice, EPA may take regulatory action pursuant to section 5(e), 5(f), 6, or 7 to control the substance. If no action is taken, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

IV. Discussion of the Chemical Substance

A. Production and Use Data

The primary use of pentachloroethane has been as an intermediate in the production of tetrachloroethylene. Reporting for the TSCA Chemical Substances Initial Inventory showed that 1977 U.S. manufacture and import of pentachloroethane was between 10 and 50 million pounds.

The high toxicity of pentachloroethane, as well as the development of a new process for the manufacture of tetrachloroethylene has resulted in a rapid decline in demand for pentachloroethane. In 1984, EPA's Office of Toxic Substances surveyed those persons who reported production of pentachloroethane for the TSCA inventory. All firms who reported manufacturing or importing pentachloroethane for the TSCA inventory reported that they no longer manufactured or imported the substance as of the date of the survey.

EPA recognizes that it is possible that a new manufacturer or importer of pentachloroethane may have entered the marketplace between the time of the TSCA inventory reporting and the date this SNUR is proposed, and that there may be an ongoing use for pentachloroethane that EPA is not aware of. Those "new" manufacturers or importers would not have been identified in the 1984 survey, because EPA only contacted those persons who reported for the TSCA inventory. In the event that an ongoing use is identified, EPA will modify the significant new use trigger to account for any ongoing uses identified.

B. Health Effects

Results of a National Toxicology Program (NTP) carcinogenesis bioassay on technical grade pentachloroethane published in April 1983, demonstrated limited evidence that pentachloroethane is carcinogenic in laboratory animals. Under the conditions of the bioassay, pentachloroethane was carcinogenic for male and female $B6C3F_1$ mice, inducing hepatocellular carcinomas in both sexes, and adenomas in females. NTP stated that the substance under test was not carcinogenic in F344/N rats, but added that the decreased survival of dosed rats may have reduced the sensitivity for a carcinogenic response.

The NTP held a Peer Review Panel and determined that the kidney was a target organ for short chain chlorinated hydrocarbons in male F344/N rats. Alerted to this, NTP reevaluated the kidneys of male rats from the pentachloroethane carcinogenesis bioassay, and found rare tubular cell adenomas, one carcinoma, and one adenocarcinoma. Because these data were discovered subsequent to peer review of the bioassay, these findings were added as a note attached to the bioassay report. Because of this finding, EPA views that pentachloroethane may also present a carcinogenic hazard for male F344/N rats by causing uncommon kidney tumors.

EPA published Proposed Guidelines for Carcinogen Risk Assessment in the **Federal Register** of November 23, 1984 (49 FR 46294). These proposed guidelines define as possible human carcinogen agents exhibiting: ". . . (a) definitive malignant tumor response in a single well-conducted experiment, (b) marginal tumor response in studies having inadequate design or reporting, (c) benign but not malignant tumors with an agent showing no response in a variety of short-term tests for mutagenicity, and (d) marginal responses in a tissue known to have a high and variable background rate. . . ."

A limited review of the results of the NTP carcinogenesis bioassay on pentachloroethane indicates that the substance has been found to induce a definitive malignant tumor response in male and female mice, and may therefore be a possible human carcinogen according to the Agency's proposed guidelines for carcinogen risk assessment.

Results from the NTP bioassay also demonstrate that pentachloroethane may be capable of causing rare renal adenomas in male rats. Studies on the chronic effects of pentachloroethane have demonstrated pathological changes in the lungs, liver, and kidneys of test animals. Two of the metabolites of pentachloroethane, trichloroethylene and tetrachloroethylene, both have evidence of carcinogenicity in animals. For these reasons, EPA has concluded that exposure to the chemical may present a risk of injury to human health.

C. Past and Current Exposure Data

EPA has little data on actual numbers of persons who have been exposed to pentachloroethane, or at what levels. Current exposures are limited to those resulting from any residues of previously manufactured or imported pentachloroethane in the environment.

D. Regulatory Background

Pentachloroethane is not subject to any Federal regulation that limits exposure to humans or the environment. Excluding this proposed SNUR, no Federal regulation has been proposed or promulgated that would allow a governmental entity an opportunity to evaluate the potential human exposure to pentachloroethane originating from its manufacture, import, processing, and use and to protect human beings from potentially adverse exposures before they occur.

V. Reasons for Proposing This Rule

Pentachloroethane is a possible human carcinogen and is not currently manufactured, imported, processed, or used for commercial purposes. Pentachloroethane is not subject to any Federal regulation that would notify the Federal government of activities that might result in adverse exposures to this substance or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occurred.

EPA believes that the resumption of any use of pentachloroethane, and the related manufacture, import, or processing, has a high potential to increase the magnitude and duration of exposure to this substance and to change the type or form of exposure from that which currently exists. Given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to pentachloroethane at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to propose that any use of pentachloroethane be designated a significant new use of this chemical substance. Persons intending to manufacture, import, or process pentachloroethane for any use would be required to notify EPA 90 days before they begin such manufacture, import, or processing. Advance notification will allow EPA the opportunity to evaluate the intended activities and to protect against adverse exposures to pentachloroethane before they can ocur. Because EPA is concerned about potential exposure during the entire life-cycle of pentachloroethane, the Agency is proposing that § 721.5(a)(2) would be modified for this rule to require any manufacturer, importer, or processor who intends to distribute

pentachloroethane in commerce to submit a notice.

VI. Alternatives

Before proposing this SNUR, EPA considered alternative regulatory actions.

1. One alternative would be to promulgate a section 8(a) reporting rule for this substance. Under such a rule, EPA could require any person to report to EPA before manufacturing, importing, or processing pentachloroethane. However, in this particular instance, the use of section 8(a) rather than SNUR authority has drawbacks. Small businesses would be exempt from reporting under section 8(a). Considering the toxicity of pentachloroethane, even relatively small manufacture, import, or processing activities could result in adverse exposures to this chemical. In addition, if EPA received a report under section 8(a) indicating that a person intended to manufacture, import, or process this substance, the Agency could not take immediate action under section 5(e) or (f) as it can under a SNUR, and therefore would not be able to act quickly to protect against an adverse exposure to this substance. Rather, in a situation such as this EPA would have to consider regulating the substance under TSCA section 6 or requesting under section 9 that another agency regulate it, each of which would require a lengthy separate action before the exposure could be controlled.

2. The Agency also has the authority to regulate substances under section 6 of TSCA. However, the Agency may regulate under section 6 only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. There is insufficient information about prospective manufacturing, importing, processing, or use operations at this time to perform a reasoned evaluation of the health or environmental effects of these activities. Therefore, the Agency cannot state with certainty that these activities would present an unreasonable risk and cannot, at this time, regulate pentachloroethane under section 6.

VII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA finds 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 after the promulgation of a final rule. If uses begun during the proposal period of the SNUR were not considered significant new uses, it would be extremely difficult for the Agency to establish significant new use notice requirements. Any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final.

EPA recognizes that this interpretation of section 5 may disrupt the commercial activities of persons who begin the manufacture, import, or processing of pentachloroethane for the proposed significant new use during the proposal period. However, this proposal puts them on notice of the potential disruption, and they proceed at their own risk.

VIII. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential risks that may be posed by a significant new use of pentachloroethane, EPA encourages significant new use notice submitters to conduct tests that would permit a reasoned evaluation of the substance's toxic potential to humans or the environment when utilized for an intended use.

Significant new use notices submitted with such test data would improve EPA's ability to make a reasoned evaluation of the health and environmental effects of pentachloroethane. Test data should be developed in accordance with TSCA Good Laboratory Practices Standards at 40 CFR Part 792, published in the **Federal Register** of November 29, 1983 (48 FR 53923).

In addition to health and environmental effects test data, EPA encourages significant new use notice submitters to develop and submit relevant exposure data on this substance. Notices submitted with such exposure data would improve EPA's ability to make an evaluation of the human exposure potential when pentachloroethane is utilized for an intended significant new use. EPA encourages persons to consult with the Agency before selecting a testing protocol.

As an alternative to testing, potential notice submitters may wish to consider the use of engineering controls and/or personal protective equipment to reduce exposure to and release of this substance.

Finally, EPA urges persons to submit information on potential benefits of this substance and information on risks posed by the substance compared to risks posed by potential substitutes.

IX. Economic Analysis

The Agency has evaluated the potential costs of establishing reporting requirements for pentachloroethane. The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. The estimated cost to the Agency for issuing the SNUR is $10,500 to $20,500. The Agency will also incur enforcement costs, but these costs cannot be quantified at this time.

After promulgation of the SNUR, the Agency believes there are two possible courses of action for a person who intends to manufacture, import, or process pentachloroethane for a significant new use: (1) File a significant new use notice with information describing the method of controlling exposures that would mitigate health and environmental concerns; or, (2) not initiate the significant new use.

In some circumstances it may be cost-effective for a person to file a significant new use notice with data that show there exist means of controlling exposures (e.g., personal protective equipment or engineering controls) that would mitigate EPA's health concerns. In this case, the company incurs the costs of filing a SNUR notice ($1,400 to $8,000) and possibly the cost of utilizing exposure controls that, without the existence of the SNUR, would not have been used. These costs cannot be quantified at this time, since industrial processes and exposure controls vary among companies. The company may also incur up to a 3.2 percent reduction in profits due to delays in manufacture or processing and the cost of regulatory follow-up, if any. If a person decided to submit a significant new use notice, EPA would incur estimated costs of $7,100 to review the notice and $8,700 to modify the SNUR assuming EPA's concerns were adequately addressed.

A person may find the cost of controlling exposures too expensive to justify the manufacture, import, or processing of pentachloroethane for a significant new use. This outcome does not result in any direct costs, but the prospective manufacture, importer, or processor may lose benefits that would have been derived from such manufacturer, import, or processing of pentachloroethane. EPA cannot quantify these potential lost benefits because EPA cannot reasonably anticipate the future level of use of this chemical

substance, the profit margins of these uses, and other related factors.

The Agency has not attempted to quantify the benefits of this proposed rule or of the outcomes. In general, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before adverse effects can occur.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50545). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. Economic Analysis of Proposed Significant New Use Rule for Pentachloroethane. Economics and Technology Division, U.S.E.P.A., 1985.
2. Chemical Hazard Information Profile on Pentachloroethane. Existing Chemical Assessment Division, U.S.E.P.A., 1982.
3. National Toxicology Program Carcinogenesis Bioassay on Pentachloroethane. 1983.
4. Other relevant factual information and support documents.

The Agency will accept materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation.

A public version of this record is available in the OTS Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E-107, 401 M St., SW., Washington, D.C.

XI. 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 proposed 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, EPA believes that the cost will be low. Even if EPA received 50 significant new use notices, the direct cost of the rule would be under one million dollars. In addition, because of the nature of the rule and the substance identified in it, EPA believes that there will be few significant new use 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 that has high potential value.

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 proposed rule, if promulgated, will not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, because EPA has no evidence of recent commercial manufacture, import, processing, or use of pentachloroethane, EPA believes that few manufacturers, importers, or processors will submit significant new use 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 the proposed 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. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked: Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

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

Dated: March 14, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

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

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

2. By adding a new § 721.497 to read as follows:

§ 721.497 Pentachloroethane.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance pentachloroethane, CAS Number 76-01-7, is subject to reporting under this section for the significant new use 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 OMB control number 2070-0038.)

[FR Doc. 86-6360 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50539; FRL-2882-5]

Methylammonium n-Methyldithiocarbamate; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P-84-1042 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that this substance may be hazardous to human health and that the uses described in this proposed rule may result in significant human or environmental exposure.

DATE: Written comments should be submitted by May 23, 1986.

ADDRESS: Since some comments are expected to contain confidential business information (CBI), all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS-50539. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107 at the address given above. For further information regarding the submission of comments containing CBI, see Unit XII of this preamble.

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, D.C. 20460. Toll Free: (800-424-9065). In Washington, D.C.: (544-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5 (a)(1) of TSCA which are interpreted at 40 CFR Part 720 puiblished in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5(e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 of TSCA to control activities on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency 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 intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.188 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Pary 707.

II. Applicability of General Provisions

EPA promulgated general provisions applicalbe to SNURs under 40 CFR Part 721, Subpart A published in the **Federal Register** of Spetember 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble and set forth in § 721.433.

III. Summary of This Proposed Rule

The chemical substance which is the subject of this proposed rule is identified as methylammonium n-methyl dithiocarbamate, CAS number 21160-95-2. It was the subject of PMN P-84-1042. EPA is proposing to designate the following as significant new uses of this substance: (1) Any use other than as described in the PMN for this substance; (2) any method of disposal associated with the PMN use of the substance other than in a landfill meeting all Federal, State, and local requirements; (3) any manner or method of manufacture, import, or processing associated with the PMN use of the substance without establishing a program whereby persons who may be exposed to the substance wear impervious gloves, eye protection, and protective clothing; such persons are informed of the hazards of the substance; and, containers of the substance distributed in commerce are labeled.

IV. Background

On August 7, 1984, EPA received a PMN which the Agency designated as P-84-1042. EPA announced receipt of the PMN in the **Federal Register** of August 24, 1984 (49 FR 33718).

The notice submitter claimed the following as confidential business information (CBI): Submitter identity, production volume, impurities and by products, use, and process information. Under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding. "[D]isclosure in such a proceding shall be made in such manner as to preserve confidentially to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its chemical name and PMN number.

Based upon the physical and chemical properties of the substance along with test data submitted in the PMN, the Agency has determined that the substance may be absorbed via the lungs, skin, and gastrointestinal tract. The Agency is concerned that the substance may be carcinogenic, mutagenic, teratogenic, and neurotoxic.

Based on analogy to three structurally similar dithiocarbamates, selenium diethyldithiocarbamate, bis (2-hydroxyethly) dithiocarbamic acid, potasium salt, and ethylcarbamate, which have been shown to cause cancer in laboratory animals, the Agency has determined that the substance may be carcinogenic. Based on analogy to a known carcinogen, the Agency has determined that an inpurity may be carcinogenic.

Based on submitted mutagenicity data, the substance is expected to be a human mutagen. Further, based on available test data on two impurities, they are expected to be mutagenic in humans.

The Agency has determined that the substance may cause developmental effects based on its structural similarity to sodium diethyldithiocarbamate and sodium methyldithiocarbamate. Tests have shown that these compounds produced significant effects in the estrus cycle, ejaculatory response, and litter size in mammals.

Based on submitted test data, the Agency has determined that the substance may promote acute central nervous system depression. By analogy to sodium diethyldithiocarbamate, the substance could potentially inhibit dopamine beta hydroxylase which could lead to numerous nervous system effects.

During review of the PMN, the Agency concluded that the uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that use of appropriate protective equipment and environmental controls will significantly reduce exposures and potential risks to workers and other persons. A section 5(e) consent order requiring the use of appropriate controls was regotiated with the notice submitter. The order became effective February 9, 1985. The significant new uses defined in § 721.433 reflect the terms of the consent order issued by the Agency for this substance.

By issuing a section 5(e) consent order which allows controlled commercial

manufacture, import, and processing of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substance until additional data are submitted. At the same time, the section 5(e) consent order protects human health by requiring precautionary controls pending the development of the data needed for a more fully reasoned evaluation of the risks associated with the substance.

Section 5(e) ordes apply only to the notice submitter. When the notice submitter commenced commercial manufacture of the substance and submitted a Notice of Commencement of Manufacture to EPA, the Agency added the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without controls. Therefore, EPA is proposing to designate the uses set forth in paragraph (a)(2) of the proposed § 721.433 as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would affort EPA the opportunity to review exposure and toxicity information on the substance before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P-84-1042 that are potentially hazardous.

V. Determination of Proposed significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance and potential exposures and releases associated with possible uses (such as uses not consistent with the terms of the section 5(e) order), and the four factors listed in section 5(a)(2) of TSCA. In particular, EPA considered the extent to which potential uses might change the magnitude and duration of exposure of humans to P-84-1042. Based on these considerations, EPA proposes to define the significant new uses of P-84-1042 as set forth in paragraph (a)(2) of the proposed § 721.433.

EPA has already determined in the section 5(e) order that unrestricted manufacture, import, processing, distribution in commerce, use, and disposal of the substance may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the uses of the substance would be significant.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA, that in addition to meeting the requirements in § 721.17, persons who manufacture, import, or process P-84-1042 maintain the following records for 5 years from their creation: (1) Determination that gloves are impervious; (2) names used for the substance and the dates of use; (3) names of persons informed of the hazards of the substance, the means by which they were informed, and the dates they were informed; (4) dates of shipment of containers of the substance and identity of persons to whom they were shipped; and, (5) information on disposal including the dates waste material was disposed of, the location of the disposal site, the volume of the disposed material, and the method of disposal.

These recordkeeping requirements would apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TSCA is not applicable when the chemical substance which is the subject of the rule also is the subject of a section 5(e) order.

The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them. The basis for the Agency's recordkeeping requirements has been set forth in the preambles to previously proposed SNURs. Persons interested in a complete discussion of this issue should read the proposed SNUR for P-83-370 published in the **Federal Register** of January 13, 1984 (49 FR 1753).

VII. Exemptions To Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722), including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule pending further rulemaking to revise the provisions. Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about the worker exposure and environmental release during manufacture and processing of the substance, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed on December 27, 1984 (49 FR 50208). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S. except in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacture or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., such activity would not be "solely for export" because the manufacture and processing would be for use in the U.S.

VIII. Applicability of Proposal To Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter began manufacture of the substance, the submitter sent EPA a Notice of Commencement of Manufacture and the substance was added to the Inventory. The notice submitter is prohibited by the section 5(e) order from undertaking the activities which the Agency is proposing be designated as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemical substance which is the subject of this SNUR was added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are not "new" at the time the rule is promulgated, and therefore not significant new uses. EPA finds 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. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substance is manufactured, imported, or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who engage in a proposed significant new use prior to a promulgation of a final SNUR, is considering amending Subpart A of 40 CFR Part 721 to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation). EPA will solicit public comment on an advance compliance exemption when such an exemption is proposed in the **Federal Register.**

IX. Determining When a Use Is a Significant New Use

EPA is proposing a significant new use which includes CBI, that is, any use other than that described in PMN P-84-1042. The Agency is also proposing that this significant new use would remain confidential in the final rule. EPA believes it is appropriate to keep the significant new use confidential to protect the interests of the original notice submitter. Therefore, EPA is proposing to reveal this significnt new use only to a manufacturer, importer, or processor who has shown a *bona fide* intent to manufacture, import, or process the substance under the procedures in § 721.433(b)(1). This will enable the manufacturer, importer, or processor to determine whether a SNUR notice will be necessary.

To determine whether its intended use of the substance is a significant new use, a manufacturer, importer, or processor of the substance would have to describe its intended use of the substance in a *bona fide* submission under § 721.433(b)(1). If the use described in the *bona fide* submission would be a significant new use, the Agency would so inform the submitter but would not reveal the use described in P-84-1042. If the use described in the *bona fide* submission were the use described in P-84-1042, the Agency would so inform the submitter. Thus, the *bona fide* submitter could determine whether a significant new use notice would be necessary.

By using this procedure, the Agency will disclose CBI only to the extent necessary to implement the SNUR.

X. Test Data and Other Information

EPA recognizes that, under 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, in view of the potential hazards that may be posed by this substance, EPA believes that a reasoned evaluation of the risks posed by these uses would require additional data on oncogenicity, mutagenicity, teratogenicity, and neurotoxicity. These data might be generated by a 2-year rodent bioassay, a 2-generation reproductive assay, a 2-species teratology study, repeated exposure and neuropathy testing with correlative functional observation, and acute exposure neurotoxicity testing. These studies may not be the only means of addressing the potential risks.

EPA encourages potential SNUR notice submitters to test the substance for these concerns. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e). As part of an optional 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 according to TSCA good laboratory practices regulations 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 effects of the substance. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

XI. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for this substance. This evaluation is summarized below.

A. Costs

The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's cost of issuing and enforcing the SNUR. It is estimated that this cost to EPA is about $43,600. The Agency would also incur enforcement costs, although the Agency cannot quantify these costs at this time.

EPA believes that, subsequent to promulgation of the SNUR, there are three possible outcomes for firms that would manufacture, import, or process P-84-1042: (1) Conduct their activities within the limits of the SNUR (e.g., use only for the use identified in P-84-1042; attach warning labels; use protective equipment), which would not necessitate the filing of a SNUR notice; (2) submit a SNUR notice describing the intention to manufacture, import, or process P-84-1042 for a significant new use; or, (3) choose not to manufacture,

import, or process P-84-1042 due to the existence of the SNUR. The costs of these outcomes are summarized below.

Outcome 1

If a company's activities stay within the limits of the SNUR, it will not have to submit a SNUR notice. In order to comply with the SNUR provisions, a company may incur some costs. A discussion of these costs follows.

The cost of protective equipment such as gloves and goggles varies from company to company. Many companies already have this type of equipment on hand for use by employees due to the use of many different chemicals, including organic solvents. For those companies the costs associated with protective equipment should be considered as normal costs of business, and not as costs attributable to this EPA regulation. On the other hand, other companies may not have protective equipment on hand. If these companies wanted to use P-84-1042, they would have to purchase gloves and goggles.

There are many kinds of gloves available for purchase. Specific types of gloves are chosen on the basis of factors such as cost, type of chemical exposure, and duration of exposure.

While the SNUR requires that the gloves be impervious to the PMN substance, it does not specify what kind of gloves one should wear. For analytical purposes, EPA assumes the use of nitrile rubber gloves and chemical goggles. EPA also assumes, for analytical purposes, that workers will be exposed up to 75 days a year during manufacturing and up to 180 days a year during processing.

Nitrile gloves cost $2.04 per pair, while chemical goggles cost $4.75. EPA assumes daily replacement of gloves, and that goggles would be replaced every 4 months. Since exposure during manufacturing, processing, and use will occur throughout the year, EPA assumes that such workers would require 3 pairs of goggles per year.

Thus, for each manufacturing worker exposed to P-84-1042 for 45 days a year, the calculated glove cost is approximately $19/year, and the goggles cost is $14.25/year for a total of $103.25 per worker. Assuming a 10-year life cycle for the substance and a 10 percent discount rate, the present value of the $103.25 is $634.

During processing, where a worker would be potentially exposed for up to 180 days a year, the gloves costs would total $367.20, and the goggle cost would be $14.25, for a total of $381.45 per worker. Assuming a 10-year life cycle for the substance and a 10 percent discount rate the present value of the $381.45 is $2,343.85.

It should be stressed that it is unlikely that a company handling a substance such as P-84-1042 would have no personal protective equipment on hand. In addition, there are various chemicals in the workplace that will help to degrade the gloves. Thus, it would be unfair to assign all costs of protective equipment to this rule. The costs cited above probably overstate the potential direct costs of this rule.

Because of the nature of this substance, the Agency does not expect products containing it to have been commercialized yet. Therefore, the requirement that warning statements be attached to products containing P-84-1042 is not expected to cause new labels to be produced; so, it is not expected to increase labeling costs beyond routine labeling costs of a firm.

If an entirely new label has to be made, however, the development cost of the label will be between $135-$500. The annualized cost of labeling is $80. Other labeling costs will be minimal.

The Agency cannot exactly specify the cost of complying with the disposal provisions of the SNUR. The disposal costs will vary by disposal method employed. If an entire drum of P-84-1042 was taken to a landfill the cost might be $60-$75. A 55-gallon drum holds about 450 pounds of chemicals.

This SNUR specifies certain recordkeeping requirements. The present value of costs associated with recordkeeping requirements over a 10-year period (assuming a 10 percent discount rate) is $1,520; the annualized cost is $225.

Outcome 2

In some circumstances it might be cost-effective for a company to file a SNUR notice with data which shows that its means of controlling exposures could mitigate EPA's concerns. In this case, the company incurs the costs of filing a SNUR notice, which has been estimated at $1,400-$8,000 and, possibly, the costs of some exposure controls which would ordinarily not be used without the existence of the SNUR. The SNUR notice submitter may also incur some reductions in profits due to delays in manufacture, import, or processing and the costs of regulatory follow-up, if any.

Another alternative under this outcome would be to submit a SNUR notice with the results of the various toxicological tests previously mentioned. The cost of this testing, however, is viewed as being prohibitively expensive unless P-84-1042 generates profits of several million dollars. EPA does not expect this alternative to occur.

EPA will incur enforcement costs once the SNUR has been promulgated.

Outcome 3

Some companies could find the cost of controlling exposure and releases too expensive to justify production, processing, or use. Under this outcome, a company would not incur any direct costs as a result of the SNUR. The company and society could then lose benefits that would have been derived from the manufacturing, processing, or use of the substance. However, the original PMN submitter intends to produce P-84-1042 under the conditions of the section 5(e) consent order. This indicates to EPA that some uses of the substance will return an acceptable profit.

B. Benefits

EPA has not attempted to quantify the benefits of the proposed SNUR. In general, however, benefits will accrue if the proposed action leads to the identification and, if necessary, the control of unreasonable risk before significant health effects can occur. This is especially true in the case of P-84-1042 due to the number of different potential health effects of the substance, that is, cancer, reproductive effects, and neurotoxicity. The proposal and promulgation of the SNUR provides this benefit of reduced health risks during manufacture, processing, and use of P-84-1042. And, the use of personal protective equipment will give workers protection against a number of other potentially dangerous chemicals.

The PMN submitter will benefit from the SNUR since potential competitors or other manufacturers who manufacture or use P-84-1042 will be subject to the same treatment.

The Agency's complete economic analysis is available in the public file.

XII. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50539). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The section 5(e) consent order.
4. The economic analysis of the proposed rule.
5. The economic support document for the section 5(e) consent order.
6. The hazard assessment.
7. The engineering support document.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E-107, 401 M St., SW., Washington, DC.

XIV. 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 proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit XI of this preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substance identified in it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

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 proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this regulation 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 the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0012. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

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

Dated: March 14, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

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

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

2. By adding a new § 721.433 to read follows:

§ 721.433 Methylammonium n-methyldithiocarbamate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its CAS number and chemical name is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: 21160-95-2, methylammonium n-methyldithiocarbamate.

(2) The significant new uses are:

(i) Use other than as described in Premanufacture Notice P-84-1042.

(ii) Any method of disposal associated with the use of the substance described in Premanufacture Notice P-84-1042 other than in a landfill meeting all Federal, State, and local requirements.

(iii) Any manner or method of manufacture, import, or processing associated with the use of the substance described in Premanufacture Notice P-84-1042 without establishing a program whereby:

(A) Person employed by or under the control of the manufacturer, importer, or processor who may be dermally exposed to the substance must wear:

(*1*) Gloves which are determined by the manufacturer, importer, or processor to be impervious to the substance under the conditions of exposure, including the duration of exposure. The manufacturer, importer, or processor makes this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications includes consideration of permeability, penetration, and potential chemical and mechanical degradation by the substance and associated chemical substances.

(*2*) Chemical safety goggles or equivalent eye protection.

(*3*) Clothing which covers any other exposed area of the arms, legs, or torso.

(B) All persons required to wear protective clothing or equipment are informed of the following in writing, and by presenting the information as part of a training program in safety meetings at which attendance is recorded: that they should avoid contact; that contact with skin may be harmful; that chemicals similar in structure to the substance have been found to cause cancer and reproductive effects in laboratory animals; that the substance may produce effects on the nervous system; and, to protect themselves they should wear safety goggles or equivalent eye protection, impervious gloves, and protective clothing while handling this substance.

(C)(*1*) A label is affixed to each container of the substance or formulation containing the substance that may be distributed in commerce which includes a warning statement which consists, at a minimum, of the following language:

WARNING: Avoid contact. Contact with skin may be harmful. Chemicals similar in structure to [insert appropriate name] have been found to cause cancer and reproductive effects in laboratory

animals. [Insert appropriate name] may produce effects on the nervous system. To protect yourself you must wear safety goggles or equivalent eye protection, impervious gloves, and protective clothing while handling this material.

(2) The first word on the label is capitalized, and the type size of the first word is no smaller than 6 point type for a label 5 square inches or less in area, 10 point type for a label above 5 but no greater than 10 square inches in area, 12 point type for a label above 10 but no greater than 15 square inches in area, 14 point type for a label above 15 but no greater than 30 square inches in area. The type size of the remainder of the warning statement is no smaller than 6 point type. All required label text is of sufficient prominence, and is placed with such conspicuousness relative to other label text and graphic material, to ensure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

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

(1) *Determining whether a use is a significant new use.* (i) A person who intends to manufacture, import, or process the substance identified in paragraph (a)(1) of this section may submit to EPA the use for which the person intends to manufacture, import, or process the substance and ask EPA whether that use is a significant new use under paragraph (a)(2)(i) of this section.

(ii) EPA will answer such an inquiry only if it determines that the person has a *bona fide* intent to manufacture, import, or process the substance. To establish a *bona fide* intent to manufacture, import, or process the substance, the person must submit to EPA the information required under § 721.6(b).

(iii) EPA will review the information submitted by the person under this paragraph (b)(1) to determine whether the person has a *bona fide* intent to manufacture, import, or process the substance. If EPA determines that the person has a *bona fide* intent to manufacture, import, or process the substance, EPA will tell the person whether the use for which the person intends to manufacture, import, or process the substance is a significant new use under paragraph (a)(2)(i) of this section.

(iv) A disclosure to a person with a *bona fide* intent to manufacture, import, or process the substance that a use is or is not a significant new use under this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(v) EPA will answer an inquiry as to whether a use is a significant new use under this section within 30 days after receipt of a complete submission under this paragraph (b)(1).

(2) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substance identified in paragrpah (a)(1) of this section must maintain the following records for 5 years from their creation:

(i) Determinations that gloves are impervious.

(ii) Names used for the substance and accompanying dates of use.

(iii) Names of persons informed as required by paragraph (a)(2)(iii)(B) of this section, the dates they were informed, and the means by which they were informed.

(iv) Dates of shipment of containers labeled as required by paragraph (a)(2)(iii)(C) of this section, and the identities of persons to whom they were shipped.

(v) Information on disposal of the substance including the dates waste materials were disposed of, the location of the disposal site, the volume of the disposed material, and the method of disposal.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

[FR Doc. 86-6361 Filed 3-21-86; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-349-N]

Medicare Program; Reasonable Charge Limitations; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This notice extends the period for public comment on a Notice of Proposed Rulemaking (NPRM) published on February 18, 1986 (51 FR 5726). That NPRM proposed rules that would state the circumstances under which HCFA would consider establishing special reasonable charge payment limits for services (including supplies and equipment) reimbursed under Part B of the Medicare program, as well as the procedures HCFA would follow in establishing these limits. The limits would be either a specific dollar amount, or a special method to be used in determining maximum reasonable charges to be allowed for a particular service or category of service. The proposed rule also specified procedures for public participation in establishing limits, and that procedures for exceptions would be included in each notice of limits, as appropriate.

The NPRM provided an opportunity for public comment through March 20, 1986. The comment period has been extended through April 4, 1986. This will give the public an additional 15 days to comment on the proposal.

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 4, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-349-N, 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-349-N. Comments will be available for public inspection as they are recieved, beginning approximately three weeks after publication of this document, 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).

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Ronald Wren, (301) 594-7107.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medical—Supplementary Medical Insurance)

Dated: March 20, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: March 20, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-6530 Filed 3-20-86; 4:58 pm]

BILLING CODE 4120-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 86-6]

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Availability of Finding of No Significant Impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule published on February 18, 1986 (50 FR 5734) in Docket No. 86-6 and found that its final resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due April 3, 1986.

ADDRESS: Petitions for review (original and 15 copies) to: John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Director, Office of Energy and Environmental Impact, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission, Office of Energy, and Environmental Impact has determined that the Commission's proposed rule in Docket No. 86-6 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. section 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 86-6 the Commission proposes to substantially revise its service contract regulations. This action would reaffirm that a shipper cannot commit all or a fixed portion of its cargo without the resulting arrangement becoming a Loyalty Contract and would clarify statutory concepts, among other things, relating to parties to the contracts. The rule would provide for additional filings, and would also refine procedures involving the essential terms of publication and statements, contingency clauses, termination, and rejection of filings by the Commission.

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 504.6(b).

The FONSI and related environmental assessment are available for inspection or request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 523-5725.

John Robert Ewers,

Secretary.

By the Commission.

[FR Doc. 86-6307 Filed 3-21-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF AGRICULTURE

48 CFR Parts 401, 406, 413, 414, 415, 422, 433, 436

[Agriculture Acquisition Circular No. 1]

Acquisition Regulation; Competition in Contracting and Miscellaneous Changes

AGENCY: Office of Operations, Department of Agricutlure.

ACTION: Notice of proposed rule making.

SUMMARY: This notice invites written comments on a proposed amendment to the Department of Agriculture's Acquisition Regulation (AGAR). The revisions are intended to update the AGAR as a result of the Competition in Contracting Act of 1984 (CICA). Pub. L. 98-369. There are other changes intended to clarify existing subject matter and to add new coverage requested by USDA contracting activities. A detailed listing of the proposed changes is provided in the **SUPPLEMENTARY INFORMATION** section.

DATE: Written comments must be received on or before May 8, 1986.

ADDRESS: Requests for a copy of the proposed rule and respondents' comments should be sent to the U.S. Department of Agriculture, Office of Operations, Procurment Division (Room 1575, South Building), Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Larry Schreier, Office of Operations, United States Department of Agriculture, Washington, D.C., (202) 447-8924.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Procedural Requirements.
A. Executive Order 12291.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act
III. Public Comments

I. Background

The primary purpose of this rulemaking is to revise the AGAR, as necessary, to implement the Federal Acquisition Regulation's (FAR) changes as a result of the Competition in Contracting Act of 1984, Pub. L. 98-369. The purpose of the Act and the FAR coverage, as implemented herein, is to increase the use of full and open competition in the acquisition of property and services. The FAR and related AGAR coverage provides for full and open competition by soliciting sealed bids or requesting competitive proposals, or use of other competitive procedures, unless a statutory exception permits other than full and open competition. There are new justification, approval, and notice requirements for contracts employing other than full and open competition.

The principal effects of this proposed rule are as follows:

(a) Table of contents is revised to agree with the FAR reoganization of subchapter and part title changes;

(b) Section 402.601 is amended to remove the advocate for competition responsibility from the Director, Office of Operations;

(c) Section 401.603-1 is revised to recognize the USDA contracting officer warrant system.

(d) Section 401.671 adds contract ratification procedures;

(e) Subpart 401.70 is added to recognize procurement management reviews as a necessary Departmental activity;

(f) Section 406.302-70 provides guidance to contracting activities using authority under Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318);

(g) Section 413.505-70 is revised to clarify proper use of form AD-744;

(h) Part 414 is revised to reflect title change and to remove protest procedures (procedures are moved to Part 433);

(i) Subpart 415.3 is removed since negotiating authorities are no longer used;

(j) Subpart 422.10 is removed since parent FAR coverage was previously deleted;

(k) Part 433 is revised to comport with, and implement, CICA changes, particularly to incorporate protest procedures;

(l) Section 436.3 is amended to change "formal advertising" reference to "sealed bidding."

(m) Sections 414.404–1 and 415.105 are added to authorize HCA's to determine whether invitations for bids may be cancelled, and if so whether negotiations may proceed to complete the procurement.

II. Procedural Requirements

A. Review Under Executive Order 12291

Procurement rules are normally exempt from review under Executive Order 12291, entitled "Federal Regulations," based on a determination that they generally relate only to the management of an agency function and do not have any major economic impact. The Office of Management and Budget, OMB, has decided however that agency implementations of the Competition in Contracting Act of 1984, Pub. L. 98–369, warrant review. Accordingly, this proposed rule is being submitted to OMB for review in accordance with Executive Order 12291 and OMB Bulletin 85–7.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. USDA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or record-keeping requirements are imposed on the public by this proposed rule making. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., or OMB's implementing regulation at 5 CFR Part 1320.

III. Public Comments

Interested persons are invited to participate in this rule making by submitting views and comments with respect to the proposed AGAR amendment set forth in this notice. All written comments will be carefully assessed and fully considered prior to publication of the final rule.

List of Subjects in 48 CFR Parts 401, 406, 413, 414, 415, 422, 433 and 436

Government procurement.

For the reasons set out in this preamble, the Department proposes to amend Chapter 4 of Title 48 of the Code of Federal Regulations. Copies of the proposed rule may be obtained from the address set forth above.

Issued in Washington, D.C., March 18, 1986.

Frank Gearde, Jr.,

Director, Office of Operations.

[FR Doc. 86–6341 Filed 3–21–86; 8:45 am]

BILLING CODE 3410–98–M

Notices

Federal Register
Vol. 51, No. 56
Monday, March 24, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

AGENCY: Committee on Administration.

Date: Monday, March 31, 1986.

Time: 2:30 p.m.

Location: Department of Commerce, Room 5859, 14th Street and Constitution Avenue NW., Washington, DC

Agenda: Philip Harter's study and draft recommendations on federal agencies' use of alternative dispute resolution techniques.

Contact: Charles Pou, Jr., 202-254-7065.

Public Participation: Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92-463).

Richard K. Berg,

General Counsel.

[FR Doc. 86-6358 Filed 3-21-86; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 3032S]

Privacy Act; System of Records; Debt Collection Act of 1982

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising its System of Records maintained by the Federal Crop Insurance Corporation (FCIC), USDA/FCIC-1 through 9. This action is necessary to recognize organizational changes regarding renaming the person from whom individuals may request information relative to this system of records; to correct the listing of FCIC office locations; to delete three obsolete systems of records; and to implement a new routine use to report information to collection or servicing contractors, as authorized by the Debt Collection Act of 1982. The intended effect of this notice is to list correct addresses, rename the individual responsible for providing information contained in the system, delete three obsolete systems, and add a routine use of the system to enable FCIC to provide information to effectively collect and service commercial debts.

EFFECTIVE DATE: On or before April 23, 1986. Comments must be received by the contact person listed below on or before April 23, 1986, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Ralph F. Satterfield, Federal Crop Insurance Corporation, Room 4606, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-9714.

SUPPLEMENTARY INFORMATION: USDA hereby amends its system of records, USDA/FCIC-1 through 9, published in 43 FR 51294, November 2, 1978, by: correcting the addresses of FCIC offices; providing the correct person from whom information may sought throughout the system of records; deleting three systems no longer used by FCIC; amending the "Routine use of records maintained in its system, including categories of users and the purposes of such uses" to permit referral of information with respect to delinquent debts owed to FCIC to credit reporting, consumer reporting, and collection agencies; and adding a new section "Disclosures pursuant to 5 U.S.C. 552a(b)(12)," to permit referral of information to consumer reporting agencies.

By this action FCIC will (1) be able to report delinquent consumer debts and all commercial debts to credit reporting agencies; (2) clarify its authority to turn debtor files over to collection agencies for the collection of administrative commercial debts; and (3) amend the system of records to remove obsolete sections and correct office listings and contacts.

The three systems of records being deleted are: USDA/FCIC-2, Inspector's Report (FCIC-26); USDA/FCIC-4, Contact Report File, USDA/FCIC; and USDA/FCIC-9, Listing of Indemnities Paid, USDA/FCIC. The reasons for their deletion are stated below.

1.

USDA/FCIC-2

Inspector's Report (FCIC-26), USDA/FCIC

This system contains a listing of policyholders whose land productivity and/or farming practices were found to warrant a change in their actuarial classification, or individuals who have filed applications for insurance with the total anticipated liability which substantially exceeds the average for the area.

With increased coverage under the Actual Production History (APH) insurance program currently being offered and the increasing size of farms, this system is no longer applicable ahd has been discontinued.

2.

USDA/FCIC-4

Contact Report File, USDA/FCIC

This system contains Contact Report Forms (FCI-18) prepared by FCIC sales representatives during a sales presentation to a prospective policyholder.

FCIC is no longer involved in direct selling contact with prospective policyholders. This contact is now made by agents under an Agency Sales and Services Contract with a private commercial insurance company; therefore, the system is obsolete.

3.

USDA/FCIC-9

Listing of Indemnities Paid, USDA/FCIC

This systems of records contained the names of policyholders who were paid an indemnity, the policy number, and total amount of indemnities paid for the crop year. The listing of indemnities paid to all policyholders within a county was posted in the County Courthouse in accordance with the Federal Crop Insurance Act, as amended. This provision is no longer contained in the Act; therefore, the practice has been discontinued.

The systems of records maintained by FCIC are amended to correct the listing of offices of FCIC and the contact from whom information regarding the system may be obtained, and to provide for the referral of information with respect to delinquent debts owed to FCIC to credit reporting, consumer reporting, and collection agencies.

Further, USDA revises and republishes the full text of FCIC's systems of records to read as set forth below.

Signed at Washington, D.C., on March 18, 1986.

Richard E. Lyng,

Secretary.

USDA/FCIC-1

SYSTEM NAME:

Accounts Receivable, USDA/FCIC.

SYSTEM LOCATION:

Kansas City Operations Office, Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri 64131. A copy is also maintained in the applicable Field Operations Office for the State(s), and the Service Office for the county(ies) of the Federal Crop Insurance Corporation, as well as the ASCS County Offices of the United States Department of Agriculture. Addresses of these field offices may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are indebted to the Federal Crop Insurance Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

System consists of a master list of indebtedness by county and individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosures may be made from this system with respect to delinquent debts to a credit reporting agency consistent with the provisions of 31 U.S.C. 3701, 3702, 3711–3720A, and the Federal Claims Collection Standards, 4 CFR 102.2.

(4) Referral to a collection agency, when FCIC determines such referral is appropriate for collecting the debtor's account as provided for in U.S. Government contracts with collection agencies.

(5) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or 31 U.S.C. 3701(a)(3).

(7) Referral of commercial credit information, which is filed in the system, to a commercial credit reporting agency for it to make the information publicly available. 7 CFR 3.35, 50 FR 7725 (February 26, 1985).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer printouts, magnetic tape, microfiche, and also in a card index in county ASCS offices.

RETRIEVABILITY:

Records are indexed by State, county, and name of individual.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Reocrds are maintained until the indebtedness is paid. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the service office. Addresses of locations where records are maintained may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250. The request for information should contain (1) Individual's name and address, (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number, if known.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the Director, Field Operations Division, FCIC, Washington, D.C. 20250.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual debtor.

USDA/FCIC-3

SYSTEM NAME:

Crop Insurance Actuarial Listing, USDA/FCIC.

SYSTEM LOCATION:

Field Actuarial Offices: Davis, California; Valdosta, Georgia; Springfield, Illinois; Oklahoma City, Oklahoma; Billings, Montana; Jackson, Mississippi; Raleigh, North Carolina; St. Paul, Minnesota; and Topeka, Kansas.

Field Operations Offices: Davis, California; Harrisburg, Pennsylvania; Columbia, Missouri; Springfield, Illinois; Indianapolis, Indiana; Des Moines, Iowa; Manhattan, Kansas; St. Paul, Minnesota; Jackson, Mississippi; Billings, Montana; Lincoln, Nebraska;

Raleigh, North Carolina; Bismarck, North Dakota; Columbia, South Carolina; Huron, South Dakota; Nashville, Tennessee; College Station, Texas; and Spokane, Washington.

Also, service offices of the Federal Crop Insurance Corporation. Addresses of each such field office may be obtained from the telephone directories under United States Government, Department of Agriculture, Federal Crop Insurance Corporation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who produce specific crop(s) in the county.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name and address of the owner or operator of a farm, ASCS farm serial number, allotment or planted acres of the crop, and the actuarial classification for the crop(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Information in the system of records is on file and available to the public for inspection in the service office for the county.

(4) Dislosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DEPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by State, county, crop, and name of owner/operator of ASCS farm serial number.

SAFEGUARDS:

Records are available for public inspection in the service office for the county. These offices are locked during non-working hours.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the service office. The addresses of the individual service office may be obtained from the Director, Field Operations Division, FCIC, Washington, DC 20250. A request for information pertaining to an individual should contain (1) Individual's name and address, (2) State(s) and county(ies) where farm(s) is located, (3) whether owner or operator, and (4) ASCS farm serial number.

RECORD ACCESS PROCEDURE:

An individual may obtain information as to procedures for gaining access to a record in this system which pertains to such individual by submitting a written request to the Director, Field Operations Division, FCIC, Washington, DC 20250.

CONTESTING RECORD PROCEDURES:

Same as access above.

RECORD SOURCE CATEGORIES:

Information in this system comes from county ASCS offices, data obtained from producers and from Corporation records of producers's insurance experience.

USDA/FCIC-5

SYSTEM NAME:

Rejected applications, USDA/FCIC.

SYSTEM LOCATION:

Field Operations Offices: Davis, California; Harrisburg, Pennsylvania; Columbia, Missouri; Springfield, Illinois; Indianapolis, Indiana; Des Moines, Iowa; Manhattan, Kansas; St. Paul, Minnesota; Jackson, Mississippi; Billings, Montana; Lincoln, Nebraska; Raleigh, North Carolina; Bismarck, North Dakota; Columbia, South Carolina; Huron, South Dakota; Nashville, Tennessee; College Station Texas; and, Spokane, Washington. Also individual service offices of the Federal Crop Insurance Corporation. The address of each Field Operations Office may be obtained from the local telephone directory under the "United States Government, Department of Agriculture, Federal Crop Insurance Corporation."

CATEGORIES OF INDIVIDUALS COVERD BY THE SYSTEM:

Producers whose applications for insurance have been rejected.

CATEGORIES OF RECORDS IN THE SYSTEM:

System consists of the rejected application, related materials and correspondence received between the applicant and Federal Crop Insurance Corporation offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTANED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in the service and field operations offices involved.

RETRIEVABILITY:

Records are indexed by individual names and crop years.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are normally retained for 3 years following the crop year in which the file was prepared. Records for disposal are delivered to custodial services as waste paper.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to such individual from the service office for the county. The addresses of the individual service office may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250. A request for information pertaining to an individual should contain (1) Individual's name and address, (2) State(s) any county(ies) where farm(s) is located, and (3) crop year in which application for insurance was rejected.

RECORD ACCESS PROCEDURE:

Any individual may obtain information as to the procedures for gaining access to a record in this system which pertains to such individual by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes from prosepctive insureds and employees of the Federal Crop Insurance Corporation.

USDA/FCIC-6

SYSTEM NAME:

Insurance Contract Analysis, USDA/FCIC.

SYSTEM LOCATION:

Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri, 64131. Field Actuarial Offices in Valdosta, Georgia; Springfield, Illinois; Oklahoma City, Oklahoma; Billings, Montana; Jackson, Mississippi; Raleigh, North Carolina; St. Paul, Minnesota; Topeka, Kansas; Harrisburg, Pennsylvania; and, Davis, California. Field Operations offices in 18 different locations, and individual service offices of the Federal Crop Insurance Corporation. Addresses of each field office may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have, or have had in the past, insurance with the Federal Crop Insurance Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name, crops insured by crop years, the amount of premium paid by the insured, the amount of indemnity paid to the insured, the cause of loss, loss ration of each crop insured under the policy, the number of years of no loss, the wheat bushel balance for premium discount purposes, the total number of years a premium discount was earned, and the number of years an indemnity was paid.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation of potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in bound books and on magnetic tape.

RETRIEVABILITY:

Records are indexed by State, county and policy number.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained for 3 years after a policy is cancelled, except indefinite retention applies where the loss ratio for an individual crop was 1.20 or greater. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the service office for the county. Addresses of locations where records are maintained may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250. The request for information should contain (1) Individual's name and address (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number, if known.

RECORD ACCESS PROCEDURE:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system is a summary of data obtained from insured producers.

USDA/FCIC-7

SYSTEM NAME:

Insurance Contract Files, USDA/FCIC.

SYSTEM LOCATION:

Kansas City Operations Office, Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri 64131 and/or various service offices throughout the United States. To obtain addreses of the service offices, contact: Director, Field Operations Division, Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual farmers who participate in the Federal Crop Insurance program are included in this system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a complete file containing all basic insurance documents; i.e., the application for insurance, the annual acreage report, inspection reports, claim forms, miscellaneous correspondence, etc. Selected data obtained from the basic insurance documents is also maintained on magnetic tape.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charges with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in individual file folders and on magnetic tape.

RETRIEVABILITY:

Records are indexed by State, county, and policy number.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained for 3 years following cancellation of the policy, except where there is an outstanding debt the file is retained 5 years following the year of the debt. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Director, Field Operations Division, FCIC, Washington, DC 20250. Addresses of locations where records are maintained may also be obtained from the above office.

A request for information should contain (1) Individual's name and address, (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number(s), if known.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from individual insured, Federal Crop Insurance Corporation and investigative personnel.

USDA/FCIC-8

SYSTEM NAME:

List of Ineligible Producers, USDA/FCIC.

SYSTEM LOCATION:

Kansas City Operations Office, Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri 64131; Field Actuarial Offices, offices of Field Operations Office Directors; and, each service office of the Federal Crop Insurance Corporation. Addresses of each such field office may be obtained from the Director, Field Operations Division, FCIC, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been determined as not eligible for Federal Crop Insurance on a specific crop(s) due to excessive losses, questionable farming practices, or who have contracts voided due to suspected or apparent fraud.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains only lists of names of producers and prior policy numbers, if any, for a specific state and county.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders by county, and on magnetic tape.

RETRIEVABILITY:

Records are indexed by State, county, and name of individual.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Director, Field Operations Division, FCIC, Washington, D.C. 20250. Addresses of locations where records are maintained may also be obtained from the above office.

A request for information pertaining to an individual should contain (1) Individual's name and address, (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number(s), if known.

RECORD ACCESSS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes from reports of inspections made by FCIC personnel of producer's operations and from records of previous insuring experience.

[FR Doc. 86-6387 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

Feed Grain Donation for the Crow Creek Reservation Indian Tribe in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Crow Creek Sioux Indian Tribe of the Crow Creek Indian Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Crow Creek Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribes will not displace or inferfere with normal marketing of agricultural commodities.

Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 15, 1986, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC, on March 18, 1986.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86-6340-Filed 3-21-86; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Appeals Handbook—FSH 1509.12; Availability

AGENCY: Forest Service; USDA.

ACTION: Notice of Availability.

SUMMARY: The Forest Service announces the availability of Forest Service Handbook 1509.12, the Appeals Handbook. Part of the Agency's directive system, the handbook contains procedural guidelines for use by National Forest System line officers, resource staff, and appeals coordinators to process administrative appeals of decisions by forest officers.

ADDRESS: Single copies of the Appeals Handbook are available to the public upon request to: USDA-Forest Service, P.O. Box 2417, Washington, DC 20013, Attn: InS-Program Support Group, Rm. 0341 South.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Hauser, Program Analyst, NFS, (202) 382-9346.

Dated: March 14, 1986.

R. Max Peterson,

Chief.

[FR Doc. 86-6389 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Hearing on the Protection of Handicapped Newborns

Notice if hereby given pursuant to the provisions of the Civil Rights Act of 1983, Pub. L. 98-183, 97 Stat. 1304, that a public hearing of the U.S. Commission on Civil Rights will be held on April 29, 1986, at 9:00 a.m., at the U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Washington, DC.

The purpose of the hearing is to hear testimony about civil rights issues affecting handicapped newborns.

The Commission is an independent, bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal government with respect to the discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, DC., March 19, 1986.

Clarence M. Pendleton, Jr.,

Chairman.

[FR Doc. 86-6381 Filed 3-21-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-507]

Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish From Canada

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 producers or exporters in Canada of certain fresh Atlantic groundfish as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 5.82 percent *ad valorem.*

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain fresh Atlantic groundfish from Canada that are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on

entries of these products in the amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0161.

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 producers or exporters in Canada of certain fresh Atlantic groundfish (groundfish). For purposes of this investigation, the following programs are found to confer subsidies:

A. Federal Programs

1. Fishing Vessel Assistance Program;
2. Department of Fisheries and Oceans (DFO) Promotions Branch;
3. Assistance for the Construction of Ice-making and Fish Chilling Facilities;
4. Certain Types of Investment Tax Credits;
5. Program for Export Market Development;
6. Regional Development Incentive Program;
7. Industrial and Regional Development Program;
8. Fisheries Improvement Loan Program;
9. DFO Grants to Fishermen and Fish Processors from SRCPP Funds;
10. Preferential User Fees to Fishermen under the Small Craft Harbour Program; and
11. Government Equity Infusions into National Sea Products Limited and Fishery Products International Limited.

B. Joint Federal-Provincial Programs

1. Agricultural and Rural Development Agreements;
2. Prince Edward Island (P.E.I.) Comprehensive Development Plan;
3. General Development Agreements;
4. Transitional Programs;
5. Economic and Regional Development Agreements; and
6. Interest-Free Loans to National Sea Products Limited.

C. Provincial Programs

1. New Brunswick: Loans from the Fisheries Development Board;
2. New Brunswick: Fish Unloading Systems and Ice-making Programs;
3. New Brunswick: Insurance Premium Prepayment Program;
4. New Brunswick: Interest Rate Rebates;
5. New Brunswick: Technical Services;
6. Newfoundland: Grants for Purchasing and Constructing Boats;
7. Newfoundland: Grants for Rebuilding and Repair of Fishing and Coastal Vessels;
8. Newfoundland: Grants to Cover Operating Expenses;
9. Newfoundland: Loans from the Fisheries Loan Board;
10. Newfoundland: Loan Guarantees from the Fisheries Loan Board;
11. Newfoundland: Operation of Fisheries Facilities and Services;
12. Newfoundland: Construction and Repair of Fisheries Facilities;
13. Newfoundland: Enhancement of Fishing Operations;
14. Newfoundland: Marketing Assistance;
15. Nova Scotia: Fishing Vessel Construction Program;
16. Nova Scotia: Loans from the Fisheries Loan Board;
17. Nova Scotia: Industrial Development Division Grants;
18. Nova Scotia: Market Development Assistance;
19. P.E.I.: Fishing Vessel Subsidy Program;
20. P.E.I.: Near and Offshore Vessel; Assistance Program;
21. P.E.I.: Engine Conversion Program;
22. P.E.I.: Commercial Fishermen's Investment Incentive Program;
23. P.E.I.: Assistance for the Construction of Ice-making and Fish Chilling Facilities;
24. P.E.I.: Fish Box Pool Program;
25. P.E.I.: Technical Upgrading Program;
26. P.E.I.: Fresh Fish Marketing Program;
27. Fishing Industry Technology Program;
28. P.E.I.: Technology Improvements Program;
29. P.E.I.: Onboard Fishing Handling Systems Program;
30. Quebec: Vessel Construction Assistance Program;
31. Quebec: Gear Subsidy Program:
32. Quebec: Insurance Premium Subsidy Program;
33. Quebec: Large Vessel Construction Program;
34. Quebec: Loans from the Ministry of Agriculture, Fisheries and Food;
35. Quebec: Grants for Engine Purchases;
36. Quebec: Grants for Fish Transport and Seafood Processing Tanks;
37. Quebec: Grants to Processing Enterprises for Capital Equipment; and
38. Quebec: Ice-making and Fish Chilling Assistance.

We determine the estimated net subsidy to be 5.82 percent *ad valorem*.

Case History

On August 5, 1985, we received a petition in proper form from the North Atlantic Fisheries Task Force on behalf of the United States groundfish industry which harvest and produces for sale Atlantic groundfish in fresh form. The North Atlantic Fisheries Task Force is an unincorporated association representing fisherman, fishermen's cooperatives, and processors located in the northeastern United States. A majority of the members of the Task Force are producers, wholesalers, or trade or business associations whose members are producers or wholesalers of groundfish.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 26, 1985, we initiated this investigation (50 FR 35281). We stated that we expected to issue a preliminary determination by October 29, 1985.

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On September 19, 1985, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of certain fresh whole Atlantic groundfish. At the same time, it determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain fresh Atlantic groundfish fillets from Canada (50 FR 38904).

We presented a questionnaire concerning the allegations contained in the petition to the government of Canada in Washington, DC, on September 9, 1985. On November 8, 1985, we received a response to our questionnaire containing information submitted by the government of Canada, the governments of the provinces of New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, and Quebec, and three Canadian firms (Fishery Products International Limited, National Sea Products Limited, and United Maritime Fisherman (Co-op). We received supplementary information throughout November and December 1985.

On October 7, 1985, based upon a request made by the petitioner and in accordance with section 703(c)(1)(A) of the Act, we postponed the deadline date for the preliminary determination to no later than January 2, 1986 (50 Fed. Reg. 41921). On the basis of information contained in the response, we made a preliminary determination on January 2, 1986 (51 Fed. Reg. 1010).

From January 13 to February 10, 1986, we verified the information submitted in response to our questionnaire. At the request of petitioner, we held a hearing on February 18, 1986. We received pre-hearing briefs on February 12, 1986, and post-hearing briefs on February 26, 1986. Written comments on the verification reports were submitted by petitioner on March 7, 1986.

In accordance with § 355.38 of the Commerce Regulations, several Canadian firms claiming not to have benefitted from subsidies applied for exclusion from any possible countervailing duty order. On October 8, 1985, we informed representatives of the Canadian government of the applications, and requested questionnaire responses from each of the firms applying for exclusion. We also informed the Canadian officials that, for the exclusion requests to be considered, the Department would require that both the federal and the appropriate provincial governments submit formal certifications attesting to the non-receipt of benefits by the firms in question. Both the questionnaire responses and government certifications were due no later than November 8, 1985. We received responses to the questionnaire during the period November 8–15, 1985. However, in a letter dated November 6, 1985, the Canadian government informed the Department that it was not feasible for the federal and certain provincial governments to comply with the certification requirement. On November 27, 1985, we notified the Canadian government that, due to the volume of requests for exclusion and the difficulty of verifying the responses of firms requesting exclusion, the current policy of the Import Administration is to accept and verify exclusion requests in countervailing duty investigations only if the respondent government provides certification that the firm or firms are not receiving subsidies. Given that we had not previously denied an exclusion request on the basis of a government's refusal or inability to provide certification, we extended the certification deadline until December 6, 1985, to allow the Canadian federal and the appropriate provincial governments to comply with this requirement. However, we stated that, if we did not receive the certifications by that date, we would not consider the exclusion requests. On December 4, 1985, the Canadian government notified the Department that it would be unable to provide the certifications. Therefore, we denied the requests for exclusion.

Standing Issue

Section 702(b)(1) of the Act requires that a petition be filed "on behalf of" a U.S. industry. As we have previously stated, neither the Act nor the Commerce Regulations require a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case.

In the course of this investigation, we heard from a number of members of the domestic industry producing fresh groundfish fillets who unconditionally oppose the petition. These firms primarily opposed the case on whole, fresh groundfish, which they do not, by and large, produce. This opposition did not reach such a level as would lead us to believe that a majority of either industry opposes the petition on the like product each produces. We also received a submission from the Task Force for the Survival of American Fishermen, Processing Plants and Jobs, a group claiming to account for a major proportion of groundfish fillet production in the United States, and a significant amount of domestic landings of whole groundfish. The group has stated its opposition to the investigation of filleted *and* whole groundfish, but it is opposed to terminating the investigation just on groundfish fillets. The group has provided no information on the volume of domestic landings for which it accounts, nor has it provided sufficient evidence that it accounts for a major proportion of the domestic whole groundfish industry. Accordingly, we believe that the opponents of the petition have not demonstrated affirmatively that the petition was not filed on behalf of the domestic industry. This conclusion is not based upon any exclusion from consideration, as part of the domestic industries, of those firms which may also import from Canada the like product which they allegedly produce.

Scope of Investigation

The products covered by this investigation are certain fresh Atlantic groundfish, which cover fresh whole and fresh fillets of Atlantic groundfish, including cod, haddock, pollock, hake, and flatfish (including flunder and sole). These species are generally referred to collectively as "groundfish" because they live on or near the seabed. The term "fresh" includes fish that are chilled, but excludes fish that have been frozen. Whole fish include fish which are whole, or processed by removal of heads, viscera, fins, or any combination thereof, but not otherwise processed. Fillets (including fish steaks) include fish, other than frozen blocks, which are otherwise processed (whether or not heads, viscera, fins, scales, or any combination thereof have been removed). These products are currently provided for in items 110.1585, 110.1593, 110.3560, 110.5000, 110.5545, 110.5565, and 110.7033 of the *Tariff Schedules of the United States Annotated (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 government of Canada's 1985 fiscal eyar (April 1, 1984—March 31, 1985).

With respect to the calculations of benefits from grant programs, we allocated grants for fishing vessels over 18 years (the average useful life of vessels, barges, tugs, and similar water transportation equipment), for private wharves and slipways over 16 years (the average useful life of ship and boat building dry docks and land improvements), for fish boxes over four years (the average useful life of specialized materials handling devices), and for all other assets over 12 years (the average useful life of assets used in the manufacture of food and other sundry products). Because we used aggregate data for subsidy programs in this case, we used as the discount rate the long-term corporate bond rate in Canada, as published by the Bank of Canada.

With respect to the benchmark interest rates used to calculate benfits from loan programs, for long-term fixed-rate loans, we used the long-term corporate bond rate in Canada. For long-

term variable-rate loans, because we had no variable-rate long-term loans to use as a benchmark, we relied on a short-term interest rate which in this case is the 90-day prime corporate paper rate as reported by the Bank of Canada. And for short-term loans, we also used the 90-day prime corporate paper rate. For those programs in which respondents were unable to segregate benefits to the producers of the subject merchandise from benefits to the producers of other fresh fish and shellfish, we allocated benefits to all producers of fish and shellfish over the f.o.b. value of production in Atlantic Canada of fish and shellfish. All dollar amounts referred to represent Canadian dollars.

Based on our analysis of the petition, the responses to our questionnaire, our verification, and comments filed by petitioner and respondents, we determine the following:

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to producers or exporters in Canada of certain fresh Atlantic groundfish under the following programs:

A. Federal Programs

1. Fishing Vessels Assistance Program (FVAP)

Under the administration of the Economic Programs Branch of the DFO, the government of Canada operates the FVAP. Although the program was terminated on December 20, 1985, its operation remains in effect through March 31, 1986. This program provided grants to any provincial agency, Canadian corporation or resident citizen to construct, modify, or convert and re-equip fishing vessels. All construction, modification, or conversion was to be done in Canada.

The regulations for this program authorized funding of up to 60 percent of the cost of constructing a vessel, to a maximum of $750,000. The funding limit for modification or conversion of a vessel was $400,000. However, during our review period, financial assistance was limited to 25 percent of the cost of construction of a vessel, not to exceed $125,000 for steel hull vessels or $100,000 for other vessels. Grants for modifications or conversions could not exceed 25 percent of the vessel's replacement cost.

Because grants under this program were limited to vessels used by commercial fishermen, we determine that they were limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5)(B) of the Act, and are countervailable.

To calculate the benefit from this program, we allocated the grants received in Atlantic Canada in fiscal years 1968 through 1985 over 18 years. Applying our grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.715 percent *ad valorem*.

2. DFO Promotions Branch

The marketing of the DFO are the responsibility of the Marketing Directorate. The Directorate has two branches: the Market Intelligence and Industry Service Branch, and the Promotions Branch. The Market Intelligence and Industry Services Branch is discussed in section III. A.2 of this notice. The function of the Promotions Branch is to promote fish products generically. Specifically, the Promotions Branch has run advertising campaigns, published and distributed promotional materials, developed and tested new recipes, organized an educational program for retailers, and funded promotion displays at fairs and exhibitions, including "Boston Seafood '85," and the "Dallas Solo Fish Show." The majority of the Promotions Branch's activities are directed at the Canadian domestic market. However, funding of promotional displays at the Boston Fair and Dallas Show provided a benefit to exporters of fish to the United States during the review period. Because promotional activities at these shows benefited only exports to the United States, we determine that the expenses incurred for participation are countervailable export subsidies.

To calculate the benefit from this program, we divided the amount expended on promotional displays by the f.o.b. value of exports of fish and shellfish from Canada to the United States during the review period. This resulted in an estimated net subsidy of 0.001 percent *ad valorem*.

3. Assistance for the Construction of Ice-making and Fish Chilling Facilities

Under the administration of the Inspection Branch of the DFO, this program provided grants for the construction and equipping of commercial ice-making facilities used by the fishing industry in amounts up to 50 percent of a project's cost, with a ceiling of $25,000. In 1977, the ceiling was raised to $50,000. The program began in 1973, and terminated in 1980.

Because grants provided under this program were limited to a specific enterprise or industry, or group of enterprises or industries, we determine the program to be countervailable. We recognize that this program terminated in 1980. However, according to our grant methodology, grants bestowed between 1973 and 1980 confer benefits during the review period. To calculate the benefit from this program, we allocated the grants received in Atlantic Canada in fiscal years 1974 through 1980 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.059 percent *ad valorem*.

4. Certain Types of Investment Tax Credits (ITC)

There are four categories of ITCs in Canada: two are directed at encouraging capital investment in certain regions of the country; one is designed to stimulate scientific research; and the fourth is aimed at promoting the purchase of certain types of transportation equipment. The first category of ITC is for investment in "qualified property," such as new plant and equipment used for manufacturing or processing. The basic ITC for investment in qualified property is seven percent. An additional three or 13 percent is available for qualified property used in certain regions.

The second category of ITC is for investment in "certified property." The distinguishing factor between "certified property" and "qualified property" is that the former must be located in prescribed regions characterized by high levels of unemployment and low per capita income. The ITC rate for certified property is 50 percent.

The third category of ITC is for scientific research. Eligible expenditures under this category include the cost of capital equipment used for scientific research and expenses attributable to scientific research. A basic 20 percent ITC rate is available for qualifying scientific research expenditures. For small Canadian-controlled private corporations, the rate is 35 percent. For all other corporations, the rate is 30 percent, if the expenditure is made in certain regions. The fourth category of ITC is for investment in "qualified transportation equipment."

We verified that the basic seven percent rate for "qualified property" is not limited to a specific industry or region. We, therefore, determine that it is not countervailable. However, because the additional rates of three and 13 percent for qualified property can only be claimed on assets used in

certain regions, we determine that those additional benefits are countervailable. The 50 percent ITC rate for "certified property" can also only be claimed on assets used in specific regions. Thus, we determine that the additional benefit above the basic rate of seven percent is countervailable.

We verified that the fishing industry did not benefit from scientific research ITCs. Therefore, we determine that these ITCs were not used. We verified that the ITC for transportation equipment is not available for investment in fishing vessels. Consequently, we determine that this type of ITC was not used.

Our standard methodology to calculate the benefit from a tax program would be to consider the benefit to be the amount of tax credits claimed on the tax return filed during the review period. However, information from tax returns filed in 1984 is not available. Thus, we are using, as best information available, those tax credits claimed in 1983. Dividing the amount of countervailable ITCs attributable to Atlantic Canada's fishing industry by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.162 percent *ad valorem.*

815. Program for Export Market development (PEMD)

PEND is administered by the Department of External Affairs and is available to all businesses in the manufacturing or service sectors which export. PEMD facilitates the development of export markets for Canadian products by providing assistance for project bidding, market identification, export consortia, sustained export market development, participation in trade fairs abroad, and bringing in foreign buyers. PEMD assistance is in the form of interest-free loans with repayment terms dependent upon the success of the export promotion activity. If sales result from the export promotion, the funds must be repaid at a rate of two percent of sales generated for a period of three years up to the amount of assistance provided. We verified the amount of PEMD loans provided to the Atlantic fishing industry. However, respondents were unable to segregate the loans provided solely for the export promotion of groundfish.

Since PEMD loans are provided for export activities, we determine that assistance provided under the program confers benefits which constitute export subsidies. Because the repayment terms on PEMD loans are indefinite, we are considering all the loans attributable to the Atlantic Canada fishing industry outstanding in the beginning of the review period as short-term loans with zero interest, rolled over each year. To calculate the benefit, we multiplied the amount outstanding at the beginning of the review period by our short-term interest benchmark. We then divided the benefit by the f.o.b. value of exports to the United States of fish and shellfish during the review period. We calculated an estimated net subsidy of 0.001 percent *ad valorem.*

6. Regional Development Incentive Program (RDIP)

The RDIP, which was the predecessor of the Industrial and Regional Development Program (see section I.A.7. of this notice), was administered by the Department of Regional Economic Expansion (DREE) for the purpose of creating stable employment opportunities in areas of Canada where employment and economic opportunities were chronically low. The program provided development incentives (usually grants) to manufacturers whose capital investment projects for establishing new facilities or expanding or modernizing existing facilities would create jobs and economic opportunities in areas designated as economically disadvantaged.

Because paid benefits were limited to companies located within specific regions in Canada, we determine that grants provided through the RDIP program of DREE are countervailable.

Although the program was terminated in 1983, RDIP grants were still provided to the fishing industry through 1985. To calculate the benefits from RDIP, we allocated the grants received in Atlantic Canada in fiscal years 1974 through 1985 over 12 years. Applying the grant methodogy, and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.447 percent *ad valorem.*

7. Industrial and Regional Development Program (IRDP)

Under the administration of the Department of Regional and Industrial Expansion (DRIE), IRDP was established in 1983 as the successor to RDIP. Its purpose is to increase industrial development and improve the overall economic climate in Canada. To accomplish this goal, grants are provided for four purposes: (1) to encourage the development of new products and new processes and to increase industrial productivity and industrial competitiveness; (2) to assist in the establishment of new production facilities in less developed areas; (3) to increase industrial productivity through the improvement, modernization and expansion of existing manufacturing and processing operations; and (4) for marketing purposes.

Each of Canada's 260 census districts is classified into one of four tiers on the basis of the economic development of the region. The most economically disadvantaged five percent of the population is included in Tier IV; the districts in which the next 15 percent of the population (in terms of economic disparity) resides are classified as Tier III; the districts in which the next 30 percent of the population resides are classified as Tier II; and the districts in which the remaining 50 percent of the population resides are classified as Tier I. The Yukon and Northwest Territories are always classified in Tier III.

Those districts classified as Tier IV are authorized to receive the highest share of assistance under IRDP (as a percentage of assistance per approved project); those in Tier I, the lowest. Also, grants for the establishment of new facilities, and for modernization and expansion are no longer provided to companies located in census districts classified as Tier I.

Despite the fact that the criteria for assignment to a tier may be neutral, the program nevertheless authorizes benefits to vary from tier to tier, and thus, from region to region. Therefore, we determine that this grant program provides regional subsidies and is countervailable.

IRDP grants were received by fresh fish producers only in the 1985 fiscal year. To determine the level of benefit under this program, we compared the level of assistance provided to companies involved in fresh fish production in Atlantic Canada to the average level of assistance provided to companies in Tier I. We took the difference and allocated it over 12 years. Applying the grant methodology and dividing the f.o.b. value of production in Atlantic Canada of the subject merchandise during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem.*

8. Fisheries Improvement Loan Progam (FILP)

The FILP, established in 1955 under the Fisheries Improvement Loans Act, is currently administered by the Economic Programs Branch of the DFO in accordance with the Fisheries Improvement Loans Regulations. Under the program, the Minister of Fisheries and Oceans guarantees loans made by chartered banks and other designated commercial lenders to commercial fishermen for fisheries improvement projects. These projects include the

purchase, construction, and repair of alteration of fishing vessels, equipment, water supply systems, or other structures related to a primary fishing enterpirse. The maximum amount of guaranteed loans that a borrower may have outstanding is $150,000. The interest rates charged on loans guaranteed by the government are variable and are equal to the prime lending rate of the lending bank plus one percent. The maximum term of any loan is set at 15 years. There are no fees charged for the guarantees.

Respondents contend that because loans under this program are provided on terms similar to those found under the Farm Improvement Loans Act, the loans to the fishing industry should not be considered to be limited to a specific enterprise or industry, or group of enterprises or industries. We disagree.

There is no evidence that loans under the farm program or the fishing program are linked in any way to an overall government lending policy to provide loans and loan guarantees on comparable terms to the various qualifying groups. Thus, we must look at each of these programs separately.

Loans under the farm loan program were found to be not countervailable in the *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 Fed. Reg. 25097) because they were available on similar terms to all industries in the agricultural sector. In contrast, loans under the FILP are limited to one specific industry, the fishing industry.

In addition to determining whether the FILP is limited to a specific enterprise or industry, or group of enterprises or industries, we must also determine whether the loans and loan guarantees given under the program are on terms inconsistent with commercial considerations.

With respect to the loan guarantees, there are no private commercial sources for loan guarantees in Canada. There are, however, fees charged for loan guarantees under other federal and provincial programs. Under the Federal Enterprise Development Program, private lenders pay the government a fee of one percent per annum on the outstanding balance of loans guaranteed under that program. Under the Newfoundland Deficiency Guarantee Program, the government of Newfoundland's Department of Finance also charges a one percent fee per annum. Therefore, we are using, as best information available, the guarantee fee charged under those programs as our benchmark to determine whether loan guarantees provided under the FILP are on terms inconsistent with commercial considerations. As stated earlier, there are no fees charged on loan guarantees under the FILP. Therefore, we determine that loan guarantees provided under this program are countervailable because they are limited to the fishing industry and are made on terms inconsistent with commercial considerations.

To calculate the benefit under this program, we took the difference between our benchmark guarantee fee (one percent) and the charge for guarantee fees under this program (zero). We applied the difference to the amount of loans outstanding in Atlantic Canada during the review period. Dividing the result by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.043 percent *ad valorem* for loan guarantees provided under this program.

With respect to loans under this program, in order for commercial banks to have their loans guaranteed by the federal government, they must charge an interest rate of prime plus one percent. To determine whether the interest rate mandated by the government provides an additional benefit to commercial fishermen, we compared the interest rate provided to fishermen under the FILP to the commercial interest rate which commercial fishermen would have had to pay absent this program. Comparing the appropriate benchmark described in the Analysis of Programs section of this notice to the interest rate charged under the program, we determine that the FILP loans are not made on terms inconsistent with commercial considerations. We therefore determine that loans made under this program are not countervailable.

9. DFO Grants to Fishermen and Fish Processors From SRCPP Funds

The DFO has provided grants to fishermen and fish processors. The funding source of these grants was the Special Recovery Capital Projects Program (SRCPP). SRCPP, which was announced in the 1983/84 budget of the government of Canada, was terminated on April 10, 1985. SRCPP was intended to be an anti-recessionary public works program with a budget of 2.4 billion dollars. SRCPP involved the injection of substantial amounts of new funds into the capital budgets of 13 federal departments and agencies in Canada which funded projects located throughout the country. These federal departments and agencies identified those projects under their program jurisdictions which could be implemented quickly with additional funds. Projects were then selected to receive SRCPP monies.

To determine whether countervailable benefits were provided under SRCPP, we looked at the use of the funds and not their source. This is because SRCPP did not create new programs but only accelerated existing programs already administered by separate government agencies and departments.

The DFO received SRCPP funds which were used for a number of programs. Some SRCPP funds were used to improve small craft harbors (*see* section 1.A.10. of this notice.) DFO also used SRCPP funds to construct government-owned and operated marine service centers, bait storage depots, fish unloading systems, and ice-making facilities. These government-owned facilities are not yet operational, and therefore, we are unable to determine if the goods and services offered through these facilities are provided on preferential terms. We will examine these programs in any section 751 review that may be requested, if this investigation results in a countervailing duty order.

In addition, DFO used SRCPP monies to provide individual grants to fish processors and commercial fishermen for ice-making and storage facilities and fish unloading systems in Nova Scotia and New Brunswick. We determine these grants to be countervailable because they are limited to a specific enterprise or industry, or group of enterprises or industries within Canada.

To calculate the benefit from these DFO grants, we allocated the grants received in Atlantic Canada in fiscal years 1984 and 1985 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.079 percent *ad valorem*.

10. Preferential User Fees to Fishermen Under the Small Craft Harbour Program

In 1973, the management of Canada's commercial fishing and recreational harbors was consolidated within the DFO by the Fishing and Recreational Harbours Act. Under this program, the Small Craft Harbours Directorate of the DFO has the responsibility for operating and maintaining over 2,000 small craft harbors, which range from modern active facilities to minor installations serving isolated communities. The program also received SRCPP funds to upgrade harbor installations.

The regulations of the program provide the berthage fees to be charged to users of the harbors. Under the

regulations, the berthage fees charged to commercial fishermen are less than those charged to other commercial vessels and recreational boaters. Commercial fishing vessels are charged seven cents per meter of length of vessel per day; other commercial vessels are charged 49 cents per meter per day.

We determine the program to be countervailable because the preferential user fees for harbor facilities are limited to commercial fishermen. To calculate the benefit under this program, we took the difference between the amount of berthage fees paid by commercial fishermen and the amount they would have had to pay if they were charged the same rate as all other commercial vessels. Dividing that difference by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.046 percent *ad valorem*.

11. Government Equity Infusions Into National Sea Products Limited and Fisheries Products International Limited

Petitioner alleges that the government of Canada made equity infusions into National Sea Products Limited, Fishery Products International Limited and United Maritime Fishermen Co-op, and that these equity infusions may have been on terms inconsistent with commercial considerations.

We have verified that the government of Canada and the Province of Nova Scotia made equity investments in National Sea Products Limited (NSP). The government of Canada and the province of Newfoundland made equity investments in Fishery Products International Limited (FPIL). No equity was purchased by the federal or provincial governments in United Maritime Fishermen Co-op. Therefore, we have limited our review to NSP and FPIL.

The provision of equity by the government of Canada and the provinces of Newfoundland and Nova Scotia was part of the restructuring of several major harvesters and processors into NSP and FPIL. The three major companies involved in the restructuring of FPIL were Fishery Products Limited, The Lake Group Limited, and John Penny and Sons Limited of Newfoundland. The restructuring of NSP involved primarily NSP itself and the acquisition of certain assets from H.B. Nickerson & Sons Limited. The restructuring of these firms and the creation of NSP and FPIL occurred in 1983 and 1984, respectively.

During the late 1970's, the five major companies rapidly increased their debt, principally through loans from commercial banks. By the early 1980's, with a downturn in the industry, the position of the companies became an item of concern to the commercial banks, and subsequently to the federal government, because their especially high debt-to-equity ratios began to affect the economic underpinnings of the companies and the Atlantic Canada fishing industry. In 1983, the federal government established a restructuring team in response to the depressed economic conditions of the industry. The federal restructuring team determined that the financial structure of the major companies was ill-suited to the economic conditions which faced the fishing industry, and that the principal challenge to the companies was to increase shareholders' equity to ensure the companies' economic viability. They also believed that liquidation would result in extremely serious disruptions to employment and financial institutions in Atlantic Canada. The government of Canada states that, based on the long-term prospects of this industry and the financial forecasts prepared for NSP and FPIL, equity participation by the government appeared to be a sound investment.

We have consistently held that government provision of equity does not *per se* confer a countervailable benefit. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. Therefore, we must determine whether the government equity infusions made at the time of each of these reorganizations were consistent with commercial considerations. To make these determinations, we analyzed (a) the companies' financial statements, (b) the financial forecasts submitted by the government of Canada, and (c) the terms of the restructuring.

With respect to FPIL, we determine that it was unequityworthy at the time of its organization. Although one private investor exchanged debt for an equivalent amount of equity in FPIL at the time of the government's infusion, we do not consider that transaction to be an appropriate gauge by which to measure the reasonableness of the government's infusion because at the time it seems that the one private investor's only change for recouping the money it had already loaned to FPIL was to help it reorganize.

Our determination rests primarily on the poor financial conditions of the companies merged into FPIL during 1981 through 1983 and on our analysis of the projected future profitability of the company. The predecessor companies, viewed generally, had low profits or lost money on their operations during the period from 1981 through 1983 (even prior to the payment of interest expenses). The primary source of projected future operations presented by respondents consists of a study performed by an independent consulting firm. The projected financial performance of FPIL according to this study, and our own analysis of the general perception of the industrial environment at the time of restructuring, lead us to believe that a reasonable investor acting in a manner consistent with commercial considerations would not have invested in FPIL at the same time that the government of Canada and the province of Newfoundland invested. The projected increase in retained earnings over five years is not large and is accompanied by a deterioration in the financial structure and working capital position of the company. The government estimates of future catches on which these projections were based are subject to great uncertainty. Government action on enterprise allocations and the effect of such a program were both uncertain. By respondents' own admission, although private investors had been sought, none were willing to invest in the restructured company under the conditions in the Atlantic fishing industry at that time. Therefore, based upon our analysis, we determine that equity infusions in 1983 by the government of Canada and the province of Newfoundland into FPIL were made on terms inconsistent with commercial considerations.

We also determine that equity infusions in 1984 by the government of Canada and the province of Nova Scotia into NSP were made on terms inconsistent with commercial considerations. The equity infusions into NSP by the governments of Canada and Nova Scotia consisted of the purchase of preferred shares, including "second preferred shares." A private investor purchased second preferred shares in combination with a larger amount of common stock. The government of Canada argues that the price paid for the second preferred shares was consistent with commercial considerations because there was a private investor willing to purchase them at the same price.

For purposes of this determination, we find that it is not possible to determine the actual value placed on each portion of this transaction by the private investor. Our determination is not based on whether NSP is equityworthy in general. Rather, analysis of these preferred shares purchased by the government indicates that the expected

return on them is below that which would be required by a private investor. Therefore, investment in this preferred stock was inconsistent with commercial considerations. Thus, we determine that these infusions confer benefits which constitute a subsidy.

To calculate the benefit of the equity infusion into FPIL, we followed our normal rate of return shortfall methodology. The benchmark rate of return was the national average rate of return on equity. For NSP, we compared the benchmark rate of return to the rate of return on the government shares. The benchmark rate of return was arrived at by using the actual return for another class of preferred stock ("term difficulty preferred shares") purchased at the same time by a private investor. We made an adjustment on the rate of return of the term difficulty preferred shares to account for their tax-free status by taking the difference between the return on tax-free bonds and long-term commercial bonds, and adding that difference to the return on the private investor's term difficulty preferred shares. Adding the benefits from the two equity infusions, and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 1.876 percent *ad valorem.*

B. Joint Federal-Provincial Programs

1. Agricultural and Rural Development Agreements (ARDA)

The Agricultural and Rural Development Act allowed the federal government to enter into agreements with the provincial governments to promote economic development and to alleviate conditions of social and economic disadvantage in certain rural areas. The focus of these agreements was alternative land use, soil and water conservation, and economic development in rural development regions. Funding for projects in these areas was evenly split between the federal and provincial government. These agreements were negotiated with all provinces in Canada, except Prince Edward Island, which in 1969 signed its own Comprehensive Development Plan with the federal government. Of the ARDAs signed with the Atlantic provinces, the Newfoundland and Nova Scotia ARDAs provided specific benefits to the fishing industry located in rural development regions.

The Newfoundland ARDA provided funds for a water supply project to furnish water to fresh fish and herring plants. Although this project was not completed under ARDA, it was later funded and completed under a General Development Agreement subsidiary agreement. Using the design report for the project as best information available, we estimate that 21 percent of the funds under this project benefitted the fresh fish plants. As best information available, we are using the project proposal as our source for the total amount of assistance provided under the project. We are also assuming the financial assistance provided under the project occurred in 1978. The Nova Scotia ARDA provided grants for bait freezing units in certain rural development regions. The grants for these units were disbursed in 1975. Respondents were unable to segregate the benefits provided solely to groundfish production under both the Newfoundland and Nova Scotia ARDAs.

Since the benefits under the Newfoundland and Nova Scotia ARDAs were limited to companies located in specific regions, we determine that the grants provided under the ARDAs is countervailable. We recognize that this program terminated in 1975, with funding continuing until 1978. However, using our grant methodology, grants bestowed in fiscal years 1975 through 1978 continue to confer a benefit during the review period. To calculate the benefit from these programs, we allocated the grants over 12 years.

Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish during the review period for the Newfoundland ARDA grant, and fish and shellfish during the review period for the Nova Scotia ARDA grants, we calculated an estimated net subsidy of 0.005 percent *ad valorem.*

2. P.E.I. Comprehensive Development Plan

The P.E.I. Comprehensive Development Plan (the Plan) was agreed to in 1969 by the federal and provincial governments. The Plan operated until 1984. The federal statutory authority for the Plan was the Fund for Rural Economic Development. The Plan provided for joint federal-provincial government cooperation on devising and implementing economic development programs. The programs instituted by the Plan focused on fisheries, agriculture, tourism, forestry, industrial development, land use, educational facilities and transportation. The federal government was responsible for 75 to 90 percent of funding under the Plan.

The response claimed that none of the programs under the plan benefitted the harvesters or processors of groundfish. However, during verification, it could not be established that the fishery projects did not benefit the harvesters or processors of groundfish. Furthermore, respondents were unable to segregate the benefits going solely to groundfish production. The following projects provided financial assistance to the fishing industry in P.E.I. under the fishery program of the Plan: (1) Landing and handling, (2) resource harvesting, (3) product handling, (4) processing and quality control, (5) silage, (6) cold storage, (7) fishermen's incentives, (8) plant quality, and (9) ice-making facilities. As best information available, we are using information provided by the P.E.I. regional office of the federal Department of Fisheries and Oceans to establish the funding levels of these programs.

Because the federal share of grant money under the Plan was limited to companies within a specific region (i.e., the province of P.E.I.), we determine the federal share to be countervailable. However, since the provincial funds were not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that they are not countervailable. To calculate the benefit from this program, we allocated the federal share of grants received in fiscal years 1973 through 1985 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.039 percent *ad valorem.*

3. General Development Agreements (GDA)

GDAs provide the legal basis for departments of the federal and provincial governments to cooperate in the establishment of economic development programs. The GDAs were umbrella agreements which stated general economic development goals. Ten-year GDAs were signed with all the provinces in 1974, except P.E.I., which had signed the Comprehensive Development Plan in 1969. Five-year GDAs were signed with the Yukon in 1977 and with the Northwest Territories in 1979.

Pursuant to GDAs, subsidiary agreements were signed. The subsidiary agreements were generally between particular federal and provincial govenment departments (e.g., the Department of Fisheries). These agreements established various individual programs. delineated administrative procedures and set out the relative funding commitments of the federal and provincial governments. Subsidiary agreements were typically directed at establishing traditional government program (i.e., extension

services), developing infrastructure, providing for economic development assistance for certain regions within the province, and creating programs for specific industries. We verified that subsidiary agreements in Newfoundland, New Brunswick and Nova Scotia provided financial assistance to the fishing industry.

Under the Newfoundland and New Brunswick subsidiary agreements, funds were provided for the construction of marine service centers. We determine the building of government-owned and operated marine service centers not to be countervailable. We are unable to determine if the services offered through these facilities are provided on preferential terms. This issue will be closely examined in any section 751 review that may be requested, if this investigation results in a countervailing duty order.

In Newfoundland, two subsidiary agreements provided funding to the fishing industry for inshore fisheries development and special fish plant water systems. We determine these two subsidiary agreements to be countervailable because they provided direct financial assistance that was limited to a specific enterprise or industry, or group of enterprises or industries. We verified the federal amount of funds disbursed under the two subsidiary agreements. To establish the total level of funding, we are using, at best information available, a federal government publication on GDAs which states that federal expenditures under the Newfoundland subsidiary agreements represents 90 percent of total expenditures.

In the course of verification, it was discovered that New Brunswick grants were provided to the fishing industry under two subsidiary agreements directed at specific regions within the province. These were the Northeast New Brunswick and Developing Regions subsidiary agreements. Under these two subsidiary agreements, grants were disbursed for bait sheds, salt sheds, quality control, computer installation, fish handling machinery, ice machines, processing up-grading and ice-making storage facilities. Respondents were unable to segregate the grants under the two subsidiary agreements which went solely to groundfish production. Because the provincial and federal funds provided under the subsidiary agreements in New Brunswick were limited to companies within a specific region, we determine funds provided under these agreements to be countervailable. Because there was no information in the questionnaire response on the amount of funding provided under this program, we are using, as best information available, the amounts indicated in the annual reports of the Community Improvement Corporation (the administering authority) to determine the total level of funding for the Northeast New Brunswick subsidiary agreement. For the Developing Regions subsidiary agreement, we are using as best information available, a listing of federal expenditures provided by the provincial office of DRIE. We are using, as best information available, a federal publication on GDAs which states that federal expenditures uder the New Brunswick subsidairy agreements represent 80 percent of total expenditures.

In Nova Scotia, the Strait of Canso subsidiary agreement provided for a water supply project designed to improve the fresh water supply to a fish processor. Because there was no information in the questionnaire response on the amount of funding provided under this program, we are using, as best information available, the total estimated project cost as shown by "Schedule A" of the agreement. Because the provincial and federal funds provided under this subsidiary agreement were limited to a company within a certain region, we determine the grants to be countervailable.

To calculate the benefits under the fishery subsidiary agreements described above, we allocated the grants received in fiscal years 1973 through 1984 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.181 percent *ad valorem.*

4. Transitional Programs

Between the termination of the GDAs and the beginning of Economic and Regional Development Agreements, three programs were founded solely by the federal government. They were the Southeast New Brunswick Development Initiative, the Quebec Development Plan, and the Fisheries Development Program for Coastal Labrador (which is discussed in section IV.B.1. below).

The Southeast New Brunswick Development Initiative began in 1981 and will end in 1986. The federal Department of Fisheries and Oceans administers the Initiative. Under the Initiative, grants are provided to fish processors for the upgrading of fish processing and transportation equipment. Respondents were unable to segregate the benefits going solely to groundfish production. Because the grants under the Initiative are limited to companies within certain regions, we determine them to be countervailable.

The Quebec Development Plan began in 1983 and is expected to last until 1998. Under the Plan, grants have been provided for expansion of the commercial fishing fleet and improvement of commercial fishing vessels. The Plan is administered by the federal Department of Fisheries and Oceans. Because the grants under the Plan are limited to companies within certain regions, we determine them to be countervailable.

To calculate the benefit under these transitional programs, we allocated all the grants received over 12 or 18 years, as appropriate. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.060 percent *ad valorem.*

5. Economic and Regional Development Agreements (ERDA)

ERDAs are essentially a continuation of the GDAs. ERDAs were signed with every province and territory in the early 1980's. Similar to GDA subsidiary agreements, ERDA subsidiary agreements establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments. We verified that three subsidiary agreements relating to development of the fisheries industry were signed with P.E.I., New Brunswick and Nova Scotia.

Under the P.E.I. subsidiary agreement, four programs were founded by the federal government: resource development, harvesting, infrastructure and pilot projects. In addition, three programs were funded by the provincial government: quality enhancement, quality improvement and product utilization. At verification, conflicting documentation was provided regarding the total monies disbursed under the subsidiary agreement. We are using, as best information available, the 1984–1985 ERDA Review Report to establish the aggregate amount of funding. Because these programs provided funds to a specific enterprise or industry, or group of enterprises or industries, we find the grants to be countervailable.

We verified that funds under the New Brunswick fishery subsidiary agreement expended for administrative costs and programs were not related to the production of groundfish. Therefore, we determine the funds provided under these programs were not used. We verified that no funds were disbursed

under the Nova Scotia subsidiary agreement as of March 31, 1985.

To calculate the benefit under the P.E.I. fishery subsidiary agreement, we allocated the total value of all federal and provincial funds received in fiscal year 1985 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.007 percent *ad valorem.*

6. Interest-Free Loans to National Sea Products

We found during verification that National Sea Products had three interest-free loans from government sources. The sources of these loans were the federal Department of Industry, Trade & Commerce, the Newfoundland Industrial Development Corporation, and the Nova Scotia Resources Development Board. Since we are unable to determine the extent to which interest-free loans may be provided by each of these sources to other industries, we find these loans to be limited to a specific enterprise or industry, or group of enterprises or industries, and hence countervailable since they are on terms inconsistent with commercial considerations. For two of the loans, we are using our long-term methodology because the interest rate is fixed for the life of the loans. For the third loan, we are using our short-term loan methodology since the interest rate is scheduled to change during the term of the loan. We divided the benefit from these loans by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period to calculate an estimated net subsidy of 0.018 percent *ad valorem.*

C. Provincial Programs

1. New Brunswick: Loans from the Fisheries Development Board (NBFDB)

The predecessor to the Fisheries Development Board was the Fisheries Loan Development Board (FLDB), originally established in 1946 by the Fisherman's Loan Act (FLA). The purpose of the FLDB under the FLA was to improve and develop the fishing industry in the province. The FLA allowed the FLDB to make loans for the building or purchase of boats, the purchase of new engines and fishing gear, or any other expenditure which the Board deemed proper. Interest rates charged for loans under the FLA were not to exceed five percent and were fixed for the term of the loan. The term was not to exceed 15 years and for each approved application to buy a boat or engine, a deposit of 30 percent of the estimated cost was required.

Effective March 1, 1978, the FLA was replaced by the Fisheries Development Act (FDA). The latter replaced the FLDB with the NBFDB. Under the FDA, the Minister of Fisheries, upon recommendation from the NBFDB, could provide financial assistance in the form of direct loans to a person or company in the fishing industry. The term for all loans under the current FDA regulations is set at a maximum of 25 years with a minimum downpayment of five percent of the value of the loan.

Respondents contend that, because loans under the NBFDB are provided on terms similar to those charged on loans provided by the New Brunswick Farm Adjustment Board, loans under this program are not limited to a specific enterprise or industry, or group of enterprises or industries. We disagree.

There is no evidence that loans under the farm and fishing programs are linked in any way to an overall provincial lending policy to provide loans on comparable terms to the various qualifying groups. Thus, we must look at each of these programs separately. Loans under the Farm Adjustment Board program were found to be not countervailable in *Swine, supra,* because they were available on similar terms to all industries in the agricultural sector. In contrast, loans under the NBFDB are limited to one specific industry, the fishing industry. Comparing the appropriate long- and short-term benchmark interest rates described above to the various fixed and variable interest rates charged under this program, we also determine that these loans were made on terms inconsistent with commercial considerations.

We were unable to verify much of the information provided in the questionnaire response relating to the actual terms and conditions of these loans. We therefore are using, as best information available, information contained in the relevant regulations and annual reports of the Department of Fisheries.

To determine the term for loans provided under the program, we used, as best information availabe, the regulations under the FLA, which state that the maximum allowable term of a loan was 15 years. Our calculations are therefore based on loans provided from 1970–1985. We treated loans given from 1970–1980 and 1983–1985 as fixed rate loans, and applied our long-term loan methodology outlined in the Subsidies Appendix. Loans given in 1981 and 1982 were variable-rate long-term loans. To calculate the benefits from the variable rate loans, we took the difference between the benchmark interest rate and the interest rate in effect during the review period and applied that difference to the amount of principal outstanding on these loans during the review period. Adding the benefits and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.259 percent *ad valorem.*

2. New Brunswick: Fish Unloading Systems and Icemaking Program (FUSIP)

The New Brunswick Department of Fisheries, through the NBFDB, administers a fish chilling grant program under the authority of the Fisheries Development Act of 1977 and New Brunswick Regulation 84–166. This is the only fish chilling assistance program available in New Brunswick. During verification, we confirmed that neither the Fish Unloading Systems and Icemaking Facilities Board nor a program we referred to in our notice of initiation as "Assistance for Icemaking and Fish Chilling Facilities" exists.

FUSIP provides grants for fish chilling facilities for both boats and plants to improve the quality of landed fish and fish products. Eligible applicants include both owners of fishing vessels and fish processing facilities. Assistance is provided on the basis of 50 percent of the total cost of the ice-making facility or equipment to a maximum of $15,000 per application.

Because benefits under this program are available exclusively to the fishing industry, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is counteravailable. To calculate the benefit from this program, we allocated all grants received in fiscal years 1981 through 1985 over 12 years. Applying our grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.010 percent *ad valorem.*

3. New Brunswick: Insurance Premium Prepayment Program

To provide vessel insurance for recipients of loans through the NBFDB, the Department of Fisheries purchases insurance on behalf of the recipient and includes the costs in the annual premium paid on the loan for the vessel. These insurance prepayment loans, which are provided in accordance with the Fisheries Development Act of 1977

and Regulation 84–166, are available at the same interest rates as those charged under the NBFDB. These loans, however, must be paid within one year. This program is available only for vessels financed through the NBFDB, discussed in section I.C.I. above, and is not available to fishermen financing boats through commercial lending institutions.

Loans under this program are available exclusively to commercial fishermen, and are therefore limited to a specific enterprise or industry, or group of enterprises or industries. Comparing the interest rates charged on these loans to the appropriate benchmark described in the "Analysis of Programs" section of this notice, we also determine that these loans are provided on terms inconsistent with commercial considerations, and are therefore countervailable. To calculate the benefit from this program, we used our methodology for short-term loans. Because we were unable to verify the interest rate reported in the response, we used, as best information available, the lowest quarterly provincial lending rate for 1985, as supplied by the New Brunswick Department of Finance to represent the interest rate charged under this program. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated subsidy of 0.004 percent *ad valorem.*

4. New Brunswick Interest Rate Rebates

Information contained in the New Brunswick Department of Fisheries 1984 Annual Report (Annual Report) indicates that the province provides interest rate rebates to commercial fishermen. Under this program, the government rebates either 25 or 50 percent of the interest charged on NBFDB loans that were provided from March 1, 1978, to December 6, 1979. Although this rebate program was repealed on December 6, 1979, loans provided during that period that are still outstanding are eligible for the rebate.

Because benefits under this program are available only to commercial fisherman, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is contervailable since such rebates are inconsistent with commercial considerations.

To calculate the benefit from this program, we divided the interest rebates provided during the review period by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period. On this basis, we calculated an estimated net subsidy of 0.018 percent *ad valorem.*

5. New Brunswick: Technical Services

Information contained in the Annual Report indicates that the Technical Services Branch of the New Brunswick Department of Fisheries provides assistance to the fishing industry under three programs. Under the Aquatic Resources Program, the Department funds aquacluture projects such as development of commercially viable aquaculture environments and testing the adaptability of certain species. Under the Fishing Vessel and Gear program, the Department will place various types of new equipment free-of-charge on board their fishing vessels for projects such as development of new types of fishing trawlers, long-lining systems and reinforcing equipment for rough weather fishing. Under the Infrastructure Program, research projects for aquaculture and hatchery facilities development, and improvement projects for construction of haul-out ramps and marine service center facilities are funded.

Because aquaculture projects pertain to species which are not the subject of this investigation, we determine that the Aquatic Resources Program does not confer benefits upon exports of the subject merchandise. Projects under the Infrastructure Program do not benefit the fishing industry specifically, but provide benefits to all users of marine facilities, including pleasure boats and marine transportation facilities. We therefore find that the Infrastructure Program is not countervailable because it is not limited to a specific enterprise or industry, or group of enterprises or industries. However, because benefits under the Fishing Vessel and Gear Program are limited to the fishing industry, we consider the program to be countervailable. We treated the value of the machinery provided as a grant.

According to our grant methodology, we would normally take financial data for the last 12 years (the average useful life of equipment in the fishing industry) and allocate grants in each year over a 12-year period. However, because financial data were unavailable for years other than the 1983–84, we used, as best information available, the total grants disbursed as reported in the 1983–84 Annual Report as representing the amount disbursed during the review period, and have expensed the full amount in the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.015 percent *ad valorem.*

6. Newfoundland: Grants for Purchasing and Constructing Boats

Under the direction of the Fisheries Loan Board (FLB), an agency in the Ministry of Fisheries, and pursuant to the Fishing Ships (Bounties) Act of 1970, the government of Newfoundland operates two programs which provide grants for purchasing and constructing fishing vessels: the Fishing Ship Bounty Program and the Small Fishing Boat Bounty Program. (This and the following program were referred to in our notice of initiation as the Newfoundland Fishing Vessel Assistance Plan.)

Grants are provided to commercial fishermen for the construction and purchase of fishing vessels. There are stringent eligibility requirements, which include: a) that the applicant be a resident of Newfoundland; b) that the vessel be newly built in Newfoundland and be used primarily in the fishing industry; and c) that the vessel be built or purchased in accordance with permits requiring compliance with technical specifications. Fishing vessels between 35 and 65 feet qualify for grants under the Fishing Ships Bounty Program; vessels less than 35 feet qualify under the Small Boat Bounty Program. The right to receive the grant accrues upon completion of the ship and final survey. Those who receive grants must undertake to use the vessel primarily in fishing for a period of five years.

Because grants under these programs are available only for vessels used by commercial fishermen, we determine that these programs are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable.

To calculate the benefit from these programs, we allocated the grants received in fiscal years 1967 through 1985 over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.150 percent *ad valorem.*

7. Newfoundland: Grants for the Rebuilding and Repair of Fishing and Coastal Vessels (RRFCV)

Under the direction of the FLB and pursuant to the Fishing and Coastal Vessels Rebuilding and Repairs Act of 1970, the government of Newfoundland operates the RRFCV. This program provides grants for the reconstruction of ships measuring 35 feet or more, covering up to 35 percent of approved costs of repair or rebuilding. The vessels must be older than eight years and in excess of ten tons underdeck. Any work

approved by the FLB must be performed in Newfoundland shipyards. To be eligible, a ship owner must be a resident of Newfoundland for at least one year. As in the grant programs for the construction of new ships, rebuilding and repair must meet the technical specifications laid down by the regulations. The FLB may provide grants for both fishing vessels and commercial vessels that are engaged in coastal trade. In actuality, however, grants are rarely disbursed for reconstructing coastal transport vessels and, in recent years, no money has been disbursed on these types of vessels.

Because grants under this program are, in fact, provided almost solely for vessels used by the commercial fishing industry, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

To calculate the benefit from this program, we allocated the grants received in fiscal years 1968 through 1985 over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.003 percent *ad valorem.*

8. Newfoundland: Grants to Cover Operating Expenses

The province of Newfoundland has provided grants to National Sea Products to cover current operating expenses of its Burgeo Plant. The funds were provided under an agreement which was signed in 1982, disbursed funds from 1982 through 1985, and expired in 1985.

Because this program was limited to a specific enterprise, we determine that it is countervailable. To calculate the benefit, since this program was a recurring grant program, we allocated the amount of funds received in our review period over the f.o.b. value of production in Atlantic Canada of fish. This resulted in an estimated net subsidy of 0.096 percent *ad valorem.*

9. Newfoundland: Loans from the Fisheries Loan Board

Under the direction of the FLB and pursuant to the Fisheries Loan Act of 1970, the government of Newfoundland provides long-term loans for the development and improvement of the fishing industry. Commercial fishermen who are residents of Newfoundland and who have had fishing experience during the previous two seasons and earned 75 percent of their income from the harvesting industry during the previous two seasons are eligible. The loans are given for the purchase, construction and repair of ships measuring up to 65 feet, the purchase of new engines and fishing gear, the construction of plants and purchase of plant equipment, and for other types of capital expenditures. Interest rates, which are set by regulation, are fixed for the term of the loan. The current interest rate charged is tied to the prime rate charged by the Bank of Montreal less three percent. Maximum terms of repayment range from ten years for equipment to 12 years for wooden ships; downpayments of ten to 15 percent of the loan amount are required. The maximum loan amount is $50,000.

Respondents contend that, because loans under this program are provided on terms similar to those charged on loans provided by the Newfoundland Farm Loan Board, loans under this program are not limited to a specific enterprise or industry, or group of enterprises or industries. We disagree.

There is no evidence that loans under the farm and fishing programs are linked in any way to an overall provincial lending policy to provide loans on comparable terms to the various qualifying groups. Thus, we must look at each of these programs separately. Loans under the Farm Loan Board program were found to be not countervailable in *Swine, supra,* because they were available on similar terms to all industries in the agricultural sector. In contrast, loans under the Fisheries Loan Board program are limited to one specific industry, the fishing industry. Comparing the appropriate benchmark described in the "Analysis of Programs" section of this notice to the interest rate charged under this program, we also determine that these loans were made on terms inconsistent with commercial considerations.

To calculate the benefit, we used the long-term loan methodology outlined in the Subsidies Appendix. We were unable to verify information in the response on the average number of years loans were outstanding. Therefore, as best information available, we are assuming a 12-year loan term, which is the maximum authorized by the FLB for wooden ships. We used, as best information available, the amount of loans disbursed in each of the past 12 years, and applied our long-term loan methodology. We used the appropriate benchmark described in the "Analysis of Programs" section of this notice. We also treated loans written-off during the review period as grants expensed in that year. Dividing the benefit by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.245 percent *ad valorem.*

10. Newfoundland: Loan Guarantees from the FLB

The FLB will guarantee 20 percent of the aggregate amount of chartered banks' term loans to fishermen for the purchase or construction of fishing vessels. There is no charge for the guarantees. Because these loan guarantees are provided exclusively to the fishing industry and at no charge, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, that they are provided on terms inconsistent with commercial considerations, and are therefore countervailable.

To calculate the benefit from this program, we used as a benchmark, the guarantee fee described above in section I.A.8. of this notice on the FILP. Taking the balance of guaranteed loans outstanding during the review period, multiplying by the benchmark guarantee fee of one percent, and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.013 percent *ad valorem.*

11. Newfoundland: Operation of Fisheries Facilities and Services

Based on information contained in the Public Accounts for the Department of Fisheries, we have found that the government of Newfoundland provides grants to Newfoundland commercial fishermen under the Longline Program, a program designed to encourage them to use longlines in their operations. Because grants under this program are provided only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

Using our grant methodology, we would take financial data for the last 12 years, and allocate grants in each year over a 12 year period. Because financial data were unavailable for any years other than 1983–84, we used, as best information available, the total grants disbursed in 1983–84 as representing the amount disbursed during the review period, 1984–85, and expensed this amount in the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem.*

12. Newfoundland: Construction and Repair of Fisheries Facilities

Based on information contained in the Public Accounts for the Department of Fisheries, the government of Newfoundland offers grants to local commercial fishermen committees to purchase materials necessary for building and repairing fisheries and marine facilities. A large percentage of expenditures go to infrastructure projects available to all boat users. However, some grants go strictly to fisheries facilities. Because these grants are provided only to commercial fishermen, we determine that assistance for fisheries facilities is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

Using our grant methodology, we would take financial data for the last 12 years, and allocate grants in each year over a 12 year period. Because financial data were unavailable for any years other than 1983–84, we used, as best information available, the total grants disbursed for fisheries facilities in 1983–84 as representing the amount disbursed during the review period, and expensed this amount to the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.009 percent *ad valorem*.

13. Newfoundland: Enhancement of Fishing Operations

Based on information contained in the Public Accounts for the Department of Fisheries, the government of Newfoundland awards funding for special research and development projects aimed at improving the techniques used in the Newfoundland fishing industry. In 1983–84, the only year for which information was available, grants went to research on longline use and research for improving the overall quality of fish products by establishing universal standards of fresh fish quality. Because we have no information on other research and development projects funded by the government of Newfoundland, nor information on the availability of research results, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. Because financial data were unavailable for any years other than 1983–84, we used, as best information available, the total grants disbursed for research in offshore fishing operations in 1983–84 as representing the amount disbursed during the review period, and expensed this amount to the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem*.

14. Newfoundland: Marketing Assistance

Based on information contained in the Public Accounts for the Department of Fisheries, the government of Newfoundland offers grants for marketing assistance, designed to encourage consolidation of marketing by small processors to offset the market advantages exercised by the larger processing companies. Because grants under this program are provided only to fish processors, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. Because financial data were unavailable for any years other than 1983–84, we used, as best information available, the total grants disbursed for marketing assistance in 1983–84 as representing the amount disbursed during the review period, and expensed this amount to the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem*.

15. Nova Scotia: Fishing Vessel Construction Program (FVCP)

The FVCP was designated to assist individuals, companies, and associations in the fishing industry to construct and operate fishing vessels. The FVCP was in effect from November 22, 1977, through March 31, 1980. The Department of Fisheries of Nova Scotia (DFNS) assessed applications for assistance on the basis of the contribution that construction and operation of the vessels would have on the fishing industry of Nova Scotia. Vessels eligible for assistance had to be operated as fishing boats, have a length not exceeding 64 feet, 11 inches, and be built and registered in Canada. Eligible applicants had to agree to keep their vessels registered in Canada and to engage in fishing for five years. Depending on the size of the vessel and the availability of federal subsidies, the amount of the FCVP grant ranged from zero to 35 percent of the vessel's cost.

Because grants under this program were available only for certain vessels used by commercial fishermen, we determine that this program was limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

We recognize that this program terminated in 1980. However, according to our grant methodology, grants bestowed from 1978 through 1980 continue to confer benefits during the review period. To calculate the benefit from this program, we allocated the grants received in fiscal years 1978 through 1980 over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.014 percent *ad valorem*.

16. Nova Scotia: Loans from the Fisheries Loan Board (NSFLB)

The NSFLB, established by the Fisheries Development Act (FDA), administers a loan program designed to provide loans and loan guarantees to commercial fisherman in order to encourage, sustain, improve, and develop the fishing industry of Nova Scotia. Under the regulations pursuant to the FDA, loans are to be made to commercial fisherman for the purpose of building, purchasing, or upgrading boats, developing aquaculture, and assisting the fishing industry generally. In fact, loans made by the NSFLB over the past 12 years have been used primarily for the purchase or upgrading of fishing vessels. To be eligible for a loan from the NSFLB, a commercial fisherman must have at least two years commercial fishing experience within the last five years and be engaged primarily in commercial fishing. Interest rates on approved loans are fixed at eight percent on the first $150,000, 11 percent on the second $150,000, and the current government borrowing rate for loans over $300,000. Interest rates are fisced for the term of the loan. Depending on whether the loan is used to upgrade or to purchase vessels, the repayment period for the loans ranges between five and 12 years. A 20 percent downpayment for each loan is required.

Repondents contend that, because loans under the NSFLB are provided on terms similar to those charged on loans provided by the Nova Scotia Farm Loan Board, loans under this program are not limited to a specific enterprise or industry, or group of enterprises or industries. We disagree.

There is no evidence that loans under the farm and fishing programs are linked in any way to an overall provincial lending policy to provide loans on comparable terms to the various qualifying groups. Thus, we must look at each of these programs separately.

Loans provided by the Farm Loan Board program were found to be not countervailable in *Swine, supra,* because they were available on similar terms to all industries in the agricultural sector. In contrast, loans under the NSFLB are limited to one specific industry, the fishing industry.

Comparing the appropriate benchmark described in the "Analysis of Programs" section of this notice to the interest rate charged under this program, we also determine that these loans were made on terms inconsistent with commercial considerations.

To calculate the benefit, we used the long-term loan methodology outlined in the Subsidies Appendix. We treated loans written off during the review period as grants expensed in that year. Dividing the benefit by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.375 percent *ad valorem.*

17. Nova Scotia: Industrial Development Division (IDD) Grants

The Industrial Development Division (IDD) of the Nova Scotia Department of Fisheries administers assistance programs designed as incentives for development of the fishing industry of Nova Scotia. Grants may be provided on a 50 percent cost-sharing basis to a maximum of $15,000 per location per fiscal year. An applicant must be a licensed commercial fisherman, processing company, or fishermen's organization. Eight separate programs affecting the fishing industry in Nova Scotia are currently administered by the IDD. (These include three programs referred to individually in our notice of initiation as Icemaking and Fish Chilling Facilities, Gutting Machine, and Plant Development Programs.) Each program is designed to encourage technological innovations and to improve the quality of the fishing industry as a whole. The following is a list of the programs and the general purpose of each:

- *IDD Safety Program.* Technical and financial assistance is provided to improve safety on vessels and in processing plants.
- *IDD Quality Improvement Program.* Technical and financial assistance is available for equipment on vessels and in plants that will improve the quality of fish and fish products. Equipment eligible for grants includes: fiberglass or plastic containers, on board insulation, refrigeration, and gutting machines. Grants are also available for plant development.
- *IDD Increased Productivity Program.* Technical and financial assistance is available to improve the productivity and efficiency of fish harvesting and fish plant operations. Unloading equipment, bait sheds, and deck equipment are examples of some items covered by this program.
- *IDD Harbor Facilities Program.* Assistance is available for constructing and improving private harbor facilities such as private wharves, gear sheds, slipways, and haulouts.
- *IDD Infrastructure Program.* Financial assistance is provided to enable processing plants and private wharves to access fresh water supplies and electrical services.
- *IDD Fleet Development Program.* Assistance is available for developing improved vessel design.
- *IDD Technology Development for Fishing Vessels Program.* Assistance is available for the development of onboard equipment. Equipment used to harvest less commonly harvested species and fuel economy equipment are included under the program.
- *IDD Technology Development for Fish Gear Program.* This program is designed to assist the commercial fisherman to purchase safer, more efficient fishing gear.

Because each of the IDD programs outlined above provides assistance exclusively for the fishing industry, we determine that these programs are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable.

To calculate the benefit from these programs, we allocated the grants received since the inception of the program (1977) through fiscal year 1985 over 12, 16 or 18 years appropriate. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.81 percent *ad valorem.*

18. Nova Scotia: Market Development Assistance

Under the Marketing Development Division of the Department of Fisheries, the Market Development Service (MDS) functions to promote fish products generically through the use of mall displays, cooking demonstrations, and distribution of recipe pamphlets and other promotional material. The majority of MDS's activities are directed at the Canadian domestic market. However, amounts spent to cover the costs of the publishing and distribution in the United States of posters and recipe pamphlets promoting Nova Scotia seafood provided a benefit to exporters of fish to the United States during the review period. Because these activities promoted exports to the United States, we determine that the expenses incurred are countervailable.

Dividing the amount spent on promotional activities on exports to the United States by the f.o.b. value of exports of fish and shellfish from Canada to the United States during the reveiw period, we calculated an estimated net subsidy of 0.008 percent *ad valorem.*

19. P.E.I.: Fishing Vessel Subsidy Program (FVSP)

Under recommendation of the P.E.I. Treasury Board, the P.E.I. Minister of Fisheries in 1978 established the FVSP. This program, which provided grants for the acquisition of new vessels, was in effect from 1978 to 1984. Participation in the program was open to all P.E.I. individuals, partnerships or firms engaged in commercial fishing who had not participated in either the federal or provincial vessel subsidy programs during the previous eight years. Vessel size was limited to between 30 and 75 feet, and only those vessels constructed in P.E.I. shipyards were eligible. Participating fishermen received a payment equal to 15 percent of the total cost of the new vessel and engine, plus all other new fixed equipment required on board the vessel, up to a maximum of $3,000. In 1983, the regulations were amended to increase the maximum assistance level to $3,500 for vessel purchases and also to provide grants of 15 percent of the cost, to a maximum of $2,000, for equipment purchased in P.E.I. and installed in new fishing vessels constructed off-island. The latter amendment was to provide assistance to commercial fishermen who wished to install P.E.I. supplied diesel engines in their new vessels but were ineligible for assistance through the Engine Conversion Program (see section I.C.21. of this notice).

Because grants under this program were available only to vessels and equipment used by commercial fishermen, we determine that this program was limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

We recognize that this program terminated in 1984. However, using our grant methodology, grants bestowed from 1978 through 1984 continue to confer benefits during the review period. To calculate the benefit, we allocated those grants for equipment installed in fishing vessels over 12 years, and for fishing vessel construction over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish

and shellfish during the review period, we calculated an estimated net subsidy of 0.015 percent *ad valorem.*

20. P.E.I.: Near and Offshore Vessel Assistance Program (NOVAP)

The NOVAP was established in 1982. Similar to the vessel subsidy program described above, NOVAP provides grants for offshore vessels as well as near-shore vessels. Assistance is provided for 25 percent of the capital costs, to a maximum of $60,000, if the vessel is eligible for federal assistance, and 35 percent, to a maximum of $80,000, if ineligible. Commercial fishermen must agree to provide catch and other data and keep the vessel in the P.E.I. fishing industry for a period of 10 years. Because P.E.I. boatyards are unable to supply larger vessels, the commercial fisherman is free to purchase from any domestic or foreign supplier. Payment of the grant is made to the vessel owner upon satisfactory inspection by the DFL and presentation of paid receipts for the eligible amounts.

Because grants under this program are available only for vessels used by commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. To calculate the benefit, we allocated the grants received in fiscal years 1983 to 1985 over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.004 percent *ad valorem.*

21. P.E.I.: Engine Conversion Program

The Engine Conversion Program provides grants to commercial fishermen to help defray the initial costs of conversion from gasoline to diesel engines. Participation is voluntary and is available to all P.E.I. commercial fishermen with a commercial fishing license who own vessels powered by gasoline engines. Only one diesel engine conversion grant will be made per commercial fishing vessel over the life of the vessel and, as of May 21, 1982, only those diesel engines purchased from P.E.I. suppliers were eligible for assistance.

The assistance covers 25 percent of the capital cost to a maximum of $2,500 for new diesel engines installed in existing vessels with gasoline engines at least a year old. The applicant must certify that the diesel engine and related equipment will be used for commercial fishing for a minimum of five years. Payment of the grant is made to the applicant upon presentation of paid receipts for the eligible equipment and a satisfactory inspection by the DFL.

Because grants under this program are available only for vessels used by commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. To calculate the benefit from this program, we allocated the grants received in fiscal years 1983 through 1985 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.006 percent *ad valorem.*

22. P.E.I.: Commercial Fishermen's Investment Incentive Program (CFIIP)

The CFIIP, which was instituted in 1983, provides interest reduction grants to all P.E.I. commercial fishermen who are holders of *bona fide* fishing permits. Eligible projects include new or used capital asset purchases, acquisition of fishing enterprises and fishing privileges, repairs to capital items and working capital loans.

Interest reduction grants are paid on loans secured from recognized commercial lending institutions. Upon obtaining the loan, the commercial fisherman is eligible to apply for an interest rebate of no more than four percent per annum if the lending rate is at or above 12 percent. When the lending rate falls below 12 percent, the interest rebate is reduced. The amount of the reduction is equal to the difference between the lending rate and 12 percent. The effective minimum rate to the fisherman under the program is therefore eight percent (*e.g.,* if the secured loan has an interest rate of 11 percent, the rebate is reduced to three percent; which reduces the rate to the prescribed minimum of eight percent). Eligibility is limited to the life of the loan or the first five years, whichever is less. The maximum aggregate of loans to individual fishing enterprises cannot exceed $30,000 at any one time. The grant is paid to the commercial fisherman upon receipt of an itemized statement from the recognized lending institution and with the certification that the borrower has paid the amount of interest due. For fishermen who were eligible to receive an interest reduction grant in 1984, payment was deferred until 1985. Grant payments were then disbursed in 1985 for the eligible amounts in both years.

Because grants under this program are available only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. Dividing the interest reduction grants received during the review period by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.003 percent *ad valorem.*

23. P.E.I.: Assistance for the Construction of Icemaking and Fish Chilling Facilities (ACIFCF)

This program, established in 1974 and administered by the Department of Fisheries and Labor (DFL), provided financial assistance for the construction of storage rooms, the purchase of icemakers, temperature control equipment, and for associated installation costs. The program was available to all inshore facilities located within P.E.I. and was formally terminated in 1983. Originally, the level of assistance was to provide for 35 percent of the cost of required construction, equipping or modification of ice-making and refrigeration facilities. This was reduced to 25 percent in 1979 and 1980. In 1981, benefits were increased to 75 percent of the total cost, up to a maximum of $75,000. Funding for the program from 1981 until its termination was provided by the P.E.I. Comprehensive Development Plan (see section I.B.2. of this notice).

Because grants under this program were available only to inshore fish processing facilities used by the fishing industry, we determine that benefits under this program were limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. We recognize that this program terminated in 1983. However, according to our grant methodology, grants bestowed from 1974 through the program's termination confer benefits during the review period.

In our preliminary determination, we based our findings on information submitted in the response stating that, of all companies which had received grants under this program, only seven exported certain fresh Atlantic groundfish to the United States during the review period. However, we were unable to verify this statement. We therefore are using, as best information available, all grants received by fishermen's cooperatives and by companies holding fresh fish export licenses during the review period. We allocated these grants over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated

an estimated net subsidy of 0.003 percent *ad valorem.*

24. P.E.I. Fish Box Pool Program (FBPP)

In 1975, the DFL instituted the FBPP to provide commercial fishermen with safer and more sanitary containers in which to transport their catch. These tote boxes, constructed of heavy duty plastic, were purchased by the DFL in bulk and made available to P.E.I. commercial fishermen at cost. The commercial fishermen had the option of either purchasing the boxes outright or taking out a five-year, five percent interest loan from the DFL to finance the purchase. Loans were provided under this program until 1979. In 1980, the DFL sold fish boxes to fishermen on a cash basis only. The program terminated in 1980.

In our preliminary determination, we stated that this program had been terminated. However, during verification, we obtained information which indicated that six loans under this program were still outstanding.

Because these loans were available only to commercial fishermen, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries. In addition, because we have no information on the interest rates charged on certain loans, nor information on principal repayments for certain other loans, as best information available, we also determine that loans were provided on terms inconsistent with commercial considerations. Hence, they are countervailable.

To calculate the benefit from this program, because of the lack of information provided on interest rates or payment terms, and given the small value of loans outstanding, we are treating the outstanding balance as a grant and expensing the total during the review period. Dividing the benefit by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.002 percent *ad valorem.*

25. P.E.I. Technical Upgrading Program

Based on information contained in the Department of Fisheries and Labor Annual Report (P.E.I. Annual Report), we found that the government of P.E.I. operates the Technical Upgrading Program. This program provides funding to commercial fishermen and processors to attend industry meetings and receive specialized training.

Because grants under this program are provided exclusively to the fishing industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. To calculate the benefit from this program, because information was unavailable on expenditures during the review period, we used, as best information available, the total value of grants reported in the 1983 P.E.I. Annual Report as representing the amount disbursed during the review period. Dividing that amount by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated subsidy of 0.001 percent *ad valorem.*

26. P.E.I. Fresh Fish Marketing Program

Based on the information contained in the P.E.I. Annual Report, we found that the government of P.E.I. operates the Fresh Fish Marketing Program. Under this program, the DFL, in association with P.E.I. groundfish processors, entered into a contract arrangement with a New England marketing firm to market fresh P.E.I. groundfish in the New England market. Because this program promotes exports, we determine that assistance under this program confers benefits which constitute export subsidies.

To calculate the benefit from this program, because information was unavailable on expenditures during the review period, we used, as best information available, the total value of financial assistance reported in the 1983 P.E.I. Annual Report as representing the amount disbursed during the review period. Dividing that amount by the f.o.b. value of production of exports of the subject merchandise to the United States during the review period, we calculated an estimated net subsidy of 0.090 percent *ad valorem.*

27. P.E.I. Fishing Industry Technology Program

Based on information contained in the P.E.I. Annual Report, the government of P.E.I. operates the Fishing Industry Technology Program. This program was initiated to assess opportunities for application of computer technology in the P.E.I. fishing industry. During 1984, a grant was provided to a major fish processor in Kings County for software development and training to upgrade its existing computer system. The software was designed to give better control on yield of fillets on groundfish species.

Because benefits under this program are provided exclusively to the fishing industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. To calculate the benefit from this program, because information was unavailable on expenditures during the review period, we used, as best information available, the total value of grants reported in the 1983 P.E.I. Annual Report as representing the amount disbursed during the review period. Dividing that amount by the f.o.b. value of production in Atlantic Canada of the subject merchandise during the review period, we calculated an estimated net subsidy of 0.012 percent *ad valorem.*

28. P.E.I. Technology Improvements Program

Based on information contained in the P.E.I. Annual Report, we found that the government of P.E.I. operates the Technology Improvements Program. This program provides financial assistance to processing firms for leasing particular machinery on a trial basis to assess the suitability and economic benefit to the firm's operations. During the 1984 fishing season, three plants participated in the program. Two of the machines tested were a groundfish filleting line and a skinning machine. In addition, three fish unloading systems were purchased by the DFL and were leased to the industry on a trial basis during 1984.

Because grants under this program are provided exclusively to the fishing industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries. In addition, because we have no information on the terms of the assistance provided, nor on the leasing arrangements entered into, we determine that the provision of these benefits is inconsistent with commercial considerations, and is therefore countervailable. To calculate the benefit from this program, because information was unavailable on expenditures during the review period, we used, as best information available, the total value of assistance reported in the 1983 P.E.I. Annual Report as representing the amount of a grant disbursed during the review period. Dividing that amount by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.002 percent *ad valorem.*

29. P.E.I. Onboard Fish Handling Systems Program

Based on information contained in the P.E.I. Annual Report, the government of P.E.I. operates the Onboard Fish Handling Systems Program. The government provides assistance to commercial vessel owners at the rate of 25 percent of the installed capital cost, to a maximum of $10,000, for onboard

fish gutting machinery and fish cooling units. According to the 1984 P.E.I. Annual Report, two grants were given to vessel owners in 1982. No applications for assistance were received in 1983 or 1984.

Because benefits under this program are provided exclusively to the fishing industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. To calculate the benefit from this program, because information was unavailable on expenditures during the review period or for prior years, we used, as best information available, the total value of grants reported in the 1984 P.E.I. Annual Report as representing the amount disbursed during the review period. Dividing that amount by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem.*

30 Quebec: Vessel Construction Assistance Program (VCAP)

Under the direction of the Ministry of Agriculture, Fisheries and Food (MAFF), the government of Quebec operates the VCAP. This program, which was established in 1972 and originally administered by the Ministry of Industry, Commerce and Tourism, provides grants to commercial fishermen to reimburse a portion of the cost of a boat. Only boats measuring between 25 and 35 feet that are constructed with materials from Quebec and equipped with storage containers which correspond to the regulations of the Quebec Standards Bureau qualify under the VCAP. If the commercial fisherman sells the boat within five years without MAFF authorization, a prorated portion of the grant must be repaid.

Because grants under this program are available only for vessels used by commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. To calculate the benefit from this program, we allocated the grants received in fiscal years 1981 through 1985 over 18 years. Grants were first provided under this program in 1972. However, no information on the grants bestowed from 1972 through 1980 was available. Therefore, for each of those years, we used, as best information available, the average value of the grants bestowed during the period 1981–1985, and allocated those grants over 18 years as well. Applying the grant methodology and dividing by f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subisdy of 0.028 percent *ad valorem.*

31. Quebec: Gear Subsidy Program (GSP)

Under the direction of MAFF, the government of Quebec operates the GSP. This program, which was established in 1972 and originally administered by the Ministry of Industry, Commerce and Tourism, provides grants to commercial fishermen to reimburse 25 percent of the purchase price of hooks, leaders, lines and metallic shellfish traps. To be eligible for this program, fishermen must purchase materials from Quebec suppliers for the construction of the gear.

Because benefits under this program are available only for gear used by commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. To calculate the benefit from this program, we allocated the grants received in fiscal years 1981 through 1985 over 12 years. Grants were first provided under this program in 1972. However, no information on the grants bestowed from 1972 through 1980 was available. Therefore, for each of those years, we used, as best information available, the average value of the grants bestowed during fiscal years 1981–1982 as representing the value of grants bestowed from 1972 through 1980, and allocated those grants over 12 years as well. We used the average for only these two years because in 1982 certain gear purchases became ineligible. Grants in years prior to 1980 are more accurately reflected by the average for fiscal years 1981–1982. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.041 percent *ad valorem.*

32. Quebec: Insurance Premium Subsidy Program (IPSP)

Under the direction of MAFF, the government of Quebec operates the IPSP. This program, established in 1981, provides reimbursements to eligible participants equal to 50 percent of the cost of fishing vessel insurance. Benefits are available to professional harvesters who own fishing vessels and to fishing corporations whose members conduct fishing operations. If the harvester transfers or sells the boat or if the insurance is prematurely cancelled, a prorated portion of the grant must be repaid to MAFF.

Respondents contend that benefits provided under the IPSP do not constitute countervailable benefits because there is no preferential treatment for the fishing industry. They claim that the fishing industry is considered just one of the "agro-alimentary" industries overseen by MAFF, and that programs providing similar benefits are available for 58 crops.

The programs referred to by the respondents are administered by the Regie des Assurances Agricoles du Quebec (the Regie), in accordance with the Crop Insurance Act. Under that Act, the government of Quebec may issue regulations establishing insurance schemes for mixed farming and commercial crops. Funding for the insurance schemes is provided jointly by the government of Quebec and the participating farmers on an equal basis. Only those crops for which specific regulations have been enacted are covered by an insurance scheme run by the Regie; coverage is not available for all crops, nor is it available to other industries in the agriculture sector (*e.g.*, livestock). By definition, benefits under the Crop Insurance Act are limited to a specific group of industries.

Similarly, under the IPSP, benefits are limited exclusively ot the fishing industry. There is no evidence that this program is part of a broader government of Quebec policy to provide comparable benefits to all industries in the "agro-industrial" sector. Therefore, we determine this program to be limited to a specific enterprise or industry, or group of enterprises or industries, and to be countervailable. Dividing the value of the premium reimbursements to the fishing industry during the review period by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.043 percent *ad valorem.*

33. Quebec: Large Vessel Construction Program

Based on information contained in the Annual Report of the Ministry of Agriculture, Fisheries and Food, the government of Quebec also provides grants for the construction of boats measuring more than 35 feet. Originally, grants covered 35 percent of construction costs, but in 1984 individual grants were increased to 50 percent of costs. A commercial fisherman is required to demonstrate that 75 percent of earned income derives from fishing and undertake to use the vessel in fishing operations for a minimum of five years. Because grants under this

program are provided only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

According to our grant methodology, we would normally take financial data for the last 18 years, the average useful life of boats, and allocate grants in each year over an 18 year period. However, because financial data were unavailable for years other than 1983–84, we used, as best information available, the total grants disbursed in 1983–84 as representing the amount disbursed during the review period, and expensed the full amount to the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.144 percent *ad valorem.*

34. Quebec: Loans From the Ministry of Agriculture, Fisheries and Food

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, the government of Quebec offers loans to commercial fishermen for the construction of new vessels, repair of used vessels and equipment, and consolidation of debt. Because benefits under this program are available only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. In addition, because information was not provided on the terms or interest rates of these loans, we also determine that these loans were provided on terms inconsistent with commercial considerations, and are, therefore, countervailable.

No financial data were available on the amounts of loans disbursed in any year other than 1983–84. Therefore, to calculate the benefit from this program, we used, as best information available, the amount of funds disbursed in 1983–84 as representing a short-term interest-free loan provided during the review period. We used as our benchmark the 90-day prime corporate paper rate. Dividing the benefit by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.045 percent *ad valorem.*

35. Quebec: Grants for Engine Purchases

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, the government of Quebec provides grants to commercial fishermen for the purchase of engines for boats measuring less than 35 feet. Because grants under this program are provided only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

Using our grant methodology, we would normally take financial data for the last 12 years, the average useful life of equipment, and allocate grants in each year over a 12 year period. However, because financial data were unavailable for years other than 1983–84, we used, as best information available, the total grants disbursed in 1983–84 as representing the amount disbursed during the review period, and expensed the full amount to the review period. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.021 percent *ad valorem.*

36. Quebec: Grants for Fish Transport and Seafood Processing Tanks

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, the government of Quebec provides financial assistance for fish transport and the purchase of processing tanks. Grants over 50 percent of the acquisition costs of approved tanks and reservoirs. Because this program provides benefits exclusively to the fishing industry, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

According to our grant methodology, we would normally take financial data for the last 12 years, the average useful life of equipment, and allocate grants in each year over a 12 year period. However, because financial data were unavailable for years over than 1983–84, we used, as best information available, the total grants disbursed under this program in 1983–84 as representing the amount disbursed during the review period. We then expensed the full amount to the review period. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.029 percent *ad valorem.*

37. Quebec: Grants to Processing Enterprises for Capital Equipment

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, we found that the government of Quebec will assume 20 percent of the cost of eligible capital equipment for processing firms wishing to modernize their plants in conformance with construction and operation standards set forth in the Agricultural, Marine and Food Products Act. Because these grants are available only to the fishing industry, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

According to our grant methodology, we would normally take financial data for the last 12 years, the average useful life of equipment, and allocate grants in each year over a 12 year period. However, because financial data were unavailable for years other than 1983–84, we used, as best information available, the total grants disbursed under this program in 1983–84 as representing the amount disbursed during the review period and expensed the full amount to the review period. Applying this methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.109 percent *ad valorem.*

38. Quebec: Ice-Making and Fish Chilling Assistance

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, we found that the government of Quebec operates ice-making equipment and cold-storage warehouses to provide commercial fishermen and processing firms with an inexpensive source of fish chilling operations. The government produces ice which the annual report states is then sold to processing plants at a price equal to its production costs, and to Quebec fishermen at a price equal to 53 percent of production costs. It also offers space in cold storage warehouses operated by the Equipment Management Division to processing firms during temporary shortfalls in commercial cold storage space.

Because these benefits are provided only to the fishing industry, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. In addition, because information was not provided on rates charged for similar services, we find that these goods and services are provided at preferential rates, and are countervailable. To calculate the benefit from this program, we used, as best information available, the cost of the government of providing these services as representing the amount of the benefit. Furthermore, because financial data were unavailable for years other than 1983–84, we used expenditures in 1983–84 as representing

expenditures during the review period. We expensed this amount to the review period. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.077 percent *ad valorem*.

III. Programs Determined Not To Confer Subsidies

We determine that subsidies are not being provided to producers or exporters in Canada of fresh Atlantic groundfish under the following programs:

A. Federal Programs

1. Atlantic Fisheries Management Program

The Atlantic Fisheries Management Program is a federal program for the conservation and restoration of Canada's fisheries resources. The program's functions include: setting total allowable catches, licensing fisheries and vessels, administering biological conservation measures, managing fleet quotas, performing research and surveillance, and monitoring domestic and foreign fleets. The program does not provide any financial assistance to the groundfish industry. Resource management, like the government's regulation of other business activities, is a legitimate government function undertaken to ensure the orderly conduct of business in the general public interest.

Research under the program falls into three general categories: resource assessment, habitat assessment, and aquaculture and resource development. The results of the research are published in publicly available technical and scientific journals.

Because no financial assistance is provided under the program, the research results are publicly available, and the research is not targeted to assist a particular industry, we determine that the program is not countervailable.

2. DFO Marketing Intelligence and Industry Services Branch

As previously discussed in section I.A.3., the Marketing Intelligence and Industry Services Brandh (MIIS) is part of the DFO's Marketing Directorate. MIIS provides market analyses, market research and forecasts and policy advice to DFO management. Its reports are used by the DFO, as well as other government agencies, industry, universities, international organizations, bankers, and the general public. Because MIIS provides no financial assistance to the groundfish industry and because it market reports are publicly available, we determine that no countervailable benefits are provided under MIIS.

3. Enterprise Development Program (EDP)

EDP, which was established in 1977 and terminated in 1983, was administered by the Federal Department of Industry, Trade and Commerce. The purpose of EDP was to increase productivity in the manufacturing and processing sectors by encouraging innovations in the production process. EDP provided loans and grants to manufacturers (individuals, firms, or corporations engaged in a manufacturing or processing activity) and term loan insurance to banks lending to manufacturers or processors.

The groundfish industry received both grants and term loan insurance, but no loans. We verified that term loan insurance and grants provided under EDP were not limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that assistance given to the groundfish industry under this program is not countervailable.

4. Section 146 of the Unemployment Insurance Act

Under the Unemployment Insurance Act, unemployment insurance is provided to all individuals working under a contract of service. Section 146 of that Act authorizes the Canada Employment and Immigration Commission to operate and establish a scheme of unemployment insurance for self-employed fishermen. Fishermen that work under a contract of service are covered under the general provisions of the Act.

Part V of the Unemployment Regulations provides the regulations covering self-employed fishermen (the Fishermen's Regulations). Under the Fishermen's Regulations, the buyer of the catch is considered the employer of the fisherman. All the provisions of the Act and the general regulations apply to self-employed fishermen except where modified by the Fishermen's Regulations.

In order for the self-employed fishermen's unemployment insurance program to be deemed a subsidy, it is necessary that the insurance be provided on preferential terms to a specific enterprise or industry, or group of enterprises or industries. We find that self-employed fishermen do not receive unemployment insurance on preferential terms.

The employee and employer premiums (as a percentage of earnings) paid under the general unemployment program and the program for self-employed fishermen are the same. The number of weeks a self-employed fisherman must work and the number of weeks a worker under the general unemployment program must work to qualify for unemployment insurance is the same. The benefit levels for each are set at 60 percent of their average insurable earnings, although the self-employed fisherman may take the average of his ten highest earning weeks if he has 15 or more weeks of fishing. The number of initial benefit weeks is calculated on a one-to-one basis for workers covered under the general unemployment program; for every one week of employment the worker qualifies for one week of benefits. The number of initial benefit weeks for self-employed fishermen is calculated on a six to five ratio; *i.e.*, for every six weeks of employment the self-employed fisherman earns five weeks unemployment insurance. The number of extended benefit weeks available to the self-employed fisherman and a worker covered under the general unemployment program is the same, although a self-employed fisherman is not eligible to receive benefits between May 15th and November 1st.

Thus, while the terms of unemployment insurance for self-employed fishermen and general contract workers are similar in many aspects, they are not identical. In those areas where they differ, some terms appear to benefit contract workers vis-a-vis self-employed fishermen (calculation of initial benefit weeks and the duration of extended benefits), whereas the use of the ten highest earnings weeks for calculating the level of benefits appears to benefit self-employed fishermen vis-a-vis contract workers.

Comparing the terms of unemployment insurance provided under the Fishermen's Regulations for self-employed fishermen to those provided under the Unemployment Insurance Act and Regulations, we determine that unemployment insurance provided to self-employed fishermen is not provided on preferential terms and therefore is not countervailable.

5. Import Duty Remission Under the Machinery Program

Petition alleges that fishermen and processors have import duties remitted on machinery not available from Canadian Manufacturers, and that this program may be administered in such a manner as to *de facto* limit the program to a specific industry or group of industries. This program is governed by the Financial Administration Act and

was established in 1968. The Machinery Program covers machines such as construction equipment, metal working machinery, and general purpose machinery such as hydraulic pumps, and pulp, paper and plastics machinery. The remission of duty is authorized by the Governor-in-Council on the recommendation of the Minister of Regional Industrial Expansion. The Machinery and Equipment Advisory Board (MEAB) advises the Minister on the eligibility of imported machines for remission of duty. To qualify for approval, the remission of duty must be in the public interest and reasonably equivalent machinery must not be available in Canada. We verified that only applications for machinery available for production in Canada were rejected.

Since all applications covering machinery not available in Canada were approved, we found no evidence of governmental discretion in the administration of this program and, therefore, no *de facto* limitation on use of the program. Since the types of machinery eligible for remission of import duties are available for use to a wide range of industries, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and therefore is not countervailable.

6. Fishing Vessel Insurance Plan

Established in 1953 and administered by the Economic Programs Branch of the DFO, the Fishing Vessel Insurance Plan insures commercial fishermen against abnormal losses. The plan covers losses or damage caused by perils at sea, accidents in loading, discharging or handling cargo, accidents occurring on dry-docks, explosions on shipboard, and the negligence of master, officers, crew or pilots, provided that any loss or damage has not resulted from lack of due diligence.

The purpose of this program is to ensure that marine insurance is available throughout Canada. Although the DFO offers insurance in remote areas of Atlantic Canada where certain private insurers elect not to operate due to the relatively high expenses associated with maintaining offices in inaccessible regions. The DFO is able to avoid these expenses because there is already some form of DFO presence in most regions (for licensing or inspection services). The premium rates are established as a percentage of the appraised and insured value of the hull and machinery. They are adjusted annually by taking the sum of indemnities paid in the preceding five-year period and dividing by the sum of the total insured value at the end of each of the preceding five years.

This program was preliminarily determined to be countervailable because information had not been provided on premium rates charged for identical or similar insurance.

At verification, we found that FVIP premiums are comparable to premiums charged by private insurers and in many instances, are actually higher. In recent years, many commercial fishermen have switched from the FVIP to private insurers to obtain lower premium rates. Therefore, we determine that the FVIP does not offer insurance at preferential rates and, consequently, does not confer a countervailable benefit.

7. Federal Assistance for Bait Services Program

The Bait Services Program was established by the Dominion of Newfoundland before it became a province of Canada in 1949. The federal government agreed to take over this program as a condition of Newfoundland becoming part of Canada. The program is presently administered by the federal DFO. The Bait Services program provides commercial fishermen with a source of bait independent of the local processors. We verified that the Bait Service sells bait at prices identical to those charged by private suppliers to unrelated purchasers. Since the prices charged by the government are not preferential when compared to the prices charged by private suppliers to unrelated purchasers, we determine that this program is not countervailable.

B. Provincial Programs

1. New Brunswick: Marketing and Promotion Activities

The New Brunswick Department of Commerce and Technology (DCT) offers three separate programs to small, newly-established companies to assist in their development, marketing, and export activities. These programs are Trade Services, Marketing Services, and Production Services. Technical/Marketing Assistance was eliminated at the end of 1980 and its functions have been absorbed by the production services section. There are no provincial rules or regulations that specifically provide for the various marketing and export programs; all are activities performed by the Department of Commerce and Technology under the direction of its Minister and the Deputy Administrator of the Department. Funding for the programs is authorized by the Financial Administration Act of October 1984.

Participation in these programs is voluntary and open to all small, newly-established companies in New Brunswick. None of the three programs is designed to deal exclusively with export promotion and, of the three programs available, the only one utilized by producers of groundfish was Trade Services.

These programs provide assistance in attending trade shows and missions which might be of use to manufacturers and processors in the province. These activities are available for both export and domestic marketing. The DCT shares the costs on a 50–50 basis for attending a trade show if the manufacturer can show that it is financially solvent, has the production capability to supply a product, and will follow up on any trade leads uncovered. The manufacturer or processor must be a resident of the province of New Brunswick. In fiscal year 1985, less than four percent of the total monies allocated for Trade Services was expended on the promotion of the subject merchandise. The remaining funds were utilized by various other industries within the province.

The Marketing Services section makes marketing professionals available to help companies establish proper marketing techniques. It also provides financial assistance for expanding marketing programs. The program is available throughout the province to all small, newly-established companies who may need marketing assistance. DCT marketing professionals work with the company in implementing a proper marketing scheme and, if financial assistance is needed, provide funds on a 50–50 cost sharing basis to expand into new marketing projects.

Production Services are available to all small, newly-established companies to provide technical advice and assistance in solving problems associated with the development of their products. Although most assistance was of an advisory nature, some financial assistance was also provided on a 50–50 cost sharing basis.

Because the services performed by the DCT are available to all industries within the province, for both domestic and export promotion, we determine that receipt of assistance is not contingent on exportation, nor is it limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we find that New Brunswick marketing and promotion activities are not countervailable.

2. New Brunswick: Training Services

Based on information contained in the New Brunswick Department of Fisheries Annual Report, we found that the government of New Brunswick operates the Training Services Program. Courses for commercial fishermen include electronic navigation, refrigeration, hydraulics, engineering and various levels of fishermen competency. Other courses are offered in conjunction with Transport Canada to provide certification in areas such as Ferry Steamship Master, Small Pleasure Craft Master and various levels of Engineering Competency. Assistance is also provided by the school to various groups organized throughout the province. Because the benefits under this program are not provided to a specific enterprise or industry, or group of enterprises or industries, we conclude that benefits under this program are not countervailable.

3. Newfoundland: Exemptions from Sales and Gasoline Taxes

Under the direction of the Tax Administration Branch of the Ministry of Finance, the government of Newfoundland offers exemptions from the application of the Retail Sales Tax Act and the Gas Tax Act, both enacted in 1978. The sales tax applies a flat rate of 12 percent on the consumption of tangible personal property. Its purpose is to tax only the final consumer of retail products. Pursuant to this purpose, the regulations enumerate specific exemptions in all areas of commercial production, including production of primary products: agriculture, fish, forestry, and minerals; and manufacturing and processing. Vessels or boats purchased by commercial fishermen, farm equipment and supplies, all productive capital equipment purchased for use in manufacturing, and all tangible personal property to be processed, fabricated, or manufactured for purpose of resale, are exempt.

The gas tax is an *ad valorem* tax based on 22 percent of the average retail price of fuel and is used to provide funds for highway repair. Exemptions apply to all uses of gas that are not related to the use of a motor vehicle on a public roadway. We verified that the gas tax exemptions are used by a broad spectrum of industries. Therefore, we determine that benefits provided under these programs are not limited to a specific enterprise or industry, or group of enterprises or industries, and are not countervailable.

4. Newfoundland: Newfoundland and Labrador Development Corporation (NLDC)

A 1972 agreement between the government of Newfoundland and the federal government created the NLDC as a crown corporation to promote small- and medium-size businesses by providing loans and equity investments to all commercial sectors. Until March 1984, the program received partial federal funding. Since then, it has been solely under provincial responsibility, although any operating losses are shared on an equal basis by Newfoundland and the federal government. Besides fishing, the NLDC has assisted enterprises in manufacturing, mining, forestry, agriculture, services, and tourism. Interest rates are established once a month at one percent or more above the cost of funds charged by the government to all crown corporations. The rate is fixed during the term of a loan. We verified that this rate is consistently higher than the prime rate charged by chartered banks. The maximum repayment period is 15 years, and is based on the average useful life of the asset. We verified that the dividend rate on equity investments is normally higher than the average market rate. The NLDC also offers business and technical information on an informal basis in response to anyone's inquiries.

Because a wide range of industries receive financing from the NLDC and because loans and equity investments are not provided on terms inconsistent with commercial considerations, we determine that this program meets neither of the two tests in section 771(5)(B)(i) of the Act, and is not countervailable.

5. Newfoundland: Rural Development Loan Program (RDLP)

Under the direction of the Rural Development Authority and pursuant to the Newfoundland Department of Rural Development Act of 1973, the government of Newfoundland operates the RDLP. The Rural Development Authority is comprised of three ministers: the Minister of Rural Development, the Minister of Forestry and Agriculture, and the Minister of Fisheries, as well as three to five other appointed members. The RDLP promotes the development of small industries and rural enterprises by providing loans to both emerging and existing businesses. "Rural" is interpreted to embrace all of Newfoundland including St. Johns, the capital of Newfoundland. Loans are at fixed interest rates for a maximum of $25,000. Maximum repayment periods are 15 years for buildings, ten years for new capital equipment, and three years for used equipment. Security is required for all loans. The regulations authorize loans for many purposes including the purchase and repair of equipment, the purchase, construction, and renovation of buildings, land purchases, and working capital needs. The only producers specifically excluded from the program are fish harvesters who already receive loans from the Fisheries Loan Board.

We verified that loans are provided to any industry in primary resource production, manufacturing, processing, services and tourism. Therefore, we determine that benefits provided under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, or to particular regions within the province and are not countervailable.

6. Newfoundland: Loan Deficiency Guarantee Program

The government of Newfoundland's Ministry of Finance, pursuant to the Crown Guarantee and Loan Act of 1973, has guaranteed short-term working capital loans to eligible fishing companies since 1977. We verified that under this program, guarantees have been provided to a variety of industries including fishing, mining, agriculture, pulpwood harvesting and sawmilling. All loans that are guaranteed must be secured, and a guarantee fee of between 0.5 and 1.0 percent is charged on the loans. Because the guarantees provided under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that they are not countervailable.

7. Newfoundland: Market Development Information Service

This service, offered by the Support services Branch of the Newfoundland Department of Fisheries, provides information on all aspects of the fishing industry to anyone who inquires. As such, we determine that the service provided under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, and is not countervailable.

8. Newfoundland: Construction of Fisheries Access Roads

Based on information contained in the Public Accounts for the Department of Fisheries, the government of Newfoundland offers grants to local fishermen's committees for the construction of access roads. The

construction is usually undertaken by the Department of Transportation and Communication. All access roads constructed with government funding must be accessible to the public. Newfoundland's road network is not very extensive, so most new roads are necessary additions to the province's infrastructure. Because these roads are open to and used by the public and are used by more than a group of industries, we determine that assistance for road construction provided by the Department of Fisheries does not confer a countervailable benefit.

9. Newfoundland: Market and Product Development Program (MAPD)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland since 1978, has offered grants to any Newfoundland manufacturer, processor, or consulting service to develop new market opportunities and new product lines. A grant may cover up to 50 percent of a project's total cost to a maximum of $50,000. We verified that a wide variety of industries have participated in this program. Therefore, we determine that benefits conferred under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, and are not countervailable.

10. Newfoundland: Rural Development Assistance Program (RDAP)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland provides funds to municipalities in all areas of Newfoundland to undertake development projects which stimulate economic growth in the municipality and region. Grants are aimed at assessment and promotion of economic opportunities. "Rural" is interpreted to embrace all of Newfoundland, including St. Johns, the capital of the province. Because benefits conferred under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, or to particular regions within the province, we determine that they are not countervailable.

11. Newfoundland: Small Business Program

Based on information contained in the Public Accounts for the Department of Development, we found that the P. H. Gardiner Institute for Small Business Studies at the Memorial University of Newfoundland offers the services of its students to help small businesses in any industry prepare feasibility studies, financial statements, accounting systems, marketing studies and other related business activities. The program is designed to assist those small businesses which need advice yet cannot afford commercial rates. Consequently, the only eligibility requirement is a demonstrated inability to pay. Because benefits conferred under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that they are not countervailable.

IV. Programs Determined Not To Be Used

Based on our verification, we determine that producers or exporters in Canada of certain fresh Atlantic groundfish did not use the following programs:

A. Federal Programs

1. Community-Based Industrial Adjustment Program (CIAP)

CIAP was established in 1981 and terminated in 1984. The program was one part of the Industrial and Labor Adjustment Program which was administered by the Department of Industry, Trade and Commerce. The objective of CIAP was to encourage businesses to undertake capital projects in certain designated communities affected by serious industrial dislocations. CIAP financial assistance took the form of grants of up to 75 percent of the consulting costs associated with CIAP projects or loans to cover capital costs and preproduction expenses.

B. Joint Federal-Provincial Programs

1. Fisheries Development Program for Coastal Labrador

This program, which is administered jointly by DRIE and DFO, began in 1981 and is scheduled to terminate in 1987. Its purpose is to improve the quality of fish landed and increase the efficiency of fish processors within the coastal Labrador region of the province of Newfoundland. We verified that no products subject to this investigation are exported from coastal Labrador.

C. Provincial Programs

1. New Brunswick Fuel Subsidy for Fishermen

Based on information contained in the New Brunswick Department of Fisheries 1983 Annual Report, we found that the government of New Brunswick operated the Fuel Subsidy Program. This special program provided five cents per litre to commercial fishermen for fuel used in their fishing vessels during the 1982 fishing season. We found no evidence of any government expenditures under this program subsequent to fiscal year 1983.

2. New Brunswick: Winterization of Fish Plants Program

In 1979, the Department of Fisheries provided a grant to a processor of herring to winterize its plant. We verified that no grants for that purpose were provided to processors of fresh Atlantic groundfish subject to this investigation.

3. Newfoundland: Secondary Processing Interest Subsidy Program (SPISP)

Under the direction of the Department of Fisheries, the government of Newfoundland operates the SPISP. This program was initiated in 1978 to provide interest subsidies to secondary processors of fish for the purchase of machinery and equipment. The program is designed to encourage increased production of fish products processed beyond the whole fish and filleting stage of processing. We verified that no fresh fish producers received benefits under this program during the review period.

4. Newfoundland: Ocean Industries Development Program (OIDP)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland provides funding for the development of research and technology, marketing strategies, and manufacturing and processing techniques in ocean-related industries. The Ocean Industry Development Subsidiary Agreement between the governments of Newfoundland and Canada authorized initiation of the program in 1984. The Department of Development has steered most of the funding into industries which are currently developing the Hibernia offshore oil fields. We verified that no fishing or processing operations have received benefits under this program.

5. Newfoundland: Ocean Industry Capital Assistance Program (OICAP)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland provides assistance to ocean-related manufacturing and technical service industries. We verified that the eligibility requirements for OICAP specifically exclude firms in the primary products sector and that no fish harvesters or processors received benefits under the program.

6. Newfoundland: Newfoundland Oceans Research and Development Corporation (NORDCO)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland offers assistance for research programs concerned with gathering intelligence related to ice and cold water technology. This program seeks to make the exploration and production of mineral resources more feasible by ameliorating the problems associated with ice and cold water. No benefits were provided to the producers of the products under investigation under this program.

7. Quebec: Tax Abatement Program (TAP)

Under the direction of the Fonds de Reliance Industrielle and in accordance with Chapter S-34 of the Act Respecting Fiscal Incentives to Industrial Development (Nov. 1980), the government of Quebec operates the TAP. This program is available to those manufacturing businesses not engaged in initial processing operations in a resource-based industry that are willing to make capital investments in one of two regional zones. These two zones embrace all of the province of Quebec except Montreal. It provides certificates allowing a firm to deduct from taxes payable 25 percent of the value of allowable capital investments, or a maximum of 50 percent of the year's income taxes due, up to a limit of $500,000. This program was terminated in 1981. However, firms participating in the program while it was in effect had the option to claim their earned tax credits during the five years following the issuance of the certificates. We verified that no producers of the subject merchandise claimed tax credits under this program on income tax returns filed during the review period.

8. Quebec: Aide a la Promotion des Exportations (APEX)

Under the direction of the Ministry of Foreign Trade, the government of Quebec operates the APEX. Established in 1972 by the Ministry of Industry, Commerce and Tourism, this program provides grants to cover partial expenses for new export market development programs and attendance at trade fairs. Export markets are defined as those outside the province of Quebec. We verified that benefits under this program were not provided to any exporters to the United States of the subject merchandise during the review period.

9. Quebec: Technological Assistance Service for Business Program (TASBP)

Under the direction of MAFF, the government of Quebec operates the TASBP. This service, which is available to all companies or individuals in industries related to the processing, distribution, and research and development of food products, provides financial assistance, up to 50 percent of total costs, for the development of new products and methods. This service also provides technological counselling on an informal basis to firms in all sections of the food industry. We verified that none of the merchandise subject to this investigation benefitted from financial assistance under this program during the review period.

10. Quebec: Societe de Developement Industriel (SDI) Expansion Program

Under this program, the government of Quebec provided grants as interest cost reimbursement to Quebec firms which increased direct exports by 20 percent over those of the previous years. As stated above, exports are defined as sales outside the province of Quebec. SDI would disburse grants over a five-year period to a participating exporter commensurate with its export performance. Although the program was terminated in 1981, payments are still made to those firms who entered the program in 1980 and 1981. We verified that no firms producing the subject merchandise received grants during the review period. SDI also operates three additional export assistance programs: 1) a consortium program, 2) a new market development program for firms seeking to sell outside the Province, and 3) an export financing program. We verified that no firms producing the subject merchandise received benefits under these programs.

V. Programs Determined Not To Exist

Based on our verification, we determine that the following programs do not exist:

1. New Brunswick: Fish Chilling Assistance Program

This is a program of the federal government. *See* section 1.A.3. of this notice.

2. Newfoundland: Bait Services Program

This is a program of the federal government. *See* section III.A.7. of this notice.

3. Newfoundland: Production Machinery and Processing Technology Program

We verified that this program, alleged by petitioner to provide financial and technical assistance for the design of plant layouts and the development and acquisition of machinery, is the same as the Secondary Processing Interest Subsidy Program. *See* section IV.C.2. of this notice.

4. P.E.I. Fish Chilling Assistance Program

This is a program of the federal government. *See* section I.A.3. of this notice.

5. P.E.I. Fishermen's Holding Unit Program

This is a program of the federal government. *See* section I.B.2. of this notice.

6. Quebec: Joint Federal-Provincial Development Program

This is a program of the federal government. *See* section I.B.4. of this notice.

Petitioner's Comments

Comment 1: Petitioner contends that the Department erred by selecting a short-term loan interest rate as the benchmark for FILP and loans provided by the New Brunswick Fisheries Development Board. Petitioner maintains that most of the loans provided under these programs are long-term and the appropriate benchmark is the long-term corporate bond rate.

DOC Position: The loans given under the two programs mentioned above are long-term variable rate loans. Therefore, the most accurate measure of the benefit to the recipient is obtained by comparing these loans to commercially available loans with variable interest rates. As we did not have long-term variable rate loans as benchmarks, we treated these loans as if they were short-term, one-year loans rolled over each year.

Comment 2: Petitioner contends that the benchmark selected by the Department in the preliminary determination fails to measure correctly the extent of the subsidy provided by the equity infusion into NSP. Petitioner maintains that, in the comparison of the government's rate of return to the rate of return on shares issued to Toronto-Dominion Bank, the Department overvalued the right of the government shares to a future stock dividend. Petitioner maintains that the right to a common stock dividend six years in the future entails a large risk factor not taken into account when current market price is used to value the anticipated return. Petitioner further maintains that the benchmark selected by the Department, the rate of return on stocks issued to Toronto-Dominion Bank,

undervalues the rate of return required by a commercial investor. The Toronto-Dominion stock is an unusual, tax-exempt type of financing which does not meet the Department's criteria of a comparable commercial investment. Because the purchase by Toronto-Dominion was conditioned on the purchase by the government, it is not an accurate measure of what an investor would require without a concurrent purchase by the government. Finally, petitioner maintains that an equity infusion of $105 million into FPIL, which was approved by the federal government in October 1985, should be taken into account by the Department.

DOC Position: Although petitioner maintains that the right to a stock dividend in the future entails a large risk factor in comparison to the current value of the stock, no methodology for the measurement of their risk factor or of its effect on the value of the stock dividend is suggested. Indeed, any adjustment for the additional risk would be difficult to estimate and inexact, and if a long-term investment outlook is assumed, would not be large. In our determination of a benchmark, we took the spread between a taxed bond and a tax-free bond and added that onto the return of the Toronto-Dominion difficulty preferred shares, to account for the fact that the term-difficulty preferred shares are tax exempt. With this modification, we believe that the term-difficulty preferred shares reflect the most accurate benchmark of a comparable commercial investment in this case.

We did not examine the issue of an additional equity infusion into FPIL because the infusion took place after the review period.

Comment 3: Petitioner contends that the use of an *ad valorem* subsidy rate improperly gauges the real benefit provided to the fresh groundfish industry in two ways: (1) The estimated sales value provided in the response overstates the value of landings of fresh whole fish, and (2) the allocation of benefits to the groundfish sector over production of all fish and shellfish distorts the subsidy conferred on the production of the subject merchandise. In addition, petition contends that the use of a per pound net subsidy calculation conforms with Department policy and avoids valuation difficulties (See *Lamb Meat from New Zealand,* 50 Fed. Reg. 37708 (*Lamb*) and *Swine,* supra). Finally, they argue that the use of national data understates the subsidy to the Atlantic Canada groundfish industry, since Atlantic Canada has received disproportionately higher benefits than the nation as a whole.

DOC Position: At verification, we learned that what we referred to in our preliminary decision as the value of landings was in fact the f.o.b. value of production. While mislabeled in our preliminary determination, we believe that this is the correct value over which benefits should be allocated. As stated in the "Scope of Investigation" section of this notice, the product designated as "fresh whole fish" goes through the production line where the fish can be processed by removal of heads, viscera, fins, or any combination thereof. Also, by definition, fillets (including fish steaks) are processed. Therefore, we believe that the value of production, and not the value of landings (*i.e.*, the value of fish as it is landed off the vessel) is the proper value over which to allocate benefits.

With respect to the use of a per pound subsidy rate, the facts in *Lamb* and *Swine* were quite different from those in this case. In the two cited cases, we were dealing with coverting one animal (hogs or lamb) into one product (pork meat or lamb meat). Conversion from animal to product was very simple. In this case, we are dealing with a variety of species each having a different yield, being processed into numerous fish products.

In order to assess duties accurately on a per pound basis, we would have to calculate a separate subsidy rate for each species and for each product thereof. Information on the record does not enable us to do so. Regarding petitioner's contention on valuation difficulties, we have been informed by U.S. Customs that collecting cash deposits on an *ad valorem* basis can be done.

Finally, with respect to the allocation of benefits over the appropriate denominator, because we are dealing with data, we have allocated benefits over the appropriate production value of the group receiving benefits. If we look at a program providing benefits to the Atlantic fishing industry, for example, it is correct to divide by the f.o.b. value of production for Atlantic Canada. In those cases where, in the preliminary determination, benefits to one group were allocated over the value of production of a different group, corrections have been made and are reflected in this determination.

Comment 4: Petitioner contends that Canada's seasonal unemployment program for self-employed fishermen is countervailable on the grounds that it bestows a benefit upon the production of groundfish and that the subsidy is specifically available to the Canadian fishing industry. Petitioner argues that: (1) The self-employed fishermen's program constitutes a specific statutory exception to Canada's unemployment insurance act: (2) the self-employed fishermen's provisions are inconsistent with the insurance scheme provided under the general act; (3) the unique features of the program, including the method by which it is financed leave no doubt that the program is separate; and (4) the benefit provider under the program is disproportionate.

DOC Position: Unemployment insurance, like social security or welfare, is the government provision of a service. Since unemployment insurance is the provision of a service by the government of Canada, we must determine whether the provision of unemployment insurance to self-employed fishermen under the Fishermen's Regulations is provided on preferential terms. When we compared the system of unemployment insurance for self-employed fishermen to the general unemployment system, we determined that the government of Canada did not extend unemployment insurance to self-employed fishermen on preferential terms. (*See* section III.A.4. of this notice).

The purpose of unemployment insurance is to provide benefits to workers who are unemployed. We, therefore, realize that workers in certain industries such as those working in seasonal or cyclical industries, will receive a higher ratio of return (in terms of benefits received to premiums paid) than the average worker who remains fully employed throughout the year. The government does not extend preferential terms to the provision of unemployment insurance. Self-employed fishermen make premium payments at the same rate when employed and receive benefits on the same general terms when unemployed as to participants in the general unemployment insurance program in Canada.

Comment 5: Petitioner contends that under the Small Craft Harbours program benefits provided to improve infrastructure are countervailable because the infrastructure is used almost exclusively by fishermen and fish processors. Further, petitioner contends that small craft harbors are not part of Canada's transportation infrastructure. Petitioner contends that the program benefits two specific industries, commercial fishing and recreational boating, and that activities such as the construction and maintenance of wharves, gear storage facilities and power outlets are not inherently governmental activities. Finally, petitioner argues that the

facilities are not made available on equal terms to any potential user, but rather, that licensed Canadian commercial fishing vessels are given preferential rates for services such as berthage at government-owned docks and are provided a countervailable subsidy.

DOC Position: To determine whether the provision of infrastructure provides a countervailable subsidy, we must determine whether (1) the government limits who can move into the area where the infrastructure has been built; (2) the infrastructure is used by more than a specific enterprise or industry, or group of enterprises or industries; and (3) industries have equal access to, or receive benefits from the infrastructure on the basis of neutral criteria. We also stated in *Carbon Steel Wire Rod from Saudi Arabia.* (50 FR 4206) that where limitations on use do not result from government activities, but instead result from the inherent characteristics of the good or service being provided, the government actions do not confer a countervailable benefit.

The government of Canada is responsible for the administration and operation of all the harbors in the country. In 1973, the administration of the smaller harbors was moved to the jurisdiction of the Small Craft Harbours Directorate. No government limitation has been placed on the use of the harbors. Users of the harbors include fishermen, recreational boaters, commercial transport vessels, coastal boats, ferries, seaplanes, tourists, and boats and ships seeking shelter from storms. We therefore find that the small craft harbors are used by more than a specific industry or group of industries and that the only limitation on the use of these harbors is due to the inherent characteristics of the facilities. However, we do find the program to be countervailable, to the extent that commercial fishing vessels are provided with preferential rates for harbor services.

Comment 6: Petitioner maintains that the Atlantic Fisheries Management Program underwrites extensively research projects that provide direct and indirect benefits to the fishing industry. Petitioner argues that the basis for DOC's preliminary determination, that the research results under the program are publicly available, ignores the express holding of the Court of International Trade in *Agrexco Agricultural Export Co., Ltd.* v. *United States (Agrexco).*

DOC Position: In *Agrexco,* the court stated that it was immaterial whether government research was disseminated to all groups, in determining whether a subsidy was provided. Instead, the court stated that Commerce should determine whether the research and development is targeted to assist a particular industry. We believe that our determination that DFO research is not countervailable, does not conflict with *Agrexco.*

Much of DFO research is done in support of Canada's international fishing responsibilities, negotiations, and agreements. Other research is done to support and to provide advice on domestic fishing and marine policy. A review of the research conducted, sponsored, and published by DFO includes such areas as "Resource Prospects for Canada's Atlantic Fishing 1985–1990," "Larval Crab (Decapoda: Brachyura) Zoeas and Megalopas of the Scotia Shelf," and "Analysis of Lake and Drainage Area Counts and Measures for Selected Watersheds Across Ontario's Shield Region." We do not believe that the scope of research conducted by DFO is targeted to assist a particular industry.

Comment 8: Petitioner maintains that the federal Bait Services Program is not run on a commercial basis, because the federal government expends substantial sums toward the program's annual operating expenses in order to keep the program afloat. Petitioner argues that the absorption of such operating losses proves that provision of bait is at a preferential price.

DOC Position: For the provision of a government good or service to be countervailable, it must be provided on preferential terms. To determine if this program provides bait at preferential prices, we compared prices of bait sold under the program with the price of bait charged by commercial bait suppliers. We verified that the price charged under the Bait Services Program is the same as that charged by commercial bait suppliers.

Respondents' Comments

Comment 1: Respondents argue that if a grant program is in existence for more than one year, grants under the program should be considered "recurring" and the grant amount expensed in the year of receipt. They further contend that if the estimated net subsidy for an individual program is *de minimis* the benefits under the program must be expensed in the year of receipt.

DOC Position: We disagree. Simply because a program provides grants to different recipients in more than one year does not make the grants given under the program "recurring." Recurring benefits are benefits which the *same* recipient can participate receiving year after year. Such benefits are expensed in the year of receipt.

The *de minimis* threshold is applicable only after the estimated net subsidy rates for all programs are added together. Each program is not required to cross the *de minimis* threshold. We established this test to ensure that countervailable grants which could be *de minimis* in a given year if allocated over time, and thus, could lead to a negative determination, would be countervailed.

Comment 2: Respondents contend that the federal FILP and numerous provincial fishery loan and loan guarantee programs are not countervailable because the relevant government operates loan and loan guarantee programs for farmers or small businessmen on comparable terms. They further contend that there is evidence that the farm and fishery loan programs are linked in their genesis and continuing operation, and, therefore, the government has made loans and loan guarantees available to a wide range of industries. Respondents further contend that if we find the fishing loan and loan guarantee program to be countervailable, the appropriate benchmarks should be those charged under the farm program.

DOC Position: We have determined that the fishery laon and loan guarantee programs are countervailable. On a case-by-case analysis of interest rates, administration of funds, evidence of government policy to treat industries equally, and the purpose of the program as stated in enabling legislation, we have concluded that the fishery loan programs are not integrally linked with other loan programs available to other sectors or industries. Furthermore, although other government loan programs may exist for the agricultural sector, these programs are not an alternative source of funds for fishermen. Therefore, we have used a commercial rate of interest as the benchmark because it is most representative of what a fisherman would otherwise have to pay for a loan in Canada.

Comment 3: Respondents argue that benefits provided under the IRDP are not countervailable because the designation of regions for benefits is based on neutral economic criteria. Respondents cite *Certain Steel Products from the Federal Republic of Germany,* (47 FR 39345) (*German Steel*) to support their position. Respondents also argue that IRDP benefits are provided to encourage economic development and expansion in all regions of Canada, and

are provided to a wide variety of industries in every province in Canada.

DOC Position: We find no merit in the argument that according to our past determinations the provision of regional benefits based on neutral criteria is not countervailable. In our *German Steel* determination, assistance provided as part of a national policy to relieve unemployment was provided on identical terms across Germany; regional designations were merely for administrative convenience. Therefore, we did not find this program to be a regional subsidy. IRDP provides grants, in order to encourage economic development and expansion, to different regions at different funding levels according to the tier designation of the region. The level of funding available to an eligible applicant is determined by geographic region. Thus, the region an applicant is in is determinative of the level of assistance and not simply an administrative convenience.

Comment 4: Respondents contend that, because RDIP provides grants to industries located throughout most of Canada, the Department erroneously concluded that development incentives provided under RDIP are limited to a specific group of enterprises or industries. Furthermore, respondents argue that section 771(5) of the Act does not support a regionality test, and that such a test should not be used to determine the existence of subsidies in this investigation.

DOC Position: We have consistently held that benefits provided on a regional basis are, by their very nature, provided to a specific group of enterprises or industries. In *Certain Softwood Products from Canada,* (48 FR 24159), we found RDIP to be countervailable because the designation of areas eligible for assistance was based on administrative discretion. Therefore, we found RDIP benefits limited to companies located within specific regions. We disagree with respondents' contention that the Department erred by determining RDIP countervailable, and we reaffirm the decision made in the above-referenced determination.

Comment 5: Respondents assert that the ITC program is a boardly-based tax incentive available to all taxpayers in Canada and that ITCs over 7 percent are not limited to specific regions. They claim that a taxpayer anywhere in Canada or abroad can make use of ITCs over 7 percent and that the benefit bestowed accrues to the taxpayer irrespective of where the investment is located. Thus, they claim there is no regional targeting under the ITC. Respondents also claim that due to the interaction between ITCs and the depreciation system in Canada, the net benefit to the taxpayer claiming an ITC may not equal the full amount of the credit.

DOC Position: Although the taxpayer who claims an ITC at a rate above seven percent need not be located in a particular region, the acquired asset used as a basis for claiming an ITC must be used in a particular region. The Canadian Income Tax Act clearly requires that to claim an ITC on an asset, at a rate higher than seven percent, the asset must be used in a prescribed region. Therefore, the higher ITC rates are limited to a group of enterprises or industries which use assets in certain regions. Thus, the higher ITC rates are countervailable.

While it may be true that all taxpayers in Canada may be benefitting from ITCs (as tax shelters, for example), it is also very likely that the regions where higher ITC rates are available are also benefitting from higher levels of investment due to the ITC rate structure which spurs investment in those regions.

Regarding the interaction between ITCs and the depreciation system in Canada, we recognize that the after tax benefit to the taxpayer may, in some cases, not equal the full amount of the credit. However, it is the Department's policy to disregard secondary tax effects on countervailable subsidies. Any offsets to a countervailable subsidy are strictly limited by section 771(6) of the Act.

Comment 6: Respondents content that, because GDAs and ERDAs were signed with all the provinces, the agreements are not limited to a specific group of enterprises or industries. They argue that it is incorrect to require each subsidiary agreement to pass the specificity test. Moreover, they contend that because assistance is directed to infrastructure projects, virtually all sectors of the economy benefit.

DOC Position: The Department recognizes that all the provinces (with the exception of P.E.I. under the GDAs) have signed GDAs and ERDAs with the federal government. However, there are no GDA or ERDA programs *per se.* GDAs and ERDAs do not establish government programs, nor do they provide for the administration and funding of government programs. GDAs and ERDAs are merely legal agreements under which departments of the federal and provicial governments may cooperate in establishing and administering joint economic development programs in spheres of dual or conflicting jurisdiction. The implementation, administration and funding of industry-and regional-specific programs occur exclusively through subsidiary agreements. Therefore, we have decided that in determining whether subsidiary agreement programs are limited to a specific enterprise or industry, or group of enterprises or industries, the proper level of analysis is the subsidiary agreement.

Because we are analyzing each subsidiary agreement separately to determine if it meets the specificity test, it is irrelevant if some subsidiary agreements have funded infrastructure projects.

Comment 7: Respondents argue that ARDA assistance conferred benefits on a wide range of agriculture and rural economic development activities in Canada and is, consequently, generally available. They further contend that, because ARDA agreements are available to all provinces, assistance is not targeted to any particular region.

DOC Position: We disagree. See our discussion in Section I.B.1.

Comment 8: Respondents contend that, because the government utilized detailed financial analyses which forecasted encouraging future prospects for the industry in general, and for FPIL and NSP in particular, its opinion that these companies were equityworthy was commercially reasonable and its investment was consistent with commercial considerations. Respondents state that the companies' actual performance subsequent to the restructuring confirms the soundness of the government's investment. Furthermore, respondents contend that the fact that private investors purchased the same shares as the government attests to the investments' commercial reasonableness.

DOC Position: We disagree. See our discussion in Section I.A.11.

Comment 9: Respondents contend that the Department incorrectly used the 1977 Class Life Asset Depreciaiton Range System of the United States Internal Revenue Service (the IRS tables) rather than Canadian Income Tax Regulations in its determination of the allocation period used for calculating the benefits of non-recurring grants.

DOC Position: In the Subsidies Appendix we stated that although we would prefer to use the estimated economic useful life of an asset as the allocation period, the IRS tables, which reflect reasonable accounting useful like, provide the best practicable means of consistently determining useful life. If we were to use different countries' tax tables for different cases, we might find different subsidy margins due solely to the different periods of allocation. Rather than this anomalous result, we

believe it is just as reasonable, and makes for more consistent results, to use the U.S. IRS tables to determine the period over which to allocate benefits. Our belief is reinforced in this case, where the Canadian Income Tax Regulations estimate the useful life of boats at seven years. Such a short estimated useful life for fishing vessels implies that the Canadian Income Tax Regulations may not be a true indicator of the estimated useful life of an asset in Canada but may serve other purposes (*i.e.*, providing for accelerated depreciation). During verification of various loan programs, we noted that the loan terms for fishing vessels ranged from 15 to 25 years. This indicates that the Canadian Income Tax Regulations may be understating the useful life of assets in the fishing industry. Therefore, we determine that the IRS tables provide the best practicable means of consistently and objectively determining useful life.

Comment 10: Respondents contend that the activities of the promotions branch of the DFO Marketing Directorate are legitimate government functions as identified in *Certain Fresh Cut Flowers from Mexico,* (49 FR 15007) (*Cut Flowers*). They also argue that the promotion branch's attendance at the Boston and Dallas seafood fairs was a courtesy gesture and not a marketing activity.

DOC Position: The *Cut Flowers* determination characterizes the organizing and directing of trade shows abroad as a legitimate government function. Specific product promotion, however, rather than constituting a legitimate government function, is the assumption of an industry's advertising cost by the government. At verification, we obtained a photograph of the Canadian display at the Boston Seafood fair. The photograph clearly shows that Canadian cod and haddock were advertised during the Boston fair. Such promotional activities are outside the scope of *Cut Flowers.*

Comment 11: Respondents maintain that assistance provided to improve fish chilling facilities prevents fish spoilage and ensures a minimum quality of fish, and, as such, constitutes a legitimate government function similar to the meat inspection service held not to be countervailable in *Lamb, supra.*

DOC Position: We agree that the maintenance of health and hygiene standards through government inspection services is a legitimate function of government. In this instance, however, the Canadian Federal and certain provincial governments are providing grants to the fishing industry to purchase capital equipment used in the production of the subject merchandise.

Comment 12: Respondents argue that if the Department calculates two subsidy rates, one for whole fish and a separate rate for fillets, it must apply the "upstream subsidy" analysis of section 771A of the Act to determine whether subsidies provided to harvesters of whole fish benefit the production of fillets.

DOC Position: Because we have calculated one rate for both whole fish and fillets, we need not consider this argument.

Comment 13: Respondents argue that subsidies provided to the fishing industry do not constitute benefits to a specific industry or group of industries ane are therefore, not countervailable. They contend that harvesters of fresh Atlantic groundfish make up a distinct industry which is included within the larger group of salt water fishing industries and that groundfish processors are also a separate industry within the group of fish products industries. Therefore, they contend that subsidies available to the group of fish products industries and salt water fishing industries are available to more than a specific group of enterprises or industries. Respondents also analogize the fishing industry to the agricultural sector, asserting that the fishing industry, similar to the agricultural sector, consists of more than a group of industries.

DOC Position: We disagree. The fisheries programs investigated conferred benefits on two specific industries, the salt water fishing industry and the seafood products industry, and as such, these programs were available to no more than a group of industries. Furthermore, the fishing industry is not analogous to the agricultural sector. The agricultural sector consists of a vast number of distinct inductries which, *inter alia,* produce: fruits, vegetables, grains, tree nuts, tobacco, nursery products, ornamental floriculture, dairy products, meat products, eggs; raise: cattle, hogs, sheep, goats, poultry, horses, furbearing animals and rabbits; and provide: crop planting and harvesting services. The salt water fishing and seafood products industries do not include the same varied and diverse range of productive activities as does the agricultural sector.

Comment 14: Respondents argue that the unemployment insurance system is a universal system which does not benefit any specific industry uniquely or disproportionately. They point out that the benefit rate is the same for fishermen and other workers, and that premiums are paid at the same rate for fishermen as for other workers. Respondents contend that fishermen are generally governed by the Unemployment Insurance Act (U.I.), with minor modifications to account for the circumstances of nominal self-employment and the seasonality of the fishery. They also argue that, due to unpredictable circumstances of fish unavailability and fishery closures, fishermen are subject to the risk of involuntary unemployment just as other workers. Finally, respondents argue that U.I. benefits are not a grant on the production of groundfish because they pay fishermen not to fish, and actually increase the costs of the fishing industries.

DOC Position: We determined that the terms of this program for self-employed fishermen were not preferential when compared to Canada's general unemployment program. See our discussion in Sectin III.A.4.

Comment 15: Respondents maintain that it is well recognized that if the government either provides infrastructure or funds infrasturcture projects; there is no subsidy because any benefits are available to and used by all industries on a non-preferrential basis. Thus, respondents argue that under the SCRPP, infrastructure projects such as highway construction, airport construction and runway repair were funded and that these projects did not selectively benefit any specific group of industries or enterprises. Respondents assert that the Department should analyze the SCRPP program in its entirety and not each separate project funded from SCRPP moneys.

DOC Position: As stated above, in examining the SCRPP, we looked at the use of funds and not their source. We find the grant to fishermen administered by the DFO to be countervailable because it is limited to a specific industry. The fact that the DFO receives it funds under the Budget of Canada or the National Treasury, does not mean that we look at all programs authorized by the Canadian Budget and funded from the National Treasury in determining whether DFO grants to fishermen are limited to a specific industry or group of industries. Similarly, the fact that some departments used additional SCRPP funds to accelerate the building of airports or highways, does not mean that a grant program for fishermen is not countervailable.

Comment 16: Respondents also argue that under the Small Craft Harbours program, Canada maintains its transportation infrastructure and that no

specific industry or enterprise is benefitted.

DOC Position: We agree that infrastructure facilities do not provide countervailable benefits if they are available to and used by all potential users on a non-preferential basis. However, in examining the Small Craft Harbours programs, we found that fishermen paid preferential users fees and therefore, that they received a countervailable benefit.

Comment 17: Respondents argue that the government of the Nova Scotia's Industrial Development Division administers a wide variety of programs designed to promote safety and improve working conditions in the fishing industry, to minimize risk associated with the introduction of technological innovations, and to raise the quality standards applicable to the fishing industry as a whole. As such, respondents contend that these programs do not reduce the overhead associated with production operations or contribute significantly to capital improvements, and that they are therefore, not countervailable.

DOC Position: We verified that under this program the government disbursed funds which were used by fishermen to invest in a wide range of capital equipment including fishing vessels, fishing gear, and storage and handling containers. Recipients also received grants covering costs of projects such as the construction of private wharves, bait storage facilities and gear sheds. These grants provide countervailable benefits under the countervailing duty law. Respondents' contention that government funding of these projects does not reduce overhead or contribute to capital improvement is untenable.

Comment 18: Respondents contend that programs providing grants for the purchase, construction and modernization of fishing vessels are not countervailable because, both in intent and effect, the grants provided benefitted boat builders, not fishermen. They state that as the legislative history indicates, the vessel assistance programs were designed to assist the Canadian shipbuilding industry, and not the fishermen. they further state that vessel assistance grants simply compensate for the "artificially inflated prices" realized by Canadian shipbuilders. Finally, with respect to vessels constructed by fishermen themselves, respondents argue that because the fishermen must use locally-produced materials, the entire amount of the grant received by the fishermen is passed on to the suppliers of the locally-sourced construction materials. Respondents are joined in these arguments by an economic consultant, working on behalf of the American Seafood Distributors Association (ASDA).

DOC Position: We disagree. Respondents have not provided any conclusive evidence to support either their argument on intent, or on effect. With respect to intent, respondents have provided two isolated excerpts from legislative disucssions on vessel grants, one from 1974 and one from 1978. We cannot conclude from either excerpt that the intent of the government was to provide benefits to the shipbuilding industry. One only needs to examine the enabling federal and provincial legislation to realize that the intent of the various governments was to benefit fishermen. Benefits are only available for vessels engaged in commercial fishing activities. If the governments intended to benefit the shipbuilding industry, why were only fishing vessels eligible for coverage? Respondents acknowledge in their pre-hearing brief that the government represented this program as benefitting fishermen. In fact, in a February 7, 1986, press release, the Canadian Minister of Fisheries and Oceans, when announcing the federal FVIP termination, stated that "when the program was introduced, there were very few sources of capital for fishermen who wished to build new boats. That has now changed and banks, trust companies, credit unions and provincial loan boards all provide funds for this purpose." The logical conclusion from this statement is that the government intended to provide funding to enable professional fishermen to purchase or construct fishing vessels.

With respect to the argument on effect, other than a limited number of price quotations on foreign built vessels, respondents and the ASDA rely on an economic study conducted in 1979 for the DFO. This study, which concluded that fishermen do not benefit from vessel subsidies, had as one of its stated purposes, "in the face of the threatening U.S. countervail suit, to recommend an alternative to help fishermen." The author of that study stated that "due to the lack of available data and knowledge about the nature of the shipbuilding industry and, indeed, about the fishermen themselves, much effort has been expended on analysis which is purely descriptive in nature." With respect to the price elasticity of demand, the author states that "to estimate the price elasticity of demand, one needs to know the various quantities which buyers will purchase at different prices, *ceteris paribus*. The only prices that could be obtained were the estimated costs of vessels, quoted by the builders of subsidized vessels. The changes brought about by the subsidy program could be determined if one knew the prices of vessels before and after the subsidy came into effect. We only have the latter." And, with respect to the price elasticity of supply, she further states, "one needs to know something about the quantities and prices of the inputs which are used in the production of vessels. How these inputs are combined to produce a given output is also helpful information. There is no such data available on the Nova Scotia boatbuilding yard." She concludes by stating, "the data that are available are very sparse, difficult to locate, and totally inadequate for the purpose of analyzing government subsidy programs." Based on these statements by the author herself, we do not believe that respondents have presented any credible evidence to support their contention that grants under these vessel programs benefit shipbuilders, not fishermen. Nor has any evidence been provided to demonstrate that subsidies are passed through to suppliers of locally-sourced construction materials.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government officials, inspection of documents and ledgers, and tracing the information in the responses to source documents, accounting ledgers, financial statements and annual reports.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain fresh Atlantic groundfish from Canada which are entered, or withdrawn from warehouse, for consumption on or after January 9, 1986, the date of publication of our preliminary determination in the **Federal Register**. The liquidation of all entries, entered or withdrawn from warehouse, for consumption will continue to be suspended, and as of the date of publication of this notice in the **Federal Register**, the Customs Service should require a cash deposit or bond for each such entry in the amount of 5.82 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705 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 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 45 days after the date of 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 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 injury exists, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on groundfish from Canada entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation as indicated 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. 1671(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 14, 1986.

[FR Doc. 86-6255 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil; Initiation of Antidumping Duty Investigation

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

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether certain carbon steel butt-weld pipe fittings from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 10, 1986, and we will make ours on or before August 4, 1986.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: 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; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On February 24, 1986, we received a petition in proper form filed by the U.S. Butt-Weld Fittings Committee, in compliance with 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel butt-weld pipe fittings from Brazil and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain carbon steel butt-weld fittings are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, as currently provided for under item 610.8800 of the *Tariff Schedules of the United States, Annotated, (TSUSA).*

United States Price and Foreign Market Value

Petitioner was unable to obtain price information from price quotes or sale offers. Consequently, petitioner based United States price on the customs value for butt-weld pipe fittings under 14 inches in diameter imported from Brazil during the period January through October 1985. Petitioner made no adjustment for foreign inland freight.

Petitioner was unable to obtain home market or third country data. Consequently, petitioner calculated a constructed foreign market value. As petitioner was unable to obtain Brazilian cost data for the appropriate sizes of seamless pipe, petitioner averaged the unit prices for the average improted Brazilian seamless pipe. Production factors were averaged as well, and were based on three high-volume common finished fittings representative of the market. Two average constructed values were calculated due to the uncertainty of the applicable tariff category.

Petitioner used U.S. production and packing costs for the three representative products.

Adjustments were made for known differences in corresponding Brazilian costs, as well as for the statutory minimums for general expenses and profits.

Based on the conparison of United States price and the constructed foreign market value, petitioner alleges average dumping margins ranging from 50.0 to 54.5 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also 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 proctective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 10, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings from Brazil are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise,

it will proceed according to the statutory procedures.

March 17, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-6320 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Japan: Initiation of Antidumping Duty Investigation

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

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain carbon steel butt-weld pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 10, 1986, and we will make ours on or before August 4, 1986.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: 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; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On February 24, 1986, we received a petition in proper form filed by the U.S. Butt-Weld Fittings Committee. 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 Japan 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel butt-weld pipe fittings from Japan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating and antidumping duty investigation to determine whether certain carbon steel butt-weld fittings from Japan are being, or are likley to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, as currently provided for under item 610.8800 of the *Tariff Schedules of the United States, Annotated, (TSUSA).*

United States Price and Foreign Market Value

Petitioners based United States price on price quotes stated to be discounts offered off domestic list prices in the United States. Petitioner then made deductions from the net price for U.S inland freight, broker fees, customs duties, ocean freight and insurance. Petitioners based foreign market value on home market price lists for all three known Japanese manufacturers. Based on the comparison of United States price and foreign market value, petitioner alleges average dumping margins ranging from 18.2 to 165.3 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also 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 consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 10, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings from Japan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 17, 1986.

[FR Doc. 86-6321 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-602]

Certain Carbon Steel Butt-Weld Pipe Fittings from Taiwan: Initiation of Antidumping Duty Investigation

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

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce we are initiating an antidumping duty investigation to determine whether certain carbon steel butt-weld pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 10, 1986, and we will make ours on or before August 4, 1986.

EFFECTIVE DATE: March 24, 1986

FOR FURTHER INFORMATION CONTACT 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; telephone: (202) 377-1769

SUPPLEMENTARY INFORMATION:

The Petition

On February 24, 1986, the U.S. Butt-Weld Fittings Committee filed a petition in compliance with filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subject merchandise from Taiwan 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten

material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel butt-weld pipe fittings from Taiwan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain carbon steel butt-weld fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, as currently provided for under item 610.8800 of the *Tariff Schedules of the United States, Annotated, (TSUSA).*

United States Price and Foreign Market Value

Petitioner based United States price on a C.I.F. price list, from a Taiwanese manufacturer. Petitioner assumed that these prices did not include the applicable customs duty on butt-weld pipe fittings from Taiwan. Petitioner estimated Taiwanese inland freight, ocean freight and insurance.

Petitioner was unable to obtain home market or third country data. Consequently, petitioner calculated a constructed foreign market value. Petitioner constructed a value for each of four representative fittings. The cost of materials and fabrication were calculated based on a U.S. producer's cost of production factors with some adjustments to reflect Taiwanese prices for those factors. Such factors included the cost of seamless steel pipe, electricity, direct labor, supervisory labor, fringe benefits, depreciation, storage, repairs and supplies. Petitioner added the statutory minimums of ten percent of the costs for general expenses and eight percent of the costs and general expenses for profit. Packing costs were added and were based on the actual expenses incurred by a U.S. producer. Based on the comparison of United States price and foreign market value, petitioner alleges average dumping margins ranging from 71.1 to 108.1 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also 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 consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 10, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings from Taiwan are causing material injury, or threaten material injury, to a Unitd States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 17, 1986.

[FR Doc. 86-6322 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-05]

Tool Steel From the Federal Republic of Germany; Correction to Early Determination of Antidumping Duty

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Correction to Early Determination of Antidumping Duty.

SUMMARY: On July 25, 1984, the Department of Commerce published an early determination of antidumping duty on tool steel from the Federal Republic of Germany. The Department is correcting certain errors in the calculations. The Department is also changing its position responding to Comment 1 of the original notice.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION: Background

On July 25, 1984, the Department of Commerce ("the Department") published an early determination of antidumping duty on tool steel from the Federal Republic of Germany (49 FR 29995). The early determination covered one company, ARBED Saarstahl GmbH. We subsequently found errors in the calculations and are correcting those errors. We provided an opportunity for comment on the recalculations. We are also changing our position responding to Comment 1 in the early determination as a result of a remand order of the Court of International Trade in *Al Tech Specialty Steel Co.* v. *United States,* Court No. 84-8-01192, and as a result of comments we received during the remand.

We have made the following corrections to our calculations. Our usual practice in calculating foreign market value using a weight-average of prices is to limit weight-averaging of a model or type to a one-month period. Therefore, we have recalculated the foreign market value by limiting the period for weight-averaging to one month.

Using the monthly figures, for some U.S. sales we no longer have contemporaneous home market sales above the cost of production. For those sales we have now used constructed value (as described in the early determination) as the basis for foreign market value. We have made adjustments to constructed value, where applicable, for early payment discounts.

We have also included adjustments for differences in the physical characteristics of the merchandise where we had inadvertently omitted such adjustments.

In our original cost of production calculations, we disallowed the company's reported interest expense allocation. Instead of completely denying the claimed allocation we have now reallocated interest expenses over all production in accordance with our usual practice. We also have now used the company's actual general expenses and eliminated profit from our cost of production analysis. Finally, we have corrected errors in the transcription of certain cost of production figures.

In compliance with the remand we have changed our position responding to Comment 1 of the early determination. In Comment 1 the petitioners contended that, in computing the cost of production and constructed value, the Department should have included an amount for those subsidies on the manufacture and production of tool steel which the West

German company received from the federal and state governments.

Saarstahl contended that the subsidies are irrelevant to an antidumping proceeding and should not be considered. Further, there was no evidence that the government assistance benefitted Saarstahl's tool steel operations.

Our new position is that the purpose of section 773(b) of the Tariff Act of 1930 is to determine whether a company is selling at less than the cost of production, based on the actual costs. In this case it is inappropriate to add subsidies to actual expenses recorded in the company's books and records.

We also received comments from Saarstahl during the remand on our proposed corrections. Saarstahl argued that the Department's corrections reflected changes in methodology, not mere corrections in computation. Legally, the Department could not change methodology after publication of a final notice.

In response, we take the position that the Department has inherent authority to correct errors of inadvertence or mistake (*Melamine Chemicals, Inc.* v. *United States*, 592 F. Supp 1338 (Ct. Int'l Trade 1984)). When we found mistakes, we corrected them. The corrections were not made to revise policy or choice of methodology, but to remedy inadvertently erroneous decisions.

Corrected Early Determination

Based on our recalculations, the margin for Saarstahl for the period January 12, 1983 through July 19, 1983 is 19.13 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the above percentage. The Department will issue corrected appraisement instructions directly to the Customs Service.

Further, as provided in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 19.13 percent, based on the above margin, shall be required on all entries of tool steel from the Federal Republic of Germany produced and exported by Saarstahl and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review for this firm.

This notice is in accordance with section 736(c) of the Tariff Act of 1930 (19 U.S.C. 1673e(c)) and § 353.49 of the Commerce Regulations (19 CFR 353.49).

Dated: March 14, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-6391 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Robert Elsner (P63A)

On January 13, 1986, notice was published in the **Federal Register** (51 FR 1420) that an application had been filed by Robert Elsner, Institute of Marine Science, University of Alaska, Fairbanks, Alaska 99775-1080 to take beached/stranded harbor seals (*Phoca vitulina*) by sacrifice for cardiovascular studies, and ring seals (*Phoca Hispida*) by captive maintenance for radio and acoustic tagging studies and by sacrifice for cardiovascular studies.

Notice is hereby given that on March 14, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: March 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-6324 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Permit Modification No. 3; Northwest and Alaska Fisheries Center (P77#9)

Notice is hereby given that Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 2725 Montlake Boulevard, East, Seattle, Washington 98112, has requested a modification to Permit No. 464 issued on April 19, 1984 (50 FR 18283), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requeisting authorization to take northern elephant seals (*Mirounga angustirostris*) by changing the pre-Ketamine intramuscular injection to atropine sulfate as a preventive measure for hyper-secretion of fluid in the lungs, to chemically stimulate respiration with an intravenous injection of Doxapram HCL if necessary and increase the number of animals that may be killed or injured prior to the suspension of research activities.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: March 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-6325 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings/Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory bodies will convene separate public meetings, April 6-11, 1986, at the Eureka Inn, Seventh and F Streets, Eureka, CA as follows:

Groundfish Select Group and Groundfish Advisory Subpanel

The Groundfish Select Group will convene April 6, at 10 a.m. to develop recommendations for second trimester management measures and other matters. The Groundfish Advisory Subpanel will convene at 2 p.m. to review plan amendments, second trimester management measure proposals and other matters.

Scientific and Statistical Committee (SSC), Salmon Advisory Subpanel (SAS), and Salmon Plan Development Team (SPDT)

The SSC, SAS, and SPDT will convene April 7 at 1 p.m. to consider matters on the Council agenda. The Council will convene a public hearing at 8 p.m. to review public comments on the proposed options for the 1986 ocean salmon seasons.

Council

On April 8, the Council meeting will convene at 9 a.m., with a closed session (not open to the public) to discuss litigation and personnel matters. The open session will convene at 10 a.m., and will hear recommendations from the SSC, the SAS, the public, the states, and Indian tribes on management options for the 1986 ocean troll, recreational, and tribal fisheries and tentatively adopt options for the SPDT analysis.

On April 9, the Council will review groundfish management issues and take action on second trimester management measures and the groundfish plan amendment package. There will be a public comment period at 3 p.m.

On April 10, the Council will hear comments and take action on salmon plan amendment issues; hear the analysis and comments of the SPDT, SSC, SAS, public, and states on the 1986 salmon management options and adopt final management measures for submission to the Secretary of Commerce. This meeting may carry over to April 11 to complete agenda items. Detailed agendas of all meetings will be available for the public on March 28. For further information, contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Dated: March 18, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-6323 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Extension of Previously Granted Interim Orders Under the Semiconductor Chip Protection Act of 1984

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Initiation of Proceeding.

SUMMARY: The Secretary of Commerce has delegated the authority under section 914 of title 17 of the United States Code, the Semiconductor Chip Protection Act (SCPA) of 1984, to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10-14. Guidelines setting forth procedures for issuance of such orders were published on November 7, 1984, in the **Federal Register**, 49 FR 44517-9, and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

Following these procedures, 14 interim orders have been granted. Of those orders, 13 were issued for a period of 1 year. In order to permit a timely review of the progress that has been made toward establishing legal measures for the protection of semiconductor chips in those countries, comments are solicited. Based upon those comments the Commissioner will determine whether a public hearing will be required before taking further action to extend these orders or to recommend the issuance of a Presidential Proclamation under section 902 of the SCPA.

DATE: Comments must be received by the Commissioner of Patents and Trademarks before 5:00 P.M. on April 16, 1986.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

Materials submitted will be available for public inspection in Room 11C28, Crystal Plaza Building 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded—
>
> (A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983 and before November 8, 1985, the effective date of the SCPA, were eligible for protection provided that they were registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C 902. The owner of the mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party or a stateless person wherever domiciled, or the mask work must be first commercially exploited in the United States, or the mask work must come within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United

States, it is contemplated that foreign nationals, domiciliaries, and sovereign authorities may obtain full protection. Section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

(1) that the foreign nation is making good faith efforts and reasonable progress toward—

(A) entering into a treaty described in section 902(a)(1)(A), or

(B) enacting legislation that would be in compliance with subparagraph (A) (B) or section 902(a)(2); and

(2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

In remarks in the *Congressional Record* of October 3, 1984, at page S12919 and of October 10, 1984, at page E4434, both Senator Mathias and Representative Kastenmeier suggest that "[i]n making determinations of good faith efforts and progress. . ., the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue. . . . With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

Following these procedures, the following interim orders, listed in order of their publication, were issued:

Country	Fed. Reg.	Expiration Date
Japan	50 FR 24668	June 6, 1986.
Sweden	50 FR 25618	June 13, 1986.
Australia	50 FR 26818	June 21, 1986.
The United Kingdom	50 FR 26818	Nov. 8, 1987.
The Netherlands	50 FR 26818	Sept. 12, 1986.
Canada	50 FR 27649	June 27, 1986.
Belgium	50 FR 37892	Sept. 12, 1986.
Denmark	50 FR 37892	Sept. 12, 1986.
France	50 FR 37892	Sept. 12, 1986.
Federal Republic of Germany.	50 FR 37892	Sept. 12, 1986.
Greece	50 FR 37892	Sept. 12, 1986.
Ireland	50 FR 37892	Sept. 12, 1986.
Italy	50 FR 37892	Sept. 12, 1986.
Luxembourg	50 FR 37892	Sept. 12, 1986.

The order for the Netherlands, originally scheduled to expire on June 21, 1985, was extended until September 12, 1986, (*See* 50 FR 37892) to expire at the same time as the order issued for other member States of the European Community.

In the time since those interim orders were issued, a number of important events have taken place. The World Intellectual Property Organization (WIPO) has embarked on the process of establishing a new international treaty for the protection of integrated circuit chips. All States for whom interim orders have been issued were active participants in the first meeting of the WIPO Committee of Experts on Intellectual Property in Respect of Integrated Circuits, held in Geneva, November 26 to 29, 1985, and a report of that meeting has been issued. The European Community has issued a Directive to its members requiring that they implement legislation to protect the design or topography of integrated circuits. And quite importantly, the Japanese "Law Concerning the Circuit Layout of a Semiconductor Integrated Circuit" has come into effect. Also, important studies have been completed by the Government of Sweden and the Canadian Parliamentary Subcommittee on Copyright Revision recommending the enactment of special provisions in their copyright laws to provide for chip protection. Copies of the relevant portions of these documents available to the Patent and Trademark Office are included as an appendix to this notice.

In view of the rapid international developments in respect of the protection of this new technology and the public interest in encouraging its continued development, we are opening this public review of progress to enable us to determine whether to extend existing interim orders under section 914 or to recommend the issuance of a Presidential proclamation under section 902 to further encourage international progress toward comity in mask work protection. Accordingly, any additional information is solicited from any interested party. To be considered, such comments must be received by 5:00 P.M., April 9, 1986, by the Commissioner of Patents and Trademarks. Comments received will be available for public inspection in Room 11C28, Crystal Plaza Building 3, Jefferson Davis Highway, Arlington, Virginia, the Office of the Assistant Commissioner for External Affairs.

Dated: March 19, 1986.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

Committee of Experts on Intellectual Property in Respect of Integrated Circuits

Geneva, November 26 to 29, 1985

Draft Treaty

Memorandum of the Director General

Introduction

1. The program of WIPO for the 1984-1985 biennium, under the title "Computer Programs, Including Integrated Circuits," provides that "The International Bureau will continue to study the usefulness and feasibility of an international treaty providing for the protection of computer programs (including *integrated circuits*) against unauthorized exploitation for a limited period of time . . ." (document AB/XIV/2, Annex A, item PRG.03(2), emphasis added). This text was proposed by the Director General of WIPO in June 1983, and WIPO's Governing Bodies approved it in September 1983.

2. In the intervening two years, several things became evident. One is that computer programs and integrated circuits should be considered separately rather than jointly, particularly because in several countries, including the United States of America—which is pioneering in that field—computer programs are regarded "as works" in the sense that that word is used in copyright law, whereas integrated circuits are not regarded as a subject matter of copyright. In the United States of America and Japan, the two countries which, together and at the present time, produce some 80% of the world's microchips, the protection of intellectual property in integrated circuits is provided for by new laws. Those new laws provide for *sui generis* protection, that is, protection that is neither copyright nor patent. The International Bureau has published the English text and a French translation of the United States law on the protection of integrated circuits ("The Semiconductor Chip Protection Act of 1984") in the March 1985 issue of the WIPO periodicals "Industrial Property" and

"La Propriété industrielle" and will publish the English and French translations of the Japanese law on integrated circuits ("An Act concerning the Circuit Layout of An Integrated Circuit" of 1985) in the September 1985 issue of the said periodicals. Any government or organization to which the present document is officially transmitted may obtain, on request and free of charge, from the International Bureau a copy of any of the said issues of those periodicals.

3. Another thing that became evident is that, should the tendency for recognizing computer software as a subject matter of copyright be confirmed and spread, it might not be necessary to secure protection on the international level by a new treaty since multilateral copyright treaties exist, and, once a country considers computer software as a "work," it is obliged to grant protection, under those treaties, to the computer software of foreigners whose countries are bound by those Conventions. Until the need for a special treaty on the protection and/or international registration of computer software becomes clear, it is not intended to pursue the "study of the usefulness and feasibility of an international treaty providing for the protection of computer programs" (*loc. cit.*).

4. It has also become evident that the situation of integrated circuits is completely different. The laws of the above-mentioned two countries on integrated circuits do not pretend that either the Copyright Conventions (the Berne Convention for the Protection of Literarcy and Artistic Works or the Universal Copyright Convention) or the Paris Convention for the Protection of Industrial Property would secure protection for the United States or Japanese integrated circuits in other countries or that the United States of America or Japan would have to protect integrated circuits of nationals of other countries by virtue of any of the said Conventions. The reason, obviously, is that integrated circuits are dealt with in the laws of those two countries neither as works eligible for copyright protection nor as inventions eligible for patent (or utility model) protection.

5. This is why, from a legal point of view, a new treaty is necessary. It is necessary also from a practical point of view since it is certain that integrated circuits are the objects of intensive international trade and for that trade to be orderly it should not be lawful for anyone to copy and use integrated circuits created by others without the latter's authorization. The matter is of interest not only to Japan and the United States of America, since both production and marketing of integrated circuits are important factors in the economy of many other countries and will become increasingly so in the near future.

6. This is why the present document proposes the consideration of the conclusion of a multilateral treaty on the protection of intellectual property related to integrated circuits. A draft of such a treaty is included in this paper.. As far as the International Bureau knows, it is the first draft treaty ever produced by anyone in this field. It will, therefore, doubtless be in need of improvement. It should be regarded as a basis for a first discussion in an international committee of experts among representatives both of governments and of intergovernmental and non-governmental organizations. In the light of those discussions, the International Bureau intends to produce a second, improved draft, which would then go to another meeting of a committee of experts. It is hoped that after that, the second, meeting of experts, the matter could go to a diplomatic conference for the adoption and signature of the treaty. This should happen in 1986 or, latest, 1987, since solid and widespread international protection is a matter of great urgency.

7. It is to be noted that the proposed text has been drafted so as to allow any country to protect the intellectual property concerning integrated circuits not necessarily by a *sui generis* law: a national law that would provide for copyright or patent protection would also be compatible with the draft treaty.

DRAFT

Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

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Notes on Article 1

Ad(i): According to Article 7, any State member of WIPO or of the United Nations could become a party to the Treaty.

Ad(ii): The definition is flexible enough to allow any national law to vest the right in the employer if the layout or the design of the integrated circuit is the creation of an employee.

Ad(iii): The term "Director General" is used in Articles 6(2), 7(2), 9 (1) and (2), 10(1)(b) and 11 (1), (2), (3) and (4).

Additional Question: During the preparation of the draft, the question arose whether it would be desirable or necessary to expressly provide in the treaty that the design or layout of an integrated circuit is protected not only in its "final" form (that is, the form which is used for mass production) but also in any of its preceding, "intermediate" forms. It is believed that such a clarification is not necessary since even an "intermediate" design or layout is a design or layout and, therefore, falls under protection. But if this view is not shared, the Article containing definitions could include an item along the following lines: "['design'] ['layout'] includes both the final and any intermediate [design] [layout.]"

Article 1—Definitions

For the purposes of this Treaty:

(i) "Contracting State" means a State party to the Treaty,

(ii) "Proprietor" means the natural person who, or legal entity which, according to the applicable national law, is to be regarded as the beneficiary of the protection of the proprietory rights mentioned in Article 3,

(iii) "Director General" means the Director General of the World Intellectual Property Organization.

Notes on Article 2

The substantive provisions of the draft Treaty consist of the obligation to grant national treatment of foreigners (Article 2) and of provisions that limit the freedom of the national legislator in that the national law must, at least, grant certain rights (Article 3) for, at least, a certain duration (Article 5) and that it must not make the protection conditional upon formalities that would go beyond certain limits (Article 4). In other words, the Treaty provides for minimum rights, a minimum term of protection and a maximum of formalities. This is why the Article under consideration (Article 2), which provides for national treatment, states that national treatment is "subject to Articles 3 to 5," that is, the said minimums and maximum.

Article 2—National Treatment

Subject to Articles 3 to 5, each Contracting State shall grant to nationals or residents of the other Contracting States the same protection that it grants to its own nationals with respect to original integrated circuits.

Notes on Article 3

Ad paragraph (1)(a). This subparagraph enumerates the acts that, in connection with integrated circuits, can be lawfully performed only with the authorization of the proprietor. That the rights are exclusive follows from the fact that they require the proprietor's authorization (paragraph (1)(a)) and from the fact that the granting of non-voluntary licenses is expressly excluded (paragraph (1)(b)).

The rights are minimum rights. Any national law may make further acts subject to the proprietor's authorization, but the acts that are mentioned in paragraph (1) must be subjected to the proprietor's authorization.

There are three kinds of such acts: (i) reproducing or copying, (ii) incorporation in a physical object or proiduct, (iii) importing, selling, or otherwise distributing. Any of those acts requires the proprietor's authorization if it is for commercial purposes.

ad item (i): One can hesitate between "reproducing" and "copying." The two terms are within square brackets to show that they are alternatives; one of them should be chosen.

One can also hesitate between "design" and "layout." In the opinion of some, "layout" confers better the notion of three dimensions ("topography"); but "design" is, by no means, limited to two dimensions (neither is, by the way, layout limited to three dimensions). The two expressions are offered as alternatives between which one should be chosen, unless one would wish to use both ("design or layout").

It is on purpose that the draft treaty contains no difinition of "integrated circuit." It is assumed that everyone knows what the expression means. After all, most patent laws do not define "invention" either. Furthermore, the definitions used in the only existing two laws (the US and the Japanese) illustrate how difficult it is to make a definition and how involved and complex they can become. In an international treaty, it would be difficult to agree on such details. Furthermore, any detailed definition risks becoming incomplete or obsolete with the development of technology. A treaty containing a definition would then have to be revised, and it is well known that any revision of a multilateral treaty is a difficult and long process.

The words "substantial portion or essential elements" want to make it clear that reproduction or copying, to be unlawful, need not relate to the totality of the design or layout; it is unlawful also if it relates to parts quantitatively ("substantial portion") and/or qualitatively ("essential elements") important (from a commercial viewpoint).

ad item (ii): One can hesitate between "physical object" or "product." The first seems to be more general, and this is to its advantage. The second carries a certain connotation of mass production and, therefore, seems to be more limited. One should chose between the two expressions or find a third solution. The typical product, the typical physical incorporation, is, or course, the microchip.

Article 3—Minimum Rights Protected

(1)(a) Any Contracting State shall consider unlawful at least the following acts if performed without the authorization of the proprietor and if performed for commerical purposes:

(i) [reproducing] [copying] [the design] [the layout] of an integrated circuit, or a substantial portion or essential elements thereof,

(ii) incorporating [the design] [the layout] of an integrated circuit, or a substantial portion or essential elements thereof, in a [physical object] [product],

(iii) importing, selling or otherwise distributing [physical object] [products] that are [reproductions] [copies] of, or that incorporate, [the design] [the layout] of an integrated circuit or a substantial portion or essential elements thereof, where [the physical objects] [the products] were made without the authorization of the proprietor.

(b) The authorization referred to in subparagraph (a) may not, under any circumstances, be replaced by a non-voluntary license.

ad item (iii): It is recalled that the qualification appearing in the heading of sub-paragraph (a)—namely, that the act must be for commercial purposes—applies here too. Consequently, and for example, a foreign tourist who crosses a country's frontier with a pocket radio containing a microchip does not require the proprietor's authorization for such "importation" since, typically, he pursues no commercial purpose.

Ad paragraph (2): While item (i) covers injunctions or "orders to cease and desit," item (ii) covers damages. Since some persons may doubt whether damages can be calculated as the equivalent of royalties that would (probably) have had to have been paid had an authorization been asked for, the expression "or reasonable royalties" has also been used.

Ad paragraph (3): Some of the acts referred to in paragraph (1)(a) need not be submitted, by the national law, to the authorization of the proprietor under certain circumstances. These possible exceptions to the right of authorization are enumerated in this paragraph. Item (i) concerns teaching and research, even when the teaching or research is for profit (commercial) (if it is for non-commercial purposes, paragraph (1)(a) already excludes the obligation of protection). The same is true for item (ii) which, otherwise, deals with the further development of another person's design or layout and with what is called "reverse engineering." Item (iii) deals typically with the exhaustion of rights after the first sale and with a possible much broader exception, namely, impunity when the sale, etc., was "in good faith." The International Bureau is not quite sure what this expression—used in some laws—exactly means or covers, but the expression does appear in the text (albeit within square brackets) to trigger discussion and clarification. Does "good faith" mean subjective ignorance of the law, or of the facts of the situation, or of both, etc.?

Ad paragraph (4): This paragraph is intended to correspond to Article 5*ter* of the Paris Convention. It is a reasonable exception that should apply also when the protection is not by patents (to which the Paris Convention applies) but is *sui generis* or copyright.

(2) Any unlawful act under paragraph (1)(a) shall give rise, at the request of the proprietor, at least

(i) to an order to discontinue such acts and

(ii) to the payment of damages or reasonable royalties.

(3) Notwithstanding paragraphs (1) and (2), any Contracting State may consider lawful the following acts in the following cases:

(i) the (reproducing) (copying) referred to in paragraph (1)(a)(i), where it is for the purposes of teaching or research,

(ii) the (reproducing) (copying) or incorporating referred to in paragraph (1)(a) (i) and (ii), where it is for the purposes of the creation of another (design) (layout) of an integrated circuit, which (design) (layout) is, in itself, original.

(iii) the importing, selling or otherwise distributing referred to in paragraph (1)(a)(iii), where it is done (in good faith or) in respect of specific products that have been put on the market by or with the consent of the proprietor.

(4) Where the product incorporating the design of the integrated circuit or a substantial portion or essential elements thereof is part of a land vehicle, vessel, aircraft or spacecraft registered in a Contracting State, and when the land vehicle, vessel, aircraft or spacecraft of which the said (physical object) (product) is a part enters, temporarily or accidentally, the territory, waters or airspace of another Contracting State, the latter State shall not consider such event as an importation in the sense of paragraph (1)(a)(iii).

Notes on Article 4

Ad paragraph (1). This paragraph enumerates the formalities upon which protection may be made conditional by any national law. It is largely inspired by the *sui generis* laws of the United States and Japan. In subparagraph (a), the words *"international* public authority" leave the door open for a possible, future, international register. Such a register could become desirable if all or most countries would follow the US and Japanese examples and would require deposit and registration since, then, the proprietor would have to go to the trouble, cost and risks of fulfilling (different) formalities in all (possibly, numerous) countries in which he wishes to be protected. Whether international registration—if it should ever be established—is a substitute for national registration is another question: the Treaty would not oblige any Contracting State to accept international registration *in lieu* of national registration; any Contracting State could still require the use of its national register.

Ad paragraph (2). This provision makes it clear that the formalities described in paragraph (1) are a maximum. It goes without saying that any country is free to have no formalities whatsoever. This freedom is even necessary for such Berne Union countries that would wish to place integrated circuits under their copyright laws.

Article 4—Maximum Formalities

(1)(a) Any Contracting State may make protection conditional upon the filing of a copy of [the design] [the layout] of the integrated circuit with a national or international public authority and the registration of the proprietor's claim to protection by such authority, provided that the time allowed for effecting such filing shall be at least two years from the date on which the proprietor first exploits commercially [the design] [the layout] of an integrated circuit or the [physical objects] [products] that incorporate that design. Registration may be subjected to the payment of a fee.

(b) Any Contracting State may, instead of the copy of [the design] [the layout] referred to in subparagraph (a), require the filing of other material allowing the identification of [the design] [the layout], and it may also require the filing of samples of the products incorporating [the design] [the layout].

(2) No Contracting State shall make protection conditional upon the fulfillment of any formality other than those referred to in paragraph (1).

Notes on Article 5

This Article establishes a minimum term of protection and is believed to be compatible with the two existing *sui generis* laws, those of the United States of America and Japan (as always, they are mentioned in chronological order).

The term is a minimum. Any national law may provide for a longer term. If a country chooses to give patent, rather than *sui generis*, protection, its law will in most cases satisfy the conditions of this Article since the duration (15 to 20 years) will be generally longer than ten years and will not expire before ten years for the first commercial exploitation (the Article does not say when the protection must start). And, if a country chooses to give copyright, rather than *sui generis*, protection, its law will in most cases satisfy the conditions of this Article since the duration (life or publication *plus* 25 or 50 years) will be so long that it will only very rarely expire before ten years from the first commercial exploitation. However, if one wants be sure that, in all cases, the minimum term required by this Article will not expire in countries that have patent or copyright protection for integrated circuits, the Article should contain further provisions to cover also those situations.

Article 5—Minimum Term of Protection

The protection provided for in Article 3 shall last at least ten years counted from either of the following two dates:

(i) the date of the registration of the proprietor's claim to protection.

(ii) the date on which the proprietor first exploits commercially (the design) (the layout) of an integrated circuit or the (physical objects) (products) that incorporate that (design) (layout).

Notes on Article 6

This is a usual provision for revision. The only question that is left without answer in the draft is whether revision requires unanimity (no negative vote) or may be decided by a majority and, if so, whether the majority should be a qualified (e.g., two thirds) majority.

Article 6—Revision of the Treaty

(1) This Treaty may be revised from time to time by a Conference of the Contracting States.

(2) The Director General shall convene a revision conference at the request of at least two thirds of the Contracting States.

Notes on Article 7

Ad paragraph (1). Since the Treaty envisages also, if not principally, a situation in which national laws provide for *sui generis* protection, there would be no reason to allow only those countries to adhere that are party to the Paris Convention or the Berne Convention. Consequently, it allows, for all practical purposes, any country to adhere.

Ad paragraph (2). It is usual, for treaties negotiated under the aegis of WIPO, to entrust the depository functions to the Director General of WIPO.

Article 7—Becoming Party to the Treaty

(1) Any State member of the World Intellectual Property Organization or of the United Nations may become party to this Treaty.

(i) by signature followed by the deposit of an instrument of ratification, or

(ii) by the deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

Notes on Article 8

Ad paragraph (1). There is no reason not to put the Treaty into force as soon as it is multilateral, that is, it has three parties. A higher number is usual when a treaty creates a Union with Governing Bodies, a budget and other administrative features. But this is not the case here: the Contracting States would not be required to pay contributions to WIPO, there would be no Union, no income or expenditure of the (non-existent) Union, and no regular meetings of the Contracting States that would entail costs. The very small costs of any occasional meetings of Contracting States could be financed from the "miscellaneous" budget item of WIPO.

Ad paragraph (2). This is a provision of the usual kind.

Article 8—Entry Into Force of the Treaty

(1) This Treaty shall enter into force three months after three States have deposited their instruments of ratification or accession.

(2) Any State which is not among those referred to in paragraph (1) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated by the State at the time of the depositing of its instrument of ratification or accession.

Notes on Article 9

This is an article of the usual kind.

Article 9—Denunciation of the Treaty

(1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) Denunication shall take effect one year after the day on which the Director General has received the notification.

Notes on Article 10

This is an article of the usual kind except that, as far as WIPO is concerned (but not as far as the United Nations or most other Specialized Agencies are concerned), Arabic and Chinese would, for the first time, be "equally authentic" languages. This seems to be justified because of the development of WIPO's membership in the last years.

Article 10—Signature and Languages of the Treaty

(1)(a) This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being eqully authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the General Assembly of the World Intellectual Property Organization may designate.

(2) This Treaty shall remain open for signature at Geneva until [six months after its adoption].

Notes on Article 11

This is an article of the usual kind.

Article 11—Depositary Functions and Notifications

(1) The original of this Treaty shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Treaty to the Governments of all the States referred to in Article 7(1) and, on request, to the Government of any other State.

(3) The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) The Director General shall notify the Governments of the States referred to in Article 7(1) of:

(i) signatures under Article 10;

(ii) deposits of instruments of ratification or accession under Article 7(2);

(iii) the date of entry into force of this Treaty under Article 8(1);

(iv) denunciations received under Article 9.

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Committee of Experts on Intellectual Property in Respect of Integrated Circuits

Geneva, November 26 to 29, 1985

Report

Adopted by the Committee of Experts

I. Introduction

1. Convened by the Director General of the World Intellectual Property Organization (WIPO) as part of the 1984/85 program of the International (Paris) Union for the Protection of Industrial Property (see document AB.XIV/2, Annex A, item PRG. 03(2)), the Committee of Experts on Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as "the Committee of Experts") met in Geneva from November 26 to 29, 1985.

2. The following States were represented at the session: Argentina, Australia, Austria, Beligum, Brazil, Bulgaria, Canada, China, Denmark, Finland, France, Germany, (Federal Republic of), Greece, Hungary, India, Ireland, Israel, Italy, Japan, Morocco, Netherlands, Nigeria, Norway, Pakistan, Republic of Korea, Soviet Union, Sweden, Switzerland, United Kingdom, United States of America (30).

3. Repesentatives of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Commission of the European Communities (CEC) and the European Patent Organization (EPO) as well as the following international non-governmental organizations participated as observers: the British Computer Society (BCS), the Committee of National Institutes of Patent Agents (CNIPA), the Computer and Business Equipment Manufacturers Association (CBEMA), the Electronic Industries Association of Japan (EIAJ), the European Electronic Component Manufacturers Association (EECA), the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), the International Association for the Protection of Industrial Property (AIPPI), the International Chamber of Commerce (ICC), the International Federation of Industrial Property Attorneys (FICPI), the International League for Competition Law (LIDC), the International Patent and Trademark Association (IPTA), the International Publishers Association (IPA), the Union of European Practitioners in Industrial Property (UEPIP), the Union of Industries of the European Community (UNICE).

4. The list of participants appears in the annex to this report.

5. Dr. Arpad Bogsch, Director General of WIPO, opened the session.

6. The Committee of Experts unanimously elected Mr. A.H. Olsson (Sweden) as Chairman and Messrs. Z. Kitagawa (Japan) and V. Myasnikov (Soviet Union) as Vice-Chairmen. Mr. J. Erstling (WIPO) acted as Secretary of the Committee.

7. Discussions were based on a Draft Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits, prepared by the International Bureau of WIPO (document IPIC/CE-I/2, hereinafter referred to as "the Draft Treaty"). The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions and does not reflect all the observations made; however, the main observations and principal conclusions of the discussions are reported below.

II. General Observations

8. The participants engaged in a general discussion of the Draft Treaty and of the desirability of an international system for the protection of integrated circuits. As a whole, the participants stressed the need for such a system, based on the principle of national treatment, and thanked the International Bureau for its initiative in preparing the Draft Treaty, which was generally considered to be a solid basis for a first discussion of the subject.

9. The Delegation of Brazil mentioned the existence of Law No. 7232, which regulated the informatics sector in its country. It noted its Government's commitments to the principles of protection of intellectual property rights and stated that a balance should be sought between the privilege given to the owner of those rights and the public interests of the society that granted the privilege, thereby avoiding the abuses that might arise from the exercise of the exclusive rights conferred on the owner of the intellectual property title. The protection of intellectual property rights should not impede the technological development of the countries that afforded the protection. In respect of the subject matter under discussion, the Delegation stated that integrated circuits were of the upmost value to modern industry; while it recognized that the protection of integrated circuits was a subject of importance, it stated that clarification was necessary concerning the principles and parameters which had served as guidance to the International Bureau in preparing the Draft Treaty. It stated that there were very important technical matters which required expounding in order that a truly meaningful discussion of the Draft Treaty could be engaged in.

10. The Delegation of the Netherlands expressed the hope that it would be possible to conclude an international treaty within a reasonable period of time. It called attention to the Draft Proposal for a Council Directive on the Legal Protection of Topographies of Semiconductor Products, prepared by the Commission of the European Communities, and pointed out that it was very important that the provisions of an international treaty be compatible with the future Council Directive. The Delegation expressed its satisfaction that originality was chosen in the Draft Treaty as a requirement for protection, but suggested that the requirement be more explicitly mentioned. The Delegation also suggested that the Draft Treaty contain a clear definition of the object of protection.

11. The Delegation of Denmark informed the Committee of Experts that new national provisions concerning the protection of the layout of semiconductor integrated circuits were being formulated in close cooperation with the other Nordic countries. The new provisions were, moreover, being framed in such a way that they could meet the requirements expected to flow from a Council Directive within the EEC. Although no final decision had been taken as to the legal structure of those provisions, it was expected that they would provide for *sui generis* protection embodied the Copyright Act within the framework of neighboring rights. With respect to the Draft Treaty, the Delegation expressed its support for a new multilateral instrument based on the principle of national treatment; it had noted that there was a tendency to seek international protection for integrated circuits on the basis of reciprocity, but did not think that such a course would be a prosperous one in the long run. It consequently expressed the hope that a new multilaterial treaty would , in a year or two, be adopted by a diplomatic conference within the framework of WIPO.

12. The Delegation of Finland indicated its acceptance of the main principles contained in the Draft Treaty, and expresed the view that any international arrangement for the protection of integrated circuits should allow the States to choose between copyright, patent and *sui generis*

protection. In Finland, work was in progress on the preparation of *sui generis* system of protection for intergrated circuits, which was intended to be incorporated in the copyright legislation under neighboring rights; in view of those national legislative developments, the Delegation was of the view that the convocation of this Committee of Experts was most timely. The Delegation drew the attention of the Committee of experts to four specific points in the Draft Treaty: it indicated that it would be in favor of trying to explore the possibility of defining the object of protection, which would be included either in the Treaty or in an explanatory document and which should stress the functional, rather than the technical or structural, aspects of that object; it expressed the need to provide further clarification concerning reverse engineering; it wished to study the possibilities of restricting the effects of the provisions on exhaustion of rights; and it wished to consider the possibility of an optional notice of protection.

13. The Delegation of the United Kingdom explained that the copyright legislation of its country currently protected functional articles, including integrated circuits; however, that legislation was under review. Therefore, it was important to the United Kingdom that a treaty on integrated circuit protection be flexible in order to cope with the various possibilities of protection, in particular as certain aspects of that protection (for example, protection against the direct copying of a circuit design drawing in another drawing) would probably continue to be governed by copyright law. The Delegation expressed its broad sympathy with the aims of the Draft Treaty since that Treaty would permit the desired flexibility, but considered that it should be compatible with any Directive of the European Communities which emerged from the discussions in Brussels.

14. The Delegation of the Federal Republic of Germany noted the necessity to provide for protection of integrated circuits on a worldwide level, expressed its satisfaction with the clarity of the Draft Treaty and indicated its acceptance of the Treaty's principles. It called attention, however, to the problem of creating separate systems of *sui generis* protection for all new technologies, and questioned whether it would not be advisable to create a system of protection on a wider level, similar to the protection against unfair competition, prohibiting the unlawful appropriation of the works of others.

15. The Delegation of the Soviet Union supported the efforts of the International Bureau of WIPO to elaborate a treaty on the protection of integrated circuits. It expressed the view that the draft under discussion required further specification and concretization. In particular, as the purpose of the Treaty was to provide protection for the non-patentable elements of integrated circuits, the Delegation felt that it was necessary to specify in greater detail the criteria for integrated circuit protection. Furthermore, basic definitions of some of the terminology used, such as "layout" and "original," were necessary in order to exclude the possibility of the Treaty being interpreted in conflicting ways in the various Contracting States. In the opinion of the Soviet Union, such deficiencies in the Draft Treaty could be overcome.

16. The Delegation of Australia expressed its support for a multilateral approach to integrated circuit protection, which it considered to be a far sounder basis for such protection than the principle of reciprocity. The Delegation expressed its agreement with the flexible approach to protection adopted by the Draft Treaty and stated that it strongly wished such flexibility to be maintained. The Delegation indicated that integrated circuit designs were already subject to protection under Australian copyright law, and that it would be a matter of concern if Australia were required to make exceptions to its general law in order to become party to the Treaty. In order to prevent such possibility, the Delegation wondered whether the statement of intention to provide for a flexible system of protection, which was included in the explanatory memorandum, should not be embodied in the text of the Treaty.

17. The Delegation of Japan expressed its general support for the Draft Treaty and said that it would be an extremely hard task to find a good definition for the term "integrated circuit." Therefore, the Delegation suggested that the term be left undefined in the Treaty and that, if a definition were deemed necessary, it be included in a memorandum accompanying the Treaty or in an explanatory note, rather than in the Treaty itself. The Delegation also indicated its preference not to use the term "semiconductor" in the text of the Treaty since that term was subject to becoming technologically obsolete, and indicated that the term "layout" or "layout design" was preferable to the term "design" since the latter could give rise to confusion with design law concepts.

18. The Delegation of the United States of America called attention to the need for integrated circuit protection so as not to hinder progress in integrated circuit technology, and was of the view that there should be an international commitment to recognize and respect the property rights in original layouts or designs of integrated circuits under appropriate conditions. The Delegation thus gave its support to the basic principles of the Draft Treaty. In order to improve or clarify that text, the Delegation raised the following points: the subject matter of the Treaty (integrated circuits) should be defined; certain terms, such as "commercial exploitation" and "design" or "layout," should also be defined; the standard of "originality" should be specified; the relationship between the Draft Treaty and existing patent and copyright treaties should be clarified; the scope of the exclusive rights and permissible limitations, especially the right of importation and the limitations regarding the defenses of innocent infringement and reverse engineering, should also be clarified; a provision for an optional notice of protection having evidentiary significance should be added; the commencement of the term of protection and the assurance of a right to reasonable compensation starting from either commercial exploitation or registration should be more clearly specified; the Treaty revision process should be regulated in greater detail; and provision for consultation procedures to encourage the negotiation and settlement of different opinions about treaty obligations should be considered. The Delegation indicated that, in its view, the Draft Treaty was fully compatible with the United States Semiconductor Chip Protection Act, which became effective on November 8, 1984.

It reported to the Committee of Experts that, after nearly one year of experience under the Act's registration system, 1,158 registrations for mask works had been filed, of which 507 were from foreign mask work owners. It explained that foreign applicants for protection were granted several bases under the Act on which registration could be made; one basis was first commercial exploitation in the United States of America; another basis was a presidential proclamation under Section 902(a)(2) of the Act; still another basis was an administrative order by the U.S. Patent and Trademark Office in accordance with Section 914 of the Act. The Delegation noted that the grant of interim protection under Section 914 was premised upon a finding that the

foreign nation in question was progressing, either by enactment of a statute or by treaty negotiation, towards a legal regime of integrated circuit protection generally similar to that found in the Act, that its nationals and persons controlled by them were not engaging in and had not recently engaged in semiconductor chip misappropriation or the sale of products containing infringing chip components, and that issuing the order would promote the overall goals of the Act and of international comity with respect to the protection of integrated circuits. The Delegation informed the Committee of Experts that the United States Congress had been impressed by the fundamental unfairness of integrated circuit piracy, which usurped the efforts of others without adding to technological progress, and that a central mission of the United States Act was thus to encourage the international protection of integrated circuits.

19. The Delegation of Austria emphasized that there was an urgent and important need for integrated circuit protection and that the preferable solution to such protection on the international level was a multilateral one. It indicated its support of the Draft Treaty and, as Austria was still undecided as to which system of protection it would adopt, expressed its appreciation for the flexibility contained in the Treaty.

20. The Delegation of Belgium declared its support for the elaboration of an international treaty within the framework of WIPO and called attention to the need to coordinate WIPO's efforts with those of the Commission of the European Communities in its preparations for a Proposal for a Council Directive on the Legal Protection of Topographies of Semiconductor Products. The Delegation of Belgium informed the Committee of Experts that, while pure copyright protection for integrated circuits had been rejected, its country had not yet chosen the precise legal route that it wished to follow; nevertheless, it indicated that registration procedures were not a part of Belgian legal tradition. The Delegation underlined the necessity of including an open and global definition of the object of protection in the Draft Treaty.

21. The Delegation of Norway stated that, as was the case in the other Nordic countries, draft provisions for the protection of integrated circuits were being drawn up, and indicated that those provisions would provide for *sui generis* protection incorporated in the copyright law under neighboring rights. The Delegation thus expressed its view that this was an opportune moment for a discussion of a treaty on the international protection of integrated circuits.

22. The Delegation of Italy informed the Committee of Experts that a draft law had been elaborated in its country, which would provide for *sui generis* protection. The Delegation further declared its support for the realization of an international treaty and expressed the wish to see it develop rapidly. It indicated that the preparatory work for the Treaty should be undertaken independently but in parallel with the work of the Commission of the European Communities. In addition, the Delegation expressed the desire to include in the Treaty a definition of the object of protection; moreover, it proposed that a new meeting of the Committee of Experts be convened as quickly as possible.

23. The Delegation of India stated that its country was trying to develop an integrated circuit industry and was striving for 40% growth during the next five years. It was, therefore, concerned about the implications of the Draft Treaty on the development of new technologies within developing countries such as India. For example, it questioned whether a duration of protection of 10 years might not be too long in view of the effective life of most modern semiconductor products and was not clear as to whether originality was an adequate indicator of protectability as well as to the level of complexity at which an integrated circuit design was to be protected. The Delegation of India therefore felt that clarification of these and other issues was necessary in order to appreciate the advantages and disadvantages of the Treaty and in order to determine the applicability of the Treaty to a developing country environment.

24. The Delegation of France declared that it was in favor of the establishment of an international system of protection for integrated circuits and that it supported the Draft Treaty prepared by the International Bureau. In the view of that Delegation, an international instrument of protection would avoid having to resort to the rule of reciprocity, which was sometimes difficult to implement. In respect of protection at the international level, France was therefore devoting the greatest attention to the possibility of establishing protection based on the principle of national treatment within the framework of the Draft Treaty proposed by WIPO. With regard to the legal situation under French law, it was indicated that French industry essentially wished to obtain full protection for its investments, in view of the considerable dangers posed by servile and quasi-servile copying. A system based on the grant of private rights conditioned upon novelty, inventive step or originality—the latter notion capable of being defined, in the Delegation's opinion, as the synthesis of the two former notions—would thus not necessarily respond to the needs of industry. Such reflections, in the opinion of the Delegation, should lead France to the elaboration of a *sui generis* law somewhat analogous to the American law, and work had already begun in that direction. The Delegation of France indicated that its country envisaged providing for the protection of any new, final or intermediate, topography of an integrated circuit. In that context, the requirement of deposit for evidentiary purposes would probably be retained as a condition for protection.

25. The Delegation of Israel stated that it welcomed the Draft Treaty as an excellent basis for discussion, in particular as its country was very active in the field of integrated circuit design and exploitation. The Delegation emphasized that a treaty on the protection of integrated circuits required clarity and flexibility and should be definitive in its terminology. In order to give effect to the aims of the Draft Treaty, a certain degree of clarification was therefore required, for example, with respect to the subject matter of protection, the concept of originality, the question of compatibility with other treaties, and the meaning of exploitation, innocent infringement and reverse engineering. The Delegation also indicated that discussions were presently taking place in its country to examine whether the existing national legislation already covered the subject of integrated circuit protection, or whether an amendment to that legislation or a new law was required.

26. The Delegation of Canada expressed its recognition of the need for a treaty. A Parliamentary Committee recommendation was under review that protection for integrated circuits be provided outside the copyright law, but no definite commitment on any particular codified approach to protection had as yet been adopted; the Delegation, therefore, stressed the importance of flexibility in the Treaty. In addition, it noted that there would be need for discussion of the following: providing a definition of an integrated circuit in an explanatory note to the Treaty; taking up the question of whether non-voluntary licenses of a

strictly limited nature ought to be permitted, for example, in order to prevent abuses of monopoly power; reviewing the provisions on exhaustion of rights and innocent infringement; and studying the questions of optional marking provisions, of compulsory registration and of the number of parties required to bring the Treaty into effect.

27. The Delegation of Hungary expressed the view that, while the form of protection may differ among the States party to an international treaty on the protection of integrated circuits there should be a common understanding as to the philosophy of protection. In Hungary, although integrated circuits as such were not protected, all intermediate parts and all phases leading to the production of integrated circuits were protected. As this system led to certain inefficiencies, thought was being given to protecting integrated circuits as a whole. Therefore, the Delegation supported the Draft Treaty because it allowed protection by all available means and did not limit itself simply to one form of protection.

28. The Delegation of Switzerland indicated that the protection of integrated circuits was considered of great importance for its country, and that a draft copyright law had been sent back to the Federal Council by the Council of States because the draft did not comprise the protection of certain achievements, among which the protection of integrated circuits could be included. In addition, a provision concerning protection of achievements was foreseen within the framework of the revision of the provisions concerning unfair competition, which could apply to integrated circuits. The Delegation of Switzerland therefore emphasized that the Treaty to be adopted would have to be sufficiently flexible and open in order to accommodate the various solutions being envisaged in the different countries.

29. The Delegation of China stated that integrated circuits constituted a rapidly developing field of modern technology and that, for such development to continue, it was necessary to protect the right of the integrated circuit designer but was also necessary to permit other designers to develop even better integrated circuits. Therefore, an international treaty should constitute a basic document with concrete details being left for national legislation. Nevertheless, it was important that the concepts and ideas contained in the Draft Treaty (for example, "layout," "design," "essential elements," "substantial portion") be stated clearly. Furthermore, recent technical developments had to be taken into account; for example, it was probably not necessary to use the term "mask work" since integrated circuits may now be made without masks.

30. The Delegation of Sweden stated that, while it was strongly in favor of international multilateral protection and supported the general structure of the Draft Treaty, it wished to raise some basic points, including the relationship between the Treaty and the Paris Convention for the Protection of Industrial Property (hereinafter referred to as "the Paris Convention"), and the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as "the Berne Convention"), and the possibility of requiring Contracting States to communicate applicable legislation to WIPO, which would distribute those texts to the other Contracting States.

31. The Representative of the CEC commented upon the Draft Proposal for a Council Directive on the Legal Protection of Topographies of Semiconductor Products, with respect to which all efforts were being made for a speedy adoption. The Representative stressed the necessity of complementarity between the Draft Treaty and the Proposal for a Council Directive. As far as the Representative of the CEC was aware, both instruments in their present drafting were completely compatible.

32. The Representative of Unesco drew attention to substantive questions concerning the legal nature of the envisaged protection and the need for legal consistency. In particular, he wondered whether it would not be advisable to be more precise, to consider explicitly the relationship with copyright and with patent law and to specify the object of protection.

33. The Representative of UNICE underlined that effective and easily enforceable protection of integrated circuits was highly desirable. In respect of international protection, he recalled that reliance on the patent and copyright conventions was problematic and that resort to bilateral arrangements was impractical. What was thus to be strived for was a treaty that complied with the existing legislation of today but that attempted to foresee the legislation of many countries of tomorrow. While the Representative of UNICE supported the Draft Treaty, he felt that definitions should be provided for the object of protection as well as for the term "layout" and that the concept of originality as mentioned in the Treaty should be clarified.

34. According to the Representative of UEPIP, the basis of protection of integrated circuits was situated between copyright and patent protection. Neither the Paris Convention nor the Berne Convention, which protected functional and non-functional forms, respectively, were adapted to the new technologies that merited the elaboration of a new international instrument, the object of which would be the protection of substantial achievements against servile copying. Such an instrument could protect, in particular, integrated circuits, industrial designs and computer software, as well as all collaboration between man and machine; in other words, the Representative indicated that it would consist of a "technical or functional copyright."

35. The Representative of FICPI endorsed the view that a most efficient means of meeting the urgent need for protection of integrated circuits at the international level was through a special treaty. A major difficulty in the elaboration of such a treaty, however, was the question of definitions. In that respect, the Representative of FICPI agreed with the Delegation of Japan that the provision of a precise definition should perhaps be left open, but that any definition that might be accepted must take into account essential developments in the field. The Representative of FICPI also expressed the view that special protection for integrated circuits should not preempt the possibility of double protection where applicable. The Representative expressed agreement in principle with the adoption of the criterion of originality, but stated that consideration should be given to examining the extent to which the commercial use of an integrated circuit by a third party in situations such as reverse engineering should be considered lawful. With respect to mandatory registration provisions, the Representative of FICPI felt that the Treaty must maintain a flexible approach and suggested that, in the long run, harmonization with respect to registration requirements might be desirable.

36. The Representative of IPTA fully supported the creation of an international system for the protection of integrated circuits and stressed the importance of such a system being capable of reflecting rapidly evolving technological developments, particularly in the areas of computer-aided design and computer-aided engineering. Furthermore, in the opinion of the Representative of IPTA, the concept of reverse engineering, which is a fundamental aspect of integrated circuit

development, should be taken fully into account.

37. The Representative of the BCS highlighted the necessity of a multilateral treaty to provide a framework for national treatment and to counter the resort to reciprocity in the international protection of integrated circuits. He stressed the importance of flexibility in the Draft Treaty's approach to protection and pointed to the WIPO Model Law on the Protection of Computer Software and to the Vienna Agreement for the Protection of Type Faces and their International Deposit as examples of flexible international texts. The Representative expressed the need to provide definitions for terms such as "integrated circuit design and layout" and "commercial exploitation"; however, he emphasized that the search for adequate definitions, which was a difficult task, should not jeopardize the realization of an international instrument. Furthermore, he felt that the limitations on protection should be clarified and that protection should not extend to any concept, process, system or technique embodied in the integrated circuit layout other than the layout itself. Finally, the Representative of the BCS pointed out that the criterion of originality in respect of the grant of protection should be understood from a copyright point of view.

38. The Representative of AIPPI declared that he was in favor of the study of an international treaty; however, he drew attention to the necessity of avoiding a multitude of special treaties. In addition, he expressed the desire for great flexibility in order to guarantee the coordination of international texts and permit the adaptation of national laws. According to the Representative of AIPPI, questions concerning the definition of an integrated circuit, the possibility of prohibiting copies of essential elements of integrated circuits, of the use in good faith of copies, of reverse engineering and of the exhaustion of rights merited examination in depth.

III. Discussion of the Draft Treaty

General

39. The Delegation of Brazil drew the attention of the Committee of Experts to the fact that the Secretariat should explain what were the parameters and principles in respect of intellectual property rights that had inspired the International Bureau to elaborate the Draft Treaty. Furthermore, in the Delegation's opinion, there were underlying technical aspects that should be clarified prior to engaging in a discussion of the proposed Treaty. All those aspects should be made available in writing to the Member States of WIPO in order that full appreciation of the Draft Treaty could be made. The Secretariat should explain what was the intended balance between those who would enjoy proprietory rights and the interests of the society that granted the privilege of protection. In the Delegation's view, the aim of the Treaty should be to prevent piracy, not to grant monopolies that could prevent the acquisition of foreign technology and hamper the development of domestic technology, particularly in developing countries.

[From here onwards, as is traditional in summary reports, the delegations are not identified.]

Article 1: Definitions

40. While recognizing that it was not easy to agree on definitions, the majority of the participants who spoke on the matter were of the view that the provision of additional definitions would help clarify the Treaty and that one should attempt to draft some. In particular, it was thought that consideration should be given to the elaboration of an introductory provision defining the object of protection of the Treaty as well as to the definition of certain key terms, in particular, "integrated circuit," "layout," "design" (or "layout-design" or "topography"), "commercial exploitation" and "original." Several other delegations, however, were of the view that definitions were not indispensable, as shown by other important international instruments in the field of intellectual property, including the Paris Convention. If definitions were to be elaborated, however, the delegations emphasized that they should be sufficiently broad and flexible in order to give enough freedom to national laws and in order to ensure that the scope of protection of the Treaty would not be surpassed by rapid technological advances. Furthermore, the view was expressed that, if the incorporation of certain definitions into the text itself of the Treaty would give rise to problems that might jeopardize the speedy realization of a system of international protection, one should consider the possibility of including agreed statements, in the nature of definitions, in a memorandum or explanatory note that would accompany the Treaty.

41. During the meeting, written proposals for definitions were made by the Delegations of the United States of America (document IPIC/CE/I/5, defining "layout," "integrated circuit," "original," "commercial exploitation," as well as the subject matter of the Treaty) and the Soviet Union (document IPIC/CE/I/6, defining "layout"), and by the Representative of UNICE (document IPIC/CE/I/4, defining "topography," "integrated circuit" and "originality"). Those proposals were examined following the discussion of the substantive provisions of the Draft Treaty (see paragraphs 90 to 93, below).

Article 2: National Treatment

42. All participants who took the floor gave strong support to the principle of national treatment. Questions were raised, however, as to the appropriateness of including the word "original" in Article 2, where it was somewhat hidden. The view was expressed that if the notion "original" were to be maintaind, it should rather appear in a provision defining the subject matter of the Treaty, or in a general statement of the Treaty's object of protection. One delegation said that the Treaty should contain provisions not only on the rights but also on the obligations of the owner of the rights in order to achieve an appropriate balance between the two, and proposed adding the following clause at the end of the Article: ". . . provided that the conditions and formalities imposed upon nationals are compiled with."

43. With respect to the application of the principle of national treatment, the question was raised whether the requirement should be based on the treatment granted to residents instead of on the treatment granted to nationals of a Contracting State. It was replied that the protection granted in application of the principle was traditionally of the highest standard, which was usually that accorded to nationals.

Condition of Originality

44. The question was discussed whether originality should be an internationally required condition of protection. While most of the participants who spoke on the matter considered that originality should constitute a requirement of protection and that the concept should be referred to in the Treaty, several delegations expressed the view that it would be preferable for the Treaty to remain silent in that regard in order to permit the Contracting States greater flexibility in adopting national systems of protection. As an alternative, the suggestion was made to make protection conditional on either originality or novelty, following the example of Article 7 of the Vienna Agreement for the Protection of Type Faces and Their International Deposit. It was noted that the meaning of "originality," as used in

connection with integrated circuits, did not seem to be exactly the same as when it was used in a copyright law (the United States Semiconductor Chip Protection Act was an example). One delegation observed that layout-designs that were novel were necessarily original, and that layout-designs that were original were often novel, so that, in the field under examination, the terms were practically interchangeable. It was emphasized, however, that, regardless of the criterion used, the purpose of the Treaty was to establish minimum rights and maximum formalities that could be adopted on an international level in order to prevent piracy in integrated circuits. The type of system adopted on the national level, therefore, need not be defined in the Treaty, provided that the national system complied with the Treaty's requirements as to minimum rights, minimum duration of protection and maximum formalities.

Article 3: Minimum Rights Protected

45. One delegation said that the Treaty should establish a better balance between the commercial interests of the proprietor of integrated circuits and the public interests of the society that granted the privilege of protection. To that end, it proposed the deletion of paragraph (1)(b) and the addition of the following: "1. Any Contracting State has the right to provide in its national law, where the exploitation of an integrated circuit is required by reasons of public interest, for the possibility of exploitation, at any time, of the integrated circuit by the government of that country or third persons authorized by it. 2 Any Contracting State of the Union has the right to adopt legislative measures to prevent abuses, such as failure to work, resulting from the exercise of the rights granted to the proprietor. The said legislative measures should include, among others, the grant of non-voluntary licenses and revocation of the privilege granted." The Delegation further pointed out that, in its view, the word "minimum" should be deleted from the title of the Article since the Treaty should establish the rights granted to the proprietor and considerations in respect of the minimum and maximum extent of those rights were thus not appropriate. Most other delegations, however, agreed that Article 3, represented a proper balance between private and public interests and thereby could encourage the stimulation of creativity and transfer of technology in the field of integrated circuit technology.

Article 3(1)(a)

46. It was felt by certain delegations that, from a drafting point of view, it would be preferable to express the provisions of paragraph (1)(a) in terms of a positive grant of rights rather than a negative prohibition of unlawful acts. The point was raised, however, that a positive grant might, in fact, prove to be more limitative than an enumeration of prohibitions. In addition, one delegation proposed the inclusion of the phrase "as defined by the specific national legislation" after the word "unlawful" as well as the deletion of the words "at least."

47. In terms of other drafting choices, most delegations appeared to prefer the term "reproduction" to "copying," at least in part because reproduction seemed to cover more clearly the change from two dimensions to three, or vice versa.

48. With respect to the choice between "physical object" or "product," a number of delegations seemed to opt in favor of "physical object," or proposed replacing both with a term such as "semiconductor product" in order clearly to express the intention that what was being referred to was, indeed, such product. It was underlined, moreover, that a distinction should be made between a semiconductor chip and the product incorporating such a chip, for example, a television set.

49. Concerning the choice between "design" or "layout," no clear preference seemed to emerge from the discussions; suggestions were made by several delegations to adopt alternative terms such as "layout-design" or "topography" and by one delegation to adopt the alternative "mask work." In addition, some delegations felt that the phrase "substantial portion or essential elements" could benefit from clarification.

50. In respect of the French-language version of the Draft Treaty, the suggestion was made to change the word "illicites" in paragraph (1)(a) to "illégaux" in order to guarantee coverage of both international and unintentional acts.

51. The question was raised of the appropriateness of providing that only acts performed for commercial purposes were to be considered unlawful under the Treaty. In the view of some delegations, acts performed for non-commercial purposes could also cause substantial economic damage and, therefore, the purpose of the act should be considered irrelevant. Other delegations, however, indicated their view that the right to prohibit certain acts was aimed at the elimination of commercial abuses and that acts performed for purely private purposes should be excluded from the scope of the Treaty. The suggestion was thus made by certain delegations to clarify the concept of commercial purposes accordingly. Moreover, the suggestion was made to clarify that use of an integrated circuit design for purposes unrelated to the objective of the design (for example, as a wallpaper design) would not be an unlawful act under the Treaty.

52. The question was also raised as to the necessity of maintaining subparagraph (1)(a)(ii) since, in the view of some delegations, the act of incorporation was included within the meaning of the term "reproducing," which was already prohibited in subparagraph (1)(a)(i). The opinion was expressed, however, that subparagraph (1)(a)(ii) was a preparatory act to the prohibitions contained in subparagraph (1)(a)(iii) and that, since the prohibited acts in the three subparagraphs could be performed by three different parties, the maintenance of subparagraph (1)(a)(ii) was perhaps advisable. If the subparagraph were to be retained, the technical appropriateness of the term "incorporating" should, in the view of one delegation, be examined. According to that delegation, subparagraph (1)(a)(ii) should be drafted as follows: "utilizing the topography or an original substantial portion or essential elements thereof to manufacture a semiconductor product."

53. In respect of subparagraph (1)(a)(iii), some delegations considered that the terminology and intent of the provision could be clarified by enumerating other specific acts, such as "offering for sale," "hiring out" or "leasing."

54. One delegation pointed to the fact that a company in a Contracting State could import a product without having knowledge that the product incorporated a copy of the integrated circuit protected under the applicable national law. That company, as well as the Contracting State, should not be penalized inasmuch as it was almost impossible to engage in a control of all components of some imported devices. The penalties should be imposed on the exporting company when a copied integrated circuit that was protected by the applicable national law was incorporated in an exported product. In the delegation's view, the Draft Treaty should thus be amended accordingly.

Article 3(1)(b)

55. Most delegations that expressed a view said that the Treaty should not

exclude the possibility of non-voluntary licenses but should allow such licenses in well-defined, specific and limited cases, in particular as a measure against possible abuses of the rights otherwise granted by the Treaty.

56. One delegation suggested allowing use of the design of an integrated circuit against remuneration for the purposes of the State or in the public interest, without any time limit, and also to include a provision on the revocation rights. In view of the proposal for Article 3 referred to in paragraph 45 of this Report, the delegation proposed the deletion of Article 3(1)(b).

57. Another delegation expressed the view that non-voluntary licenses should not be permitted except where very special circumstances justified them, for example, where certain provisions of a law had a retroactive effect.

58. A suggestion was made to examine the relationship between Article 5A of the Paris Convention and any provision concerning non-voluntary licenses in the Draft Treaty.

59. The Director General said that the Draft did not contain a proposal for compulsory licenses because the situation was quite different from that in the Paris Convention and the Berne Convention: the duration of protection was much shorter and the provisions on reverse engineering allowed a degree of free use of the protected subject matter unparalleled in those Conventions. He concluded by saying that since no delegation seemed to be absolutely opposed to the provisons on compulsory licensing, the next draft would contain such provisions.

Article 3(2)

60. Several delegations expressed the view that this provision could be ommitted from the Draft Treaty, since the question of sanctions was typically a matter for regulation by national law. Three delegations were concerned that their countries would not be able to become party to the Treaty if remedies were mandatory.

61. According to another view, this paragraph should be removed from Article 3 and drafted in a more general fashion by stating, for example, that each Contracting State would have to provide for adequate measures to ensure effective protection against unlawful acts. The sanctions in the Draft could then be mentioned as mere examples.

62. It was observed that, in any case, reasonable royalties should not be mentioned in the Draft Treaty as an alternative to damages.

Article 3(3)

63. The question was examined whether the limitations on minimum protection contained in this paragraph should be mandatory rather than optional (as under the present Draft). In support of a mandatory character, it was stated in particular that the limitation in respect of "reverse engineering," contained in item (ii), should be uniform in all Contracting States. On the other hand, attention was drawn to the difficulty of achieving agreement on a uniform standard for the said exception as well as to the desire that the Treaty be sufficiently flexible in order to accommodate various approaches in national laws with respect to limitations.

64. With respect to item (i), it was observed that this provision might be too broad, since it concerned teaching and research for all purposes. One should consider limiting the scope of the provision to cases of teaching and research for non-profit purposes.

65. With respect to item (ii), several delegations stressed that the exception of so-called "reverse engineering"—although in principle justified—should not be as broad as proposed in the present Draft. In particular, the exception should not cover the incorporating of copied integrated circuit designs in physical object or product. The exception of "reverse engineering" should rather be limited to the reproduction of the design for the purposes of analysis and evaluation. A later design that consisted of two or more earlier designs should not be able to benefit from the reverse engineering exception; the authorization of the proprietors of the compiled designs should be required before the later design could be put into practice. According to another view, the reverse engineering exception should encompass only the situation where a later design resulted from the extraction and use of the circuits, logic flow, ideas and methodology embodied in the earlier design. One delegation suggested that it might be difficult to determine whether any given act was "for the purposes of the creation of another [design] [layout]" and that, accordingly, an exception for acts done for experimental purposes might be preferable. Another delegation, however, noted that the provision in the Draft Treaty was very positive.

66. In respect of item (iii), it was generally held that the two cases covered by this provision, namely, that of distribution, in good faith, of products reproducing or incorporating the design of an integrated circuit, on the one hand, and the exhaustion of rights where the product has been put on the market by, or with the consent of, the proprietor, on the other, should be dealt with in two separate provisions. With respect to the exhaustion of rights, it was suggested that this should be admitted only if the first sale had occurred in a Contracting State.

Article 3(4)

67. It was observed that this provision should make it clear whether only the microchip or also products (for example, television sets) that contain microchips would be covered.

68. One delegation suggested replacing the words "importation in the sense of paragrapy (1)(a)(iii)" at the end of the paragraph with "constituting an unlawful act."

Article 4: Maximum Formalities

69. One delegation proposed that the word "maximum" be deleted from the title of the Article.

70. Attention was drawn to the fact that the mandatory registration of circuit layouts provided for by the Japanese Act Concerning the Circuit Layout of a Semiconductor Integrated Circuit (hereinafter referred to as the "Japanese Act") required the filing of drawings, photographs *and* other materials. The question arose whether that filing requirement was compatible with the alternative filing provided for in Article 4(1)(a) and (b) of the Draft Treaty.

71. As regards Article 4(1)(b), the suggestion was made to add the words "or in addition to" after the words "instead of" in the first line. Moreover, the expression "copy" in Article 4(1)(a) and (b) needed to be clarified, in order to make clear that drawings or photographs could also be registered.

72. Attention was also drawn to Section 21 of the Japanese Act, according to which, *inter alia*, the transfer of the layout right required registration. Here again, the question arose whether such a provision was compatible with the Draft Treaty.

73. As regards the expression "product" in the penultimate line of paragraph (1)(b), one delegation stated that in this case only semiconductor chips were meant and that goods containing such chips, for example, television sets, were excluded. It further stressed that the same was true with regard to the use of that expression in Article 3(1)(a)(ii), (1)(a)(iii) and (3).

74. The question was raised whether the formalities permitted under Article 4 of the Draft Treaty could be applied by a country that was bound by the Berne Convention and that afforded copyright

protection to integrated circuits. One delegation considered that such a country did not have the freedom to make protection conditional upon the fulfillment of certain formalities and proposed, to prevent any misunderstanding, that a new paragraph so stating be inserted in Article 4.

75. With respect to the expression "exploits commercially" in paragraph (1)(a), it was stated that the decisive condition should be whether an integrated circuit or product incorporating it had been offered to the public. Moreover, commercial exploitation—or, rather, a public offer—should be taken into account only where it had occurred in a Contracting State of the Treaty.

76. Some delegations questioned whether the Treaty should even permit mandatory registration systems, since such systems could not by their very nature in this instance be used to determine novelty or originality. A multiplicity of such systems could be burdensome to small businesses. However, it was noted that the United States of America and Japan already had such systems in place.

77. One delegation suggested that the Treaty should contain a provision on optional marking or notice of protection (for example, the letter "M" between asterisks: *M*).

78. Several delegations suggested that the use of a notice, in the agreed form, should have the same effect as in the Universal Copyright Convention, that is, it should make it unnecessary to comply with any other formality.

79. In respect of the administrative authority with which registration had to be effected, it was observed that, in a scheme of regional cooperation, a regional authority could be entrusted with this task and that this possibility should be referred to in the Draft Treaty.

80. The words "or international public authority" in Article 4(1)(a) were understood as referring to the future possibility of establishing an international system of registration of integrated circuit layouts, and did not mean or imply that an international registry would have to be established. One delegation, however, proposed deleting the reference to an "international public authority," first, because such an authority did not exist and, second, because, in its view, registration by a national or regional authority could not be replaced with registration by an international public authority as provided. It pointed out that if it were felt that a mechanism of this sort should be envisaged, other alternatives would have to be examined, such as the Patent Cooperation Treaty (PCT).

81. The question was raised whether there should be an international priority right based on an application for registration in a Contracting State.

82. It was suggested that one should further study whether the Treaty should allow the requiring of material, additional to what was mentioned in the Draft, to be furnished at the moment of registration. On the other hand, it should also be studied whether one should not merge subparagraphs (a) and (b) and merely speak about "material allowing the identification of the layout-design." The observation was made that a provision would be needed according to which critical parts of material to be registered that represented trade secrets could be omitted from the register. In addition, one delegation expressed the view that the requirements for registration should be left to the national authorities and that a precondition to the granting of the privilege should be registration by a national authority. In any event, it was important, according to that delegation, that the material required should enable the authority to determine whether the mask work complied with the degree of novelty or originality upon which the claimed protection was conditioned. The delegation further noted that it did not agree with the grace period proposed in the Draft Treaty.

83. One delegation raised questions about the possibility of establishing additional formal requirements for providing protection in accordance with national legislation and of rendering more precise the material that would allow the identification of the layout of an integrated circuit.

84. The question was also raised as to what would be the rights and obligations of a Contracting State, particularly in respect of formalities and duration or protection, if such State adhered to the new Treaty, if, in its national law, it protected layout-designs as works under the copyright law and if such State were a party to the Berne Convention or the Universal Copyright Convention. The Director General said that his views on that question would be expressed in the preparatory paper for the next session of the Committee of Experts.

85. In conformity with its observation concerning the title of Article 4 (see paragraph 69, above), one delegation proposed the deletion of paragraph (2).

Article 5: Minumum Term of Protection

86. One delegation proposed, as alternatives additional to Article 5(i) and (ii) of the Draft Treaty, the date of filing referred to in Article 4(1)(a) and 4(1)(b), and proposed further to add the words "whichever shall be the earlier" after the words "two dates" in the second line of Article 5. Several participants suggested that Article 5 should not only deal with the minimum duration and the earliest possible end of protection, but that it should also specify the event from which protection must start (for example, the first fixing or encoding of the design, layout or topography, which practically would amount to the time of creation).

87. Some delegations found the proposed 10-year minimum too long and proposed that it be reduced to five years on the ground that the rapid development of technology made new microchips rapidly obsolete.

88. On a question whether the Treaty would permit perpetual protection, the Director General said that this was the case and, if that were an undesirable feature, one would have to provide for a maximum term of protection. Such a provision was unknown in existing intellectual property treaties.

89. In respect of the expression "first commercial exploitation," the suggestion was made to use the expression "first public offer."

Definitions (Continuation of Discussions)

90. Following the discussions of Articles 2, 3, 4 and 5, the question of definitions was again discussed, on the basis the three documents referred to above (see paragraph 41). The point was raised by one delegation that, since the proposals could not fully be appreciated, further discussion of them should be envisaged at the next session of the Committee of Experts.

91. In view of the fact that the proposal of the United States of America used the expression "layout design," the proposal of the Soviet Union the expression "layout" and the proposal by UNICE the expression "topography," it was agreed that the question of the appropriate term to be used should be further studied.

92. As regards the definition of "layout design" (in the proposal of the United States of America) and "topography" (in the proposal of UNICE), attention was drawn to the importance of defining the expression "layer." With respect to the definition of "integrated circuit" in the proposal of the United States of America, it was observed that such a circuit could have either several functions or only one function; therefore, the last word of that definition should be in the singular. It was further mentioned that the said

definition comprised products that did not have a semiconductor layer or any semiconductor material at all.

93. With respect to the definition of "original," the question was raised whether that definition should include an element referring to a step or improvement achieved by the creation, in addition to the condition that "original" meant something which had not been copied. The step or improvement was, in particular, important if the expression "original" was to be used in order to define the result of legitimate reverse engineering. On the other hand, it was underlined that a definition of originality was not helpful and that national copyright law usually did not contain such a definition, since this was a question which typically had to be decided in the light of the circumstances prevailing in a given case, that is, if necessary, by the courts. Finally, it was observed that a definition of originality might not be required if the Treaty would permit Contracting States to make protection conditional on either originality or on novelty, following the example of Article 7 of the Vienna Agreement for the Protection of Type Faces and Their International Deposit.

Article 6: Revision of the Treaty

94. No observations were made in respect of the draft of this Article.

Article 7: Becoming Party to the Treaty

95. No observations were made in respect of the draft of this Article.

Article 8: Entry into Force of the Treaty

96. Several delegations stated that the minimum number of ratifications or accessions for the initial entry into force of the Treaty provided for in the Draft should be higher than three. Two delegations proposed that the number be one third of the States members of WIPO and that the period between the deposit of the last required instrument of ratification or accession and entry into force be 12 (rather than three) months. One of those delegations pointed out that the importance of integrated circuits for modern industry required the attention of the international community as a whole when a multilateral treaty was being envisaged under the aegis of WIPO; therefore, it considered that a meaningful number of States should be required for the Treaty to enter into force.

97. Several delegations, however, expressed the view that the international protection that would be guaranteed by the Treaty was urgent, and that this should be taken into account when the conditions for the entry into force of the Treaty were fixed.

Provisions for Developing Countries

98. Two delegations stated that it was necessary to include in the future treaty a set of provisions giving preferential treatment for developing countries. Such provisions were also being discussed in the framework of the ongoing revision of the Paris convention. The envisaged new Treaty should, in addition, reflect the special interests of developing countries. The need for a fair balance between the interests of the proprietors of technology and the technology importing countries should be recognized by the Treaty.

Consultation Procedures

99. The Delegation of the United States of America introduced its proposal for "Consultation Procedures in Relation to the Draft Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits" (document IPIC/CE/I/3).

100. Several delegations said that they had studied the proposal with interest, but since it raised a number of important questions of international law, which required further consultations with the competent authorities of their respective countries, and since the proposal was only received during this session, it should not be considered now. They added that their further consideration of the proposal would have to include a study of the relevant procedures in the framework of the General Agreement on Tariffs and Trade (GATT).

101. Three delegations said that they were not in favor of, or had serious reservations concerning, a provision on consultation procedures.

102. One delegation said that a procedure similar to that under Article 28 of the Paris Convention could be a model. It could not agree, however, to the establishment of a supranational jurisdiction that could be used to create obligations not clearly established in the text of the Treaty, the enforcement of which should be the responsibility of the domestic jurisdiction.

Further Procedure

103. The Committee of Experts noted the following statement made by the Director General: "I am prepared to consult with a few consultants on the technical issues, to use the term of the Indian Delegation, in order to prepare either a separate paper or a separate chapter in a paper which will be submitted eventually to the next session of this Committee of Experts. I shall, among other consultants, in any case write to the Brazilian and the Indian Governments to appoint persons who would serve as consultants for this matter. The aim of the exercise, as I understand it, is to elucidate as clearly as possible all the technical issues which are involved and which will have a great bearing on such matters as the subject matter of the Treaty and the definitions, such as integrated circuits, design, layout-design, originality, reverse engineering and all the other aspects which are not the primary speciality of lawyers, but rather those who make or use the microchips."

104. The Committee of Experts also noted a statement by the Director General according to which the next session of the Committee of Experts would probably take place during the summer (of the Northern Hemisphere) of 1986.

105. *This report was unanimously adopted by the Committee of Experts in its meeting of November 29, 1985.*

ANNEXE/ANNEX—LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. Etats/States

(dans l'ordre alphabétique des noms français des Etats)/(in the alphabetical order of the French names of the States)

Allemagne (Republique Federale D')/ Germany (Federal Republic of)

Ingwer KOCH, Regierungsdirektor, Federal Ministry of Justice, Bonn
Jügen SCHADE, Head of Section, International Industrial Property Law, German Patent Office, Munich

Argentine/Argentina

Norma S. FASANO (Ms.), First Secretary, Permanent Mission, Geneva

Australie/Australia

Lauren G. HONCOPE (Ms.), Principal Legal Officer, Intellectual Property, Business Affairs Division, Attorney-General's Department, Barton, A.C.T.

Autriche/Austria

Robert DITTRICH, Director, Ministry of Justice, Vienna
Gudrun MAYER-DOLLINER (Mrs.), Hofrat, Austrian Patent Office, Ministry of Commerce, Trade and Industry, Vienna

Belgique/Belgium

Dominique VANDERGHEYNST, Secrétaire d'administration, Office de la propriété industrielle, Ministère des Affaires économiques, Bruxelles

Bresil/Brazil

Carlos Ignacio ZAMITTI MAMMANA, Director, Institute of Microelectronics, Technological Center for Informatics, Campinas, São Paulo
Cláudio R. TREIGUER, Director, Technological Documentation and Information Center, National Institute of Industrial Property, Ministry of Industry and Trade, Rio de Janeiro

Oscar Luiz MONTEIRO DE FARIAS, Assistant for Informatics, National Institute of Industrial Property, Ministry of Industry and Trade, Rio de Janeiro
Paulo Roberto FRANÇA, Third Secretary, Permanent Mission, Geneva

Bulgarie/Bulgaria

Evelina STEFANOVA (Mme), Spécialists en matière de brevets, Institut d'inventions et de rationalisations, Comité d'Etat pour la science et le progrès technique, Sofia

Canada

Howard P. KNOPF, Policy Advisor, Department of Consumer and Corporate Affairs, Hull (Quebec)
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Chine/China

HE RU YING, Principal Director, Third Examination Department, Patent Office of the People's Republic of China, State Economic Commission, Beijing
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Danemark/Denmark

Johannes Norup-NIELSEN, Legal Adviser, Ministry of Cultural Affairs, Copenhagen
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Hans Jakob RIIS-VESTERGAARD, Head of Section, Patent and Trademark Office, Ministry of Industry, Copenhagen
Mogens KOKTVEDGAARD, Professor, Ministry of Cultural Affairs, Copenhagen

Etats-Unis D'Amerique/United States of America

Ralph OMAN, Register of Copyrights, United States Copyright Office, Library of Congress, Washington, D.C.
Harvey WINTER, Director, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State, Washington, D.C.
Michael KEPLINGER, Attorney, Office of Legislation and International Affairs, United States Patent and Tradmark Office, Department of Commerce, Washington, D.C.
Dorothy SCHRADER (Ms.), Associate Register of Copyrights for Legal Affairs, United States Copyright Office, Library of Congress, Washington, D.C.
Michael J. REMINGTON, Chief Counsel, Subcommittee of Courts, Civil Liberties and the Administration of Justice, Committee of the Judiciary, United States House of Representatives, Washington, D.C.
Virginia WEINMAN (Mrs.), American Electronics Association, Palo Alto

Finlande/Finland

Jukka LIEDES, Special Adviser, Ministry of Education, Helsinki
Satu LAHTINEN (Miss), Government Secretary, Ministry of Education, Helsinki
Marja-Leena MANSALA (Mrs.), Secretary, State Copyright Committee, Ministry of Education, Helsinki
K. Miika TARHIO, Secretary, State Copyright Committee, Ministry of Education, Helsinki
Stig HENRIKSSON, Head, Legal Department, Conferation of Finnish Industries, Helsinki

France

Jean JONQUERES, Conseiller à la Cour de cassation, Paris
Benjamine VIDAUD (Mlle), Attachée à la Direction, Institut national de la propriété industrielle (INPI), Paris

Grece/Greece

Nicolas COUNINIOTIS, Représentant permanent adjoint, Mission permanente, Genève

Hongrie/Hungary

György PÁLOS, Director, Bureau for the Protection of Authors' Rights, Budapest

Inde/India

Gautan SONI, Additional Director, Department of Electronics, Ministry of Science and Technology, New Delhi
Skand Ranjan TAYAL, First Secretary, Permanent Mission, Geneva

Irlande/Ireland

Anne COLEMAN-DUNNE (Mrs.), Patent Office, Department of Industry, Trade, Commerce and Tourism, Dublin

Israel

Michael OPHIR, Deputy Commissioner of Patents, Patent Office, Ministry of Justice, Jerusalem

Italie/Italy

Marco G. FORTINI, Ministre plénipotentiaire, Délégué aux accords pour la propriété intellectuelle, Ministère des Affaires étrangères, Rome
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Japon/Japan

Zentaro KITAGAWA, Professor, Faculty of Law, Kyoto University, Kyoto
Yoshihiro MASUDA, First Secretary, Permanent Mission, Geneva
Sachio KAMOGAWA, First Secretary, Permanent Mission, Geneva
Yusaku NAKATA, Staff Specialist for Technology Control, General Affairs Division, Machinery and Information Industries Bureau, Ministry of International Trade and Industry, Tokyo

Maroc/Morocco

Mohammed Saïd BENRYANE, Deuxième secrétaire, Mission permanente, Genève

Nigeria

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Ezekiel Oladele JEGEDE, Registrar of Patents, Designs and Trade Marks, Federal Ministry of Trade, Lagos

Norvege/Norway

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Pakistan

Zamir AKRAM, Second Secretary, Permanent Mission, Geneva

Pays-Bas/Netherlands

Erik C. NOOTEBOOM, Legal Adviser, Industrial Property Matters, Ministry of Economic Affairs, The Hague

Republique de Coree/Republic of Korea

Kang Hoo LEE, Attaché, Permanent Mission, Geneva

Royaume-Uni/United Kingdom

Derek M. HASELDEN, Senior Examiner, Industrial Property and Copyright Department, Department of Trade and Industry, London

Suede/Sweden

A. Henry OLSSON, Director, Ministry of Justice, Stockholm
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Suisse/Switzerland

Jean BORLOZ, Chef de division, Office fédéral de la propriété intellectuelle, Berne
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Jean-Marie SOUCHE, Collaborateur juridique, Office fédéral de la propriété intellectuelle, Berne

Union Sovietique/Soviet Union

Vladimir MYASNIKOV, Director, Main Department, USSR State Committee for Science and Technology, Moscow
V.V. VARFOLOMEEV, Chief Engineer, All-Union Scientific Research Institute for State Patent Examination (VNIIGPE), Moscow

II. Organisations Intergouvernementales/ Intergovernmental Organizations

Organisation des Nations Unies Pour L'Education, la Science et la Culture (UNESCO)/United Nations Educational, Scientific and Cultural Organization (UNESCO)

Yves GAUBIAC, Division du droit d'auteur, Paris

Commission des Communautes Europeennes (CCE)/Commission of the European Communities (CEC)

Robert J. COLEMAN, Chef de division, Direction générale du marché intérieur et des affaires industrielles, Bruxelles
Bernhard POSNER, Administrateur principal, Direction, générale du marché intérieur et des affaires industrielles, Bruxelles

Organisation Europeenne des Brevets (OEB)/ European Patent Organisation (EPO)

Gert D. KOLLE, Head, Department for International Affairs I, Munich

III. Organisations non Gouvernementales/ non-governmental Organizations

Association des Industries de L'Electronique du Japon (EIAJ)/Electronic Industries Association of Japan (EIAJ)

Kiyoshi NAKAMURA, Associate Chief Engineer, Electron Device Group, NEC Corporation, Kanagawa
Kazuaki OGASAWARE, Manager, Engineering Department, Electronic Industries Association of Japan, Tokyo

Association Europeenne des Fabricants de Composants Electroniques (EECA)/European Electronic Component Manufacturers Association (EECA)

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Arno KOERBER, Senior Director, Contracts and Patents, Siemens AG, Munich

Association Internationale Pour la Promotion de L'Enseignement et de la Recherche en Propriete Intellectuelle (ATRIP)/ International Associaiton for the Advancement of Teaching and Research in Intellectual Property (ATRIP)

Ivan CHERPILLOD, Docteur en droit, Centre du droit de l'entreprise, Université de Lausanne, Lausanne

Association Internationale Pour la Protection de la Propriete Industrielle (AIPPI)/ International Association for the Protection of Industrial Property (AIPPI)

Thierry MOLLET-VIEVILLE, Membre du Bureau, Avocat à la Cour, Paris
Philippe GUILGUET, Vice-président, Groupe français, Consultant, Paris

British Computer Society (BCS)

Robert J. HART, Chairman, Copyright Committee, Manager, Intellectual Property Development, Plessey Telecommunications and Office Systems Ltd., Liverpool
Bryan NIBLETT, Professor Emeritus, Department of Mathematics and Computer Science, University College of Swansea, Swansea

Chambre de Commerce Internationale (CCI)/ International Chamber of Commerce (ICC)

Frederick T. BOEHM, Staff Counsel, Copyright and Trademark Matters, International Business Machines Corporation, Purchase (New York)
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Comite des Instituts Nationaux des Agents de Brevets (CNIPA)/Committee of National Institutes of Patent Agents (CNIPA)

John U. NEUKOM, Director of Patents, United Kingdom Atomic Energy Authority, London
Jan E.M. GALAMA, Director, Corporate Patents and Trademarks, Philips International B.V. Eindhoven
Werner VON WILLICH, Patent Attorney, Munich

Computer and Business Equipment Manufacturers Associaiton (CBEMA)

Frederick T. BOEHM, Staff Counsel, Copyright and Trademark Matters, International Business Machines Corporation, Purchase (New York)

Federation Internationale des Conseils en Propriete Industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI)

Heinz BARDEHLE, President of Honor, Patent Attorney, Munich
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Jean LECCA, Commission sur la protection juridique du logiciel et des circuits intégrés, Conseil en brevets, Paris

International Patent and Trademark Association (IPTA)

Ronald S. LAURIE, Attorney, Townsend and Townsend, San Francisco

Ligue Internationale du Droit de la Concurrence (LIDC)/International League for Competition Law (LIDC)

Jean-François LEGER, Conseil en brevets, Genève

Union des Industries de la Communaute Europeenne (UNICE)/Union of Industries of the European Community (UNICE)

Jan E.M. GALAMA, Director, Corporate Patents and Tradmarks, Philips International B.V., Eindhoven
Robert J. HART, Manager, Intellectual Property Development, Plessey Telecommunications and Office Systems Ltd., Liverpool
Michel COLOMBE, Responsable, Service de la propriété industrielle, Bull S.A., Paris

Union des Praticiens Europeens en Propriete Industrielle (UPEPI)/Union of European Practitioners in Industrial Property (UEPIP)

Jean LECCA, Vice-président, Conseil en brevets, Paris
Hans-Erich BOHMER, European Patent Attorney, Aidlingen-Dachtel (Federal Republic of Germany)

Union Internationale des Editeurs (UIE)/ International Publishers Association (IPA)

Joseph A. KOUTCHOUMOW, Secrétaire général, Genève

IV. Bureau International de l'Organisation Mondiale de la Propriete Intellectuelle (OMPI)/International Bureau of the World Intellectual Property Organization (WIPO)

Arpad BOGSCH, Directeur général/Director General
Klaus PFANNER, Vice-directeur général/ Deputy Director General
Ludwig BAEUMER, Directeur, Division de la propriété industrielle/Director, Industrial Property Division
Jay ERSTLING, Chef de la Section de l'information sur le droit de la propriété industrielle, Division de la propriété industrielle/Head, Industrial Property Law Information Section, Industrial Property Division
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V. Bureau/Officers

Président/Chairman: A.H. OLSSON (Suède/ Sweden)
Vice-présidents/Vice-Chairman:
Z. KITAGAWA (Japon/Japan)
V.A. MYASNIKOV, (Union soviétique/ Soviet Union)
Secrétaire/Secretary: J. ERSTLING (OMPI/ WIPO)

Government of Canada, Gouvernement du Canada; Government Response to the Report of the Sub-Committee on the Revision of Copyright

February 1986.

Mr. Gabriel Fontaine,
Chairman Sub-Committee on the Revision of Copyright, Standing Committee on Communications and Culture, Room 319, Confederation Building, House of Commons, Ottawa, Ontario, K1A OA6

Re: "Charter of Rights for Creators"

Dear Mr. Fontaine: Pursuant to Standing Order 70(16), we are writing to you in your capacity as Chairman of the Sub-Committee on the Revision of Copyright to provide you with the Government's comprehensive and positive response to the Sub-Committee's report "A Charter of Rights for Creators".

Canada's Copyright Act has not been revised in 62 years. The intervening years have witnessed the advent of radio, television, photocopiers, audio and video tape recorders, computers, satellites and a host of information storage and retrieval devices. All of these have become common instruments for the use and exploitation of intellectual property. Thus, technology change has rendered the present law unsatisfactory not only to creators, but also to the industries using copyright material and to consumers as well.

In November 1984, this government characterized copyright revision as an urgent priority matter. In the economic statement of the Minister of Finance, the Government announced that revision was to proceed urgently following extensive consultation.

In January 1985, the White Paper on copyright, *From Gutenberg to Telidon*, together with all matters of revision, were referred for study and report to the Standing Committee on Communications and Culture. An all-party Sub-Committee on the Revision of Copyright was immediately formed. In the course of the year, the Sub-Committee received over 300 written briefs and heard 111 witnesses at public hearings in Ottawa, Montreal and Toronto. Writers, artists, librarians, lawyers, publishers, the handicapped, musicians, dancers, cable companies, broadcasters and computer representatives were among those who participated in the broad-based consultation process.

The approach of the Sub-Committee recognizes the creators' special contribution to Canadian society and that they must be rewarded for the constantly increasing number and variety of uses of their works. Copyright legislation must reflect the legal recognition of the exclusive right of a creator to determine the use of a work and to share in the benefits produced by that use. We are

pleased to say that the Government generally endorses this approach, as evidenced by the detailed response to the report.

One Sub-Committee member has presented a minority report centering upon a concern for potential increases in the outflow of royalities from Canada as a result of new protection being provided. This minority report and other particular concerns with respect to copyright revision are now the subject of futher examination. For example, new copyright legislation must recognize the balance between the legitimate interests of creators to be paid for the use of their works and the needs of users to have access to those works.

Copyright revision is one of our Government's highest priorities. Canadians' self-expression and future cultural development are largely dependent on the vitality of our publishing, film, recording and broadcasting industries but, above all, on Canadian creators for whom we must provide encouragement and protection. We must therefore create in Canada a climate where culture can thrive. Furthermore, we must respond to the challenges created by new technologies. For Canada to compete in an increasingly competitive international environment, it is necessary that effective protection be given to our creators in the computer and informatics sectors.

The Sub-Committee proposals will assist us in meeting these challenges. We wish especially to thank all five members for their extensive work and research and their significant contribution to this process of revision. We also wish to thank the staff of the Sub-Committee and all interested groups and individuals who have submitted briefs or appeared before the Sub-Committee for copyright revision.

Consequently, we will be proceeding with drafting of revisions to copyright legislation, based on the Government's response to the report of the Sub-Committee, for early introduction in the House of Commons.

Yours sincerely,

Michel Côté,

Minister of Consumer and Corporate Affairs.

Marcel Masse,

Minister of Communications.

DETAILED RECOMMENDATIONS OF THE SUB-COMMITTEE ON THE REVISIONS OF COPYRIGHT AND GOVERNMENT RESPONSE TO THE SUB-COMMITTEE RECOMMENDATIONS

A Charter of Rights for Creators

Sub-Committee's Recommendation

1. The Copyright Act should be expanded to include new property rights which reflect modern forms of creative activity and the various ways of communicating the fruits of that activity.

Government's Response

The government is strongly in favour of this objective of modernizing the existing Act and keeping it up to date in the future.

Sub-Committee's Recommendations

2. The revised law should recognize moral rights as an integral part of copyright.

3. All remedies for infringement of an economic right should be available for infringement of a moral right.

4. The term or protection for moral rights should be the same as the term of protection for economic rights.

5. The new Act should provide a moral right to authorize the use of any protected work in association with products, services, causes or institutions.

6. The revised Act should provide a moral right to prevent any modification of the original of an artistic work, including an element of a limited edition thereof, even in the absence of evidence of prejudice to the author's honour or reputation.

7. The right should be limited in order to permit the physical relocation of the work, the alteration of a structure containing the work, and legitimate restoration and preservation activities.

8. Unimpeded negotiations concerning the use and assignment of rights should be preferred whenever possible over compulsory arrangments, prohibitions and other predetermined outcomes.

Government's Response

The government agrees in principle with these recommendations.

However, recommendation 5 will not extend to works for which a blanket licence has been granted by a collective society of copyright owners so as not to oblige users to obtain a second authorization for works that such societies have been assigned to administer.

In addition, with regard to recommendation 8, a provision will be incorporated in the Act to limit the term of licences and of the assignment of rights so as to protect creators from abuses.

Subcommittee's Recommendations

9. The Crown in the right of Canada and in the right of every province should be subject to the provisions of the Copyright Act. Any exception to the above rule should be included in statutes dealing with emergency powers rather than in the Copyright Act.

10. Statutes, regulations and judicial decisions of courts and tribunals at all levels of jurisdiction should be in the public domain.

11. There should be no copyright in government works except as follows:

(a) a moral right of integrity to ensure the accuracy of works in the nature of standards should be provided;

(b) works produced by a Crown agency, such as the Canadian Broadcasting Corporation or the National Film Board, the purpose of which is to entertain rather than to assist in policy debate and evaluation, should be protected; and

(c) custom-made statistics and statistical works in restricted circulation should be protected if it is found desirable to continue the practice of making these works available to particular users on a cost-recovery basis.

12. Provincial public documents should have the same copyright status as federal ones and consultations should take place between the two levels of government on this issue.

13. Written submissions to Parliament, legislatures or to public bodies of inquiry should be in the public domain from the time of their receipt.

Government's Response

The government agrees in principle with recommendations 9, 10 and 13 and has begun consultation on this subject with the provincial governments.

The government feels that recommendations 11 and 12 raise a number of issues that ought to be examined in greater depth. A number of categories of works produced by the government and its agencies, other than those identified by the Subcommittee, might require protection.

As for recommendation 13, it will be necessary to ensure that this will not entail the removal of rights—particularly moral rights—that are not needed for the purpose of achieving the objectives sought by this recommendation.

Subcommittee's Recommendations

14. The revised law should recognize that corporate and co-operative entities can hold and exercise full rights, including moral rights.

15. First ownership of copyright should be vested in an employer in the case of works created by employees in the course of employment subject, as now, to any agreement to the contrary.

16. The revised law should clarify the meaning of "employee."

17. The copyright in commissioned engravings, photographs and portraits should vest in the author.

Government's Response

The government agrees with these recommendations. However, it will study whether the term "employee" should be defined in the Act, as suggested by the Subcommittee in recommendation 16.

Writing and Publishing

Subcommittee's Recommendation

18. In view of the originality involved in their preparation, editions of literary, dramatic, musical and artistic works should be protected against unauthorized reproduction for 25 years from publication. Protection should be extended on a reciprocal basis to those countries with similar protection.

Government's Response

This recommendation is accepted in principle. However, the conditions and the procedure for the extension of the legislation to foreign editions will be defined in the Act.

Subcommittee's Recommendations

19. Translation should be expressly included in the revised law as proper subject matter of copyright protection, without prejudice to the rights of the owner of the copyright in the underlying work.

20. Blank forms should not be specifically excluded from protection, but should be subject to the same criteria as other works.

21. Maps, charts and plans should be treated as artistic works.

Government's Response

The government accepts these recommendations.

Sub-Committee's Recommendations

22. Importation protection should be maintained for all copyright subject matter.

Government's Response

The government accepts this recommendation in principle.

Sub-Committee's Recommendations.

23. A mechanism should be developed to compensate authors for the public lending of the works by libraries. The scheme should be independent of copyright law.

24. A specific right of reprographic reproduction should not be introduced.

25. No exception should be provided for reproduction by libraries.

Government's Response

The government agrees in principle with these recommendations.

Sub-Committee's Recommendations

26. The revised law should not provide for a compulsory licence to translate literary works.

27. The reproduction, public performance and printing compulsory licences should not be retained in the revised law.

Government's Response

The government accepts these recommendations.

Sub-Committee's Recommendations

28. Provision should be made in the revised law for the Copyright Appeal Board to issue non-exclusive licences where a copyright owner cannot be located.

Government's Response

The government agrees with this recommendation. Such licences will be issed subject to the conditions stated in *From Gutenberg to Telidon*, particularly the following conditions:

—Proof, to the satisfaction of the Board, that a reasonable effort has been made to locate the copyright owner;
—Payment of royalties approximating what would be negotiated in the marketplace;
—Proof that the work against which the licence is sought has been published.

The Visual Arts

Sub-Committee's Recommendations

29. Consideration should be given to a new designation of "artistic works" in general and to "engravings" in particular.

30. The original of an artistic work should include separately identifiable reproductions of that work in a limited edition.

31. "Works of choreography," "works of performance" and "pantomimes" should be placed in a separate category of protected subject matter. Such works should not need to develop a dramatic plot or sequence in order to be protected.

Government's Response

The government accepts these recommendations.

Sub-Committee's Recommendations

32. Work on the revision of the Industrial Design Act should be accelerated.

33. Pending revision of the Industrial Design Act, section 46 of the Copyright Act should be immediately amended to eliminate the availability of copyright to protect industrial articles incorporating functional designs.

Government's Response

The government accepts these recommendations.

Sub-Committee's Recommendations

34. The revised law should recognize a right to exhibit the original of an artistic work in public. This right should also extend to artistic works which are part of a limited edition.

35. Droit de suite should not be introduced at this time in the new Act. Ongoing study should be undertaken to evaluate fully the implications of the right.

36. Ownership of copyright in a photograph should vest in the person who composed the photograph.

37. There should be no specific exception from copyright liability for the benefit of photofinishers.

Government's Response

The government agrees in principle with these recommendations.

Musical Works

Sub-Committee Recommendations

38. The category of musical work should be defined in an illustrative manner.

39. The full range of economic and moral rights should apply to musical works, including the new moral right of endorsement.

40. The revised law should not contain an exception for fairs and exhibitions from the payment of royalties for the public performance of music.

41. The revised Act should provide an exception from copyright liability for the public performance of a musical work during a religious service.

Government Response

The government agrees with these recommendations in principle.

Recommendation 38 will be considered when defining the concept of fixation of a work.

Recommendation 39 will be subject to the reservation made in our response to recommendation 5.

Sub-Committee Recommendation

42. The revised law should not retain the compulsory license for the making of sound recordings.

Government Response

The government accepts this recommendation in principle but will ensure that it is implemented in a flexible manner and will adopt the appropriate transition mechanism if required.

Sub-Committee Recommendations

43. The revised law should not contain a general exception for the public performance of copyright works by means of jukeboxes, radios, television sets and playback machines.

44. The revised law should contain an exception from copyright liability for performances of protected works by

means of radios, television sets and playback machines that incidentally take place in public.

Government Response

The government accepts these recommendations.

Audio-Visual Works

Sub-Committee Recommendations

45. The new Act should provide for a distinct category of protected subject matter to be called "audio-visual works".

46. Audio-visual works should be defined to include any work in which an image appears to be in motion, with or without sound, on any material support.

47. Audio-visual works should be defined to include pre-programmed works where the movement of the picture may be the result of a player's interaction with a computer program.

48. The new Act should define the phrase "in public" as regards the right to perform in public so as to include situations where individuals share living quarters by reason of their work, education, vacation or detention.

49. "Performance in public" should be defined to include those performances effected by means of a video jukebox even where such performances can be viewed only by one person at any given time.

50. The new Act, in defining "publication", should take into account the various methods of making a work available to the public other than by issuance of copies of that work.

51. Audio-visual works should be protected for the shorter of 50 years following publication or 75 years following fixation.

Government Response

The government agrees with these recommendations in principle. The suggested definitions will be considered when developing the Act.

Computers

Sub-Committee Recommendations

52. A new right to input any protected work into a computer should be provided in the revised law.

53. There should be no right of display in the revised law.

54. Fixation should be defined as all means capable of capturing a work, including capture in computer media, but excluding capture in a medium as volatile as a computer's main storage or display screen.

55. With respect to the right of reproduction, a material form should be one that has a certain degree of permanence.

56. Where a work created with the assistance of a computer is original the copyright in that work should be owned by the person responsible for its making and not by the owner of the copyright in the original program.

57. Ownership in compilations produced by computer data storage and retrieval systems should be vested in the individual or entity primarily responsible for the arrangements undertaken for making the compilation.

58. Computer programs should be protected by the revised law as a separate category of subject matter with the full regime of protection on the basis of reciprocity.

59. The Act should provide an exception to the right of reproduction to permit the making of a back-up copy.

60. The term of protection for computer programs should be the life of the author plus 50 years.

61. The government should study the possibility of providing an exception to permit the reproduction of a substantial part of a pre-existing program as a non-substantial part of another program.

62. Mask works fixed in semi-conductor chips should be protected by new legislation outside the *Copyright Act.*

63. The mask works to be protected are a series of related images that represent the three-dimensional pattern of circuits and components fixed in a semi-conductor chip.

Government Response

The government agrees with these recommendations in principle.

The issue of the right of display mentioned in recommendation 53, however, will be studied in further detail.

Recommendation 54 will be considered when defining the concept of fixation.

With regard to recommendation 58, the government agrees in principle that computer programs should benefit from the full regime of protection. However, it will give national treatment to foreign computer programs.

The government has studied the possibility of providing the exception suggested in recommendation 61 but has decided against it.

Finally, mask works fixed in semi-conductor chips will be protected in the Copyright Act but will be distinguished from traditional works.

Neighbouring Rights

A. Sound Recordings

Sub-Committee Recommendations

64. A sound recording should be protected as a separate category of copyright subject matter.

65. The revised law should provide the full regime of copyright protection to sound recordings. Public performance, transmission and retransmission rights should be extended only to nationals of those foreign countries which provide similar protection to Canadians.

66. The owner of the copyright in a sound recording should be the individual or entity principally responsible for the arrangements undertaken for its making.

67. The performance of a sound recording during a religious service should not constitute an infringement of copyright.

68. The revised law should not contain an exception for the public performance of sound recordings by means of jukeboxes, radios, television sets and playback machines.

69. The revised law should contain an exception from copyright liability for uses of sound recordings that incidentally take place in public.

70. Sound recordings should be protected for the shorter of 50 years following publication or 75 years following fixation.

Government Response

The government agrees with these recommendations in principle.

However, since these products are different from traditional creative works they will be included in the Act under a separate category although they will benefit from certain of the rights applicable to such works. There rights are known as neighbouring rights.

Apart from the right of reproduction recognized for sound recordings under the present Act, regardless of their national origin, the new Act will grant them public performance, transmission and retransmission rights. The conditions and mechanism for extending these new rights to sound recordings of foreign origin as suggested in recommendation 65 will, however, be defined in the Act.

B. Performer's Performances

Sub-Committee Recommendations

71. The performances of performers should be a new category of subject matter with the necessary regime of protection.

72. The protection of performers' performances should be extended to

nationals of those foreign countries which provide similar protection to Canadians.

73. Performers should be the first owners of the copyright in their performances.

74. Performer's performances should be protected for a term of at least 20 years from the time of fixation of the performance.

Government Response

The government agrees with these recommendations in principle.

As with sound recordings, however, the Act will assign performances to a separate category from that of traditional creative works as such.

The rights to be granted to performers under the Act will be defined at a later date as will the conditions and mechanism for extending these rights to nationals of foreign countries as suggested in recommendations 72.

Recommendations 73 will be subject to recommendation 15, on which we have already commented.

C. Broadcasts

Sub-Committee Recommendations

75. Broadcasts should be protected under the revised Act.

76. The rights attaching to broadcast should be—

(a) A right of reproduction;
(b) A right of transmission;
(c) A right to authorize each of the above; and
(d) A right of retransmission.

77. The rights should be provided to foreign broadcasters on the basis of reciprocity.

78. Broadcasts should be protected for a period of 25 years from the date of their fixation.

79. It should not be a copyright infringement to use incidentally an artistic work without authorization in a broadcast.

80. Exceptions should be provided for the making of ephemeral recording by broadcasters.

(a) pursuant to CRTC regulations, or
(b) in order to permit the broadcasts of the program in a different time zone provided that the recording is erased after eight days.

81. A broadcaster should not be required to identify the authors of works broadcast except where the identification is incorporated in the work itself.

Government Response

The government agrees with these recommendations in principle.

Broadcasts, however, will be assigned to a separate category together with sound recordings and performers' performances.

The conditions and mechanism for extending the rights granted under the Act to foreign broadcasters, as suggested in recommendation 77, will be defined in the Act.

In line with the routine practices of broadcasters, recommendation 80 concerning ephemeral recordings will be amended to cover not only the situations described in paragraphs (a) and (b) of the recommendation but also the situations described in *From Guteberg to Telidon;* thus,

—Broadcasters and cable or satellite systems will be able to pre-record works for transmission as long as such transmission has been authorized;
—The duration of the exception will be extended to 6 months after initial transmission;
—Upon the expiry of the prescribed period, recording may be kept only for research and study purposes.

Fair Dealing

Sub-Committee Recommendations

82. The present fair dealing provisions should not be replaced by the substantially wider "fair use" concept.

83. The nature of fair dealing as a defence to an action for infringement should not be changed.

84. The purposes for which fair dealing can be a defence should be retained but should be revised to indicate that research must be private to qualify and to indicate that all media of news reporting are covered.

85. Factors to be considered by the court may be listed but should be illustrative only and not priorized.

86. Fair dealing should not apply to unpublished works.

Government Response

The government agrees with these recommendations in principle.

The Act will, however, grant the benefit of the fair dealing exception for research purposes, private or otherwise, for unpublished works deposited with archival or conservation institutions.

Finally, the government will examine the possible impact of these recommendations on research practices in general.

Requests for Special Consideration

Sub-Committee Recommendation

87. The revised law should permit the production of special media materials without the authorization of the copyright owner but with payment to be made in accordance with tariffs established by the Copyright Appeal Board.

The government partly accepts this recommendation, which will not be accompanied by the obligation to pay royalties. This measure is suggested by the appropriate recommendations in the *Obstacles* report.

Sub-Committee Recommendations

88. The revised law should provide an exception to permit an archival institution to make a copy of a work which is not otherwise available and which is already in its collection, for the purpose of preserving the archival copy of that work.

89. An exception should be provided to permit an archival institution to make a copy of a work for another archival institution where the latter has received a request for a copy of a work from an individual researcher for the purpose of private research. The making and issuance of copies under this exception should not constitute publication.

90. The revised law should provide an exception to permit teachers and students, in the normal course of teaching activities to:

(a) Perform a work in public;
(b) Transmit and retransmit a work within the confines of a single educational institution.

91. An exception should be provided to allow for the reproduction of a work as part of questions to be asked, or answered, in an examination.

Government Response

The government accepts these recommendations.

Renting Right

Sub-Committee Recommendation

92. A new renting right attaching to all categories of protected subject matter should be provided in the revised law.

Government Response

The government recognizes the merit of the Sub-Committee's objective to compensate creators but will have to examine the best way to implement it.

Home Copying

Sub-Committee Recommendations

93. Home copying should be permitted under the revised law subject to the payment of compensation in the form of a royalty on the material support and on the machine used to reproduce the work.

94. The mechanism for establishing the amount of royalties should be the filing of tariffs for approval by the Copyright Appeal Board.

95. Payment should be made by the manufacturers or importers directly to the collectives.

96. Where works are protected on a reciprocal basis, the owners of copyright in those works should participate in the compensation system on a reciprocal basis.

Government Response

The Government recognizes the merit of the Sub-Committee's objective to compensate creators but will have to examine the best way to implement it.

Retransmission

Sub-Committee Recommendations

97. A retransmission right should be provided in the revised law.

98. Where works are protected on a reciprocal basis, the owners of copyright should benefit from a retransmission right on a reciprocal basis.

99. The government should examine the desirability of bringing all broadcasting and retransmission activities under an expanded definition of a transmission right.

100. The right of retransmission should be defined in general terms and should not depend on current technology.

101. Common carriers should be exempted from copyright liability.

102. The right of retransmission to be provided in the revised law should be limited by a compulsory license, with tariffs to be established by the Copyright Appeal Board.

103. The Copyright Appeal Board should determine the total economic value of all retransmission activities in Canada.

104. The Board should set a tariff based on that evaluation and whatever other criteria that the Board deems relevant but should not consider the number and composition of the signals carried by an individual retransmission system.

105. In assessing the economic value of retransmission activites, the Copyright Appeal Board should assign a lower value to the retransmission of local signals.

106. Local signals should be defined as those reaching the broadcaster's target market by whatever means.

107. The target market of the broadcaster should be determined by reference to such factors as the content of the programming involved, the marketing activity of the broadcaster, and the origin of the broadcaster's advertising revenues.

108. Retransmission systems should be considered within the scope of a broadcaster's target market irrespective of the broadcaster's success in deriving income from it, as long as the broadcaster's own behaviour demonstrates an intent to benefit from it financially.

109. Small cable systems serving small and isolated communities should be shielded from any material impact arising from the introduction of a retransmission right.

Government Response

The government agrees with the principles outlined in recommendations 97, 100, 101, 102 and 109. Recommendation 109, however, will extend not only to cable systems but also to those using other technologies to serve such communities.

As for the scope, implementation and operation of the system, when the new legislation is in place, the government intends to proceed as follows:

1. Local signals, which remain to be defined, will be excluded from the new system.

2. The Copyright Appeal Board will study the matter and report to the government on the system to be adopted.

3. The system will be implemented on a date to be set by proclamation.

4. The tariffs set by the Copyright Appeal Board will be subject to a right of review by the Governor in Council.

Collectives

Sub-Committee Recommendations

110. The collective exercise of copyright should be encouraged.

111. The Copyright Appeal Board should be vested with the authority to regulate all collectives.

112. Membership in collectives should continue to be voluntary.

113. Creators should continue to be allowed to grant exclusive licenses to collectives.

Government Response

The government agrees with these recommendations in principle.

The issue raised in recommendation III, however, will be examined at the same time as recommendations 114 to 126 regarding the Copyright Appeal Board.

Copyright Appeal Board

Sub-Committee Recommendations

114. The Copyright Appeal Board should be re-named the Copyright Board.

115. The Board should not be granted powers to intervene in the administration of collectives.

116. The Board's jurisdiction should be limited to hearing evidence only where a proposed tariff is in dispute.

117. The Board's jurisdiction should be limited to setting rates.

118. The Board should be granted the usual powers of a court of record, including the authority to issue subpoenas and require the production of documents.

119. Dealings with the Board should be with the Board directly, and not through the responsible Minister.

120. Previously approved rates should remain in effect until such time as the Board has approved new rates.

121. The Board's decisions should be subject to appeal to the Federal Court on matters of law.

122. The Board should be composed of five permanent members, appointed for a fixed renewable term by the Governor in Council.

123. Members should be removable only for cause.

124. Members of the Board should have legal, financial or copyright expertise.

125. The Board should be supported by its own staff and outside professional assistance as required.

126. The Board should be an independent body reporting to Parliament through the responsible Minister.

Government Response

The government generally agrees with the recommendations.

The conditions that will apply to the Board—its jurisdiction, powers, organization and operations—remain, however, to be articulated.

Registration

Sub-Committee Recommendations

127. A voluntary system of copyright registration should be maintained.

128. In an application for copyright registration, more information, supported by an affidavit, should be provided to the Registrar as to the identification and nature of the work and as to how the applicant derived title.

129. Fees for registration should be set at a level which will ensure that the system is administered on a cost recovery basis.

130. Requirements for registration of a work consisting of multiple parts should be clarified.

131. The legal effect of a certificate of registration should be to establish two rebuttable presumptions: that copyright subsists in the work and that the person named as owner on the certificate of

registration is the owner of the copyright in the work.

Government Response

The government agrees with the recommendations in principle.

Infringement and Remedies

Sub-Committee Recommendations

132. The definition of what constitutes copyright infringement should be reviewed.

133. The existing system of civil remedies should be used as the basis for revision.

134. A system of statutory damages should be introduced.

135. The protection afforded by Schedule C of the Customs Tariff should be retained.

136. The criminal offences under the existing Act should be retained and the monetary penalties increased to one million dollars.

137. Study should be made of the feasibility of extending prejudgment procedures presently available only in one or the other of Canada's legal systems, to both systems.

Government Response

The government agrees with these recommendations in principle.

The protection mechanism mentioned in recommendation 135, however, will be developed at a later date.

The offenses and penalties mentioned in recommendation 136 may be structured so a to treat minor infringements differently from major ones.

Sweden

Copyright and Computer Technology

Committee on the Revision of the Copyright Law

1 Introduction

In this report, "Copyright and Computer Technology", the Committee on the Revision of the Copyright Law submits proposals for certain amendments to the Copyright Act which are considered desirable in view of the impact of computer technology.

The introductory part of the report contains a fairly detailed description of computer technology and of how it relates to input and output of material into or out of computer systems, as well as a technical description of how computer programs are created. This part also contains a summary of the work which has been conducted in recent years by the intergovernmental organizations in this field.

The consideration deal substantially with three major issues, viz. (a) copyright problems relating to storage, retrieval and creation of works etc. by means of computers, as well as the protection for data bases, (b) the protection of computer programs and, (c) the protection of integrated circuits (semiconductor chips).

2 Storage and Retrieval etc. of Works by Means of Computers

As regards storage and retrieval of works by means of computer technology the considerations are to a large extent based on the 1982 WIPO/UNESCO Recommendation on these issues. This part of the report discusses how the exclusive rights under copyright law would apply in these cases, viz. when works as such, or abstracts or single information items are stored in a computer system. The report subscribes to the internationally accepted view that input of protected material into a computer amounts to reproduction under copyright law. As regards data bases as such they could be either compilations (in case they contain a selection of protected works) or a collection of information or other items structured in such a way as to make the base itself a protected work. If the base is not elaborated in such a way that it can be considered as the result of intellectual creativity, it could enjoy protection under a specific provision in the Copyright Act which grants ten-year protection against reproduction to "catalogues, tables or other such products containing a large number of information items."

As regards output of protected material from a computer, including such use of a data base itself, the report states that such output is an act of reproduction of the work in case physical copies are produced, and as a type of public performance or public display in cases where the output is shown on a screen which is made available to the public under the criteria of the Copyright Act in this respect. In view of the fact that frequently copies are made when a work is made available on a screen, the report also considers the introduction of a rule of presumption to the effect that the output of a work on a screen should, in the absence of proof to the contrary, be considered as an act of reproduction. Such a rule is, however, considered as going too far and no proposal is submitted in this respect.

The report contains an analysis of how various specific provisions in the Copyright Act would apply to the use of computers. The first issue to be discussed is the concept "publication" in relation to works used in a computer system. As regards such works it is frequently difficult to determine *when* the copies of the work have been made available to the public so as to meet the criteria for publication and also *which copies* could be considered as published. The report discusses whether the definition of "publication" should be amended so as to take care of this situation, but no such amendment is proposed.

As regards other specific provisions in the Copyright Act, particularly the various provisions governing limitations to exclusive rights, the report discusses these problems in detail but no specific amendments are proposed.

3 Protection of Computer Programs

The second part of the report dealing with substantive copyright law contains considerations and proposals concerning computer programs.

No proposal is made for including a definition of "computer programs" in the Copyright Act itself but the report contains a detailed discussion on this issue, on the basis, inter alia, of the definitions in foreign laws and of definitions proposed by a Working Group which met in Canberra in April 1984.

In its report the Committee unequivocally takes the view that computer programs are to be considered as a type of literary works under the Copyright Act and enjoy protection under the Act provided that they are the result of an act of intellectual creativity. This should be clarified by inserting in the Act a mention of such programs as a category of protected works. The protection applies to the program regardless of the material support in which it is embodied and regardless of its character of source code of object code. Obviously the protection applies, in conformity with established copyright law principles, only to the form in which the creator has put his ideas but not to, e.g., ideas or algorithms as such contained in the program.

The question is also raised whether programs which do not reach the level of originality required for copyright protection could nevertheless enjoy protection under the previously mentioned special provision governing protection of collections of large number of information items. The Committee considers, however, that in principle this provision is not applicable to computer programs.

Basically the protection which computer programs would thus enjoy under copyright law covers most of the practical need for such protection. The right-owner would enjoy an exclusive right in respect of all kinds of

reproduction and also in respect of, e.g., adaptation of the program. Situations may, however, occur when the copyright protection would not be entirely sastisfactory, e.g. in cases when a protected program is used in a way which would not amount to a reproduction or when the ideas contained in a program are used for the creation of a new program in a way which would be considered as contrary to honest practice but which would not be a violation of copyright law. The Committee concludes, however, that the time is not ripe for the introduction of provisions governing such specific protection.

The Committee then discusses certain particular aspects of the application of copyright law to computer programs, and certain amendments to the Act are proposed in this respect.

The Copyright Act contains a provision which admits the making of single copies of protected works for private purposes. For a number of reasons, in particular the vulnerability of computer programs in this respect, the Committee considers that the availability of such private copying of programs should be prohibited.

Another issue dealt with in the report concerns the need for a program user to make certain copies or adaptations of the program in the course of lawful use. A provision to take care of this need is proposed and is framed on the lines of certain corresponding provisions in other countries. The provision has the nature of a rule of presumption applying, unless othewise agreed, to such cases where a license is granted for the right to use a computer program, including the case when a lawful copy is bought by someone in the open market on the obvious assumption that he is allowed to use it in a computer. In such cases this lawful user has a right to make such copies and in the copies make such adaptions as are necessary for the utilization admitted, and also copies which are deemed necessary for the purpose of back-up and safeguarding in case of accidents. Such copies may not be used for other purposes and shall be destroyed at the latest when the right to utilize the program expires.

The Copyright Act contains a basic provision granting the author an exclusive right to control the distribution to the public of copies of his work. There are, however, far-reaching limitations to this right implying, inter alia, that published copies of literary and to a certain extent also musical works and works of art may be further distributed to the public. Computer programs are, as mentioned above, considered as a type of literary works and would, in the absence of other provisions, be governed by these provisions concerning exhaustion of the distribution right. The Committee considers, however, that such a solution would not be satisfactory. It is proposed that authorization by the right-owner should be required of rental or lending to the public of copies of computer programs in a machine-readable form.

Works created within the framework of the activities of public authorities are under Swedish copyright law bascially outside the scope of copyright protection. It is now proposed that computer programs should enjoy such protection also in cases when they are created by such public authorities.

In addition to the foregoing points the report considers a number of issues related to computer programs. Among them may be mentioned the transfer of rights in such programs when created in employment situations. These considerations do not, however, result in concrete proposals for amendments to the Copyright Act.

4 Protection of Integrated Circuits (Chips)

An important part of the report deals with the intellectual property law protection of integrated circuits.

Following an explanation of the technical procedures used for the production of semiconductor chips and of the contents of the United States Semiconductor Chip Protection Act of 1984 the Committee considers whether the present Swedish Copyright Act grants any protection to the design of the electronic circuitry in such chips. The conclusion is that such designs can in principle be a kind of works enjoying protection under the Act. The main basis for this conclusion is that the concept "work" in the Act is described in a general and comprehensive way and is expressly intended to cover expressions of creativity which were not even considered at the time when the law was enacted. Furthermore the underlying purpose of a work is entirely irrelevant for the question of protection. Whether and to what extent the copyright protection would apply to the various physical expressions of the particular circuitry design is a different matter, where some hesitation might exist as to the applicability of copyright protection.

This conclusion about the copyright nature of the designs for integrated circuits has a bearing only on the principle. There exist no court cases, however, and consequently the applicability of the Copyright Act is not secured for all practical cases. As just mentioned the same uncertainty applies to how far the exclusive rights under copyright law would cover the practical need for protection. The Committee considers that such an uncertainty is not acceptable in this economically very important area where moreover the Swedish high technology industry has important interests at stake. The Committee consequently proposes a specific provision governing protection of designs for integrated circuits. This provision is to a very large extent based on the provisions in the U.S. Act of 1984 and is designed to meet the special aspects of the protection of such circuitries. This special protection is intended to exist in addition to the copyright protection which may exist. This would probably mean in practice that protection is sought under these special provisions rather than under the more uncertain protection under copyright law.

The proposed special protection is included as an article, 49 a, in the Copyright Act but has the nature of a sui generis, formality-free ten-year protection for circuitry design against copying and against the transfer of it into material support in any form whatsoever and also against making the circuitry design available to the public without the consent of the right-owner. A tentative translation of the proposed provision is included in an *Annex* to this English Summary.

The explanatory notes to the various paragraphs in the proposed Article 49 a underline certain important points.

Under *paragraph 1* the subject matter for protection is the "design for the patterns of the circuitry in a semiconductor chip product" (in short "circuitry design"). This concept is intended to correspond basically to the concept "mask works" in the United States Semiconductor Chip Protection Act. The protection applies to the design, i.e. the form, and not to ideas, concepts, algorithms etc.

A certain degree of originality or creative effort is required for protection. This is indicated by the use of the word "created" in the text. Such creation could be either the production of an entirely new and original design or a kind of compilation of elements from "libraries" of pre-existing standardized design parts. No novelty criterion applies. Consequently it could theoretically happen that identical or similar circuitry designs are created. This possibility is, however, considered as merely hypothetical because of the complexity of such designs.

The paragraph also describes the exclusive rights which the creator of the circuitry design enjoys. One such right

applies to the making of copies of the design directly or indirectly regardless of the way in which such copies are made or the technique used. The right consequently covers also such situations where the circuitry design is transferred into a silicon chip, whether this transfer is made by means of a mask or in another way, e.g. when the design is stored in a data base or in a computer program and is then transferred into the chip. e.g. by means of electronic ray technique.

Another basic right granted to the creator of the circuitry design is the right to control the distribution to the public of copies of the design by means of sale, leasing, or in any other way. This right applies not only to the "first sale" but to all subsequent such acts. The right applies not only to copies of the original design but also to this design in a modified or adapted form.

The protection is automatic and requies no registration and no "mask work notice". To require formalities would cause problems in relation to the obligations under the Berne Convention for such circuitry designs as may enjoy copyright protection. The absence of formalities is not considered to weaken the protection in any way. For all practical purposes the designs are easily recognizable by experts and the fact that infringements occur could consequently be proved by expert evidence. The explanatory notes indicate, however, that it might nevertheless be feasible to attach some sort of a notice to the circuitry designs to serve as a reminder about the protection and to secure protection abroad. It is recommended that any notice should have the same features as the U.S. "mask work notice" in order to secure international uniformity in this respect.

The period of protection is ten years to be computed from the end of the year in which the circuitry design was created. In case of e.g., adaptation of an original circuitry a new period commences for the adapted version to be computed in the same way.

Paragraph 2 contains a limitation on the exclusive right of reproduction and implies basically that copies may be made for the purpose of teaching on and analysis of the protected circuitry design. This corresponds to the provisions governing "reverse engineering" in the U.S. Act. Copies made for such purposes must not be used for other purposes.

The specific protection under Article 49 a does not contain any moral rights, nor does it allow copying for private purposes. However, if an integrated circuit contains a computer program the proposed specific limitation of the availability of private copying of such programs comes into play.

Paragraph 3 contains a limitation on the right to authorize or to prohibit distribution to the public of copies of the circuitry design. The provision implies that products, e.g. pocket calculators and watches, which contain circuitry designs and which have been distributed to the public with the consent of the creator of the design may be further distributed without authorization by the right-owner. This is a kind of "first sale" exhaustion of the distribution right.

Paragraph 4 is basically only a reference to certain provisions in the copyright law part of the Copyright Act which deal with the transfer of rights. The references are explained in the translation.

Paragraph 5 states a very important principle, viz, that copyright law may be invoked if the circuitry design or part of it is protected under copyright law. Inter alia because a reference in this respect is made only to paragraph 1 of this Article the provision governing reverse engineering would apply also to such circuitry designs as enjoy copyright protection. It has not been considered feasible to make a distinction in this respect between various categories of circuitries.

Invoking copyright law also implies, inter alia, that moral rights apply, that the period of protection is longer and also that the international copyright obligations would apply.

In addition it should be mentioned that the inclusion in the Copyright Act of the specific provisions governing the protection of circuitry design means that, e.g., the sanctions provided for in relation to copyright infringements apply also to infringements of the rights under these specific provisions. Consequently wilful or grossly negligent infringements may be punishable by fines or imprisonment up to two years. Furthermore compensation for damages shall be paid and this also in case of lesser negligence. The court may order, e.g., the destruction of infringing copies. The sanctions apply also in case of import into the country, for the purpose of distribution to the public, of copies of protected material produced abroad under such circumstances that such production in Sweden would have been unlawful.

Article 61 as amended according to the proposal contains the basic principle that the specific protection of circuitry designs applies only to such designs of Swedish origin and to such designs which have been first published in this country. Article 62, as presently worded, however, authorizes the Government to provide for the application of the Copyright Act in relation to other countries on the basis of retroactivity. It is envisaged that such a Government decision will make the new provisions in Article 49 a applicable also to other countries which grant basically similar protection to Swedish circuitry designs.

The provision governing the entry into force of the new provisions makes them applicable also to works and circuitry designs created before their entry into force.

Annex

Tentative Translation of the Proposed Articles in the Copyright Act Dealing With the Specific Protection of Integrated Circuits

Article 49a

The person who has created the design for the patterns of the circuitry in a semiconductor chip product has an exclusive right to

1. authorize or prohibit acts implying the making of copies of that design
2. the transfer of the design on to or into a material support
3. the making available of that design to the public, in the original form or in an amended form, by means of sale, lending, leasing or any other kind of distribution of copies to the public. This right subsists to the end of the tenth year from that during which the design was created.

Copies of the circuitry design may, irrespective of the provisions in paragraph 1 or elsewhere in this Act, be made solely for teaching or analysis of the design. Copies thus made must not be used for other purposes.

Copies of items which contain a circuitry design and which have been distributed to the public with the consent of the creator of the design may be further distributed to the public.

The provisions contained in Articles 27 (concerning the general admissibility of transfer of rights under the Copyright Act) and 28 (stating that the person who acquires a right in a work may not, unless otherwise provided, make changes in the work or further transfer the right) apply also to the transfer of rights under this Article.

Protection under copyright law may, regardless of the provisions in paragraph 1, be invoked if the circuitry design or part of it is protected under copyright.

Article 61 is to be amended as follows

The provisions of Article 49a apply to circuitry designs created by Swedish citizens or by persons who have their

habitual residence in Sweden, as well as to such designs as have first been published in Sweden.

The proposed provisions governing the entry into force of, inter alia, Article 49a make this Article applicable also to circuitry designs which have been created before the entry into force of the new provisions.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(85) 775 final

Brussels, 23 December 1985

Proposal for a

Council Directive

On the Legal Protection of Original Topographies of Semiconductor Products

(Submitted to the Council by the Commission)

Proposal for a

Council Directive

On the Legal Protection of Original Topographies of Semiconductor Products

The Council of the European Committees,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 100 and 113 thereof;

Having regard to the proposal from the Commission;

Having regard to the opinion of the European Parliament;

Having regard to the opinion of the Economic and Social Committee;

Whereas the functins of semiconductor products depend in large part on the topographies of such products and whereas the development of such topographies requires the investment of considerable resources, human, technical and financial, while topographies of such products can be copied at a fraction of the cost needed to develop them independently;

Whereas semiconductor products are playing an increasingly important role in a broad range of industries and semiconductor technology can accordingly be considered as being of fundamental importance for the Community's industrial development;

Whereas topographies of semiconductor products are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

Whereas certain existing differences in the legal protection of semiconductor products offered by the laws of the Member States have direct and negative effects on the functioning of the common market as regards semiconductor products and such differences could well become greater as Member States introduce new legislation on this subject;

Whereas existing differences having such effects need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the common market to a substantial degree need not be removed or prevented from arising;

Whereas the export to non-member States of semiconductor products manufactured within the Community will depend in large part on those States extending substantially on the basis of reciprocity adequate legal protection to the topographies of such products; therefore to safeguard such exports a Community measure is needed to provide such legal protection in accordance with developing international standards; whereas the basis on which topographies of semiconductor products developed by persons outside the Community are to be protected within the Community should accordingly be such as to favour the extension of legal protection in those countries to topographies of semiconductor products developed by nationals and residents of the Member States; and whereas this basis is thus a matter of significance to the Community as a whole and, if necessary, should be decided at Community level;

Whereas the Community's legal framework on the protection of original topographies of semiconductor products can accordingly in the first instance be limited to certain basic principles by provisions specifying who and what should be protected, the exclusive rights on which protected persons should be able to rely to authorize or prohibit certain acts and for how long the protection should last;

Whereas other matters can for the time being be decided in accordance with national law, in particular, whether Member States rely on the provisions of copyright laws or on provisions enacted specifically for the purpose of protecting topographies of semiconductor products or on a combination of these provisions, whether registration or deposit is required as a condition for the subsistence of protection and, with the exception of a provision applicable to innocent infringers, whether and on what conditions third parties may obtain licenses in respect of protected topographies;

Whereas, however, this flexibility in the Community framework for the time being needs to be balanced by provisions designed to prevent new obstacles arising to trade between Member States in semiconductor products, in particular as regards marking of such products and, as soon as circumstances permit, a common registration and deposit procedure in the event that more than one Member State makes the subsistence of protection conditional on the fulfillment of such conditions;

Whereas protection of original topographies of semiconductor products under copyright laws or some specific form of protection should be without prejudice to the application in appropriate cases of some other forms of protection;

Whereas further measures designed to facilitate reliance on laws granting protection to original topographies of semiconductor products in the Community can be considered at a later stage, while the application of common basic principles by all Member States in accordance with the provisions of this Directive is an urgent necessity;

Has Adopted This Directive:

Chapter 1—Definitions

Article 1

For the Purpose of This Directive,

(a) a "semiconductor product" means the final or an intermediate form of any product,

(1) consisting of a body of material which includes a layer of semiconducting material; and

(2) having one or more other layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a pre-determined three-dimensional pattern; and

(3) intended to perform, exclusively or in part, an electronic function.

(b) the "topography" of a semiconductor product means a series of relased images, however fixed or encoded,

(1) representing the three-dimensional pattern of the layers of which a semiconductor product is composed; and

(2) in which series, each image has the pattern or part of the pattern of the surface of the semiconductor product in its final or any intermediate form.

(c) "commercial exploitation" of the topography of a semiconductor product means to make available to the public by sale, rental, leasing or any other method of commercial distribution the topography or a semiconductor product manufactured by using the topography.

Chapter 2—Protection of Original Topographies of Semiconductor Products

Article 2

1. The Member States shall protect the topographies of semiconductor products by conferring exclusive rights in accordance with the provisions of this Directive.

2. Exclusive rights may be conferred by the provisions of national copyright laws, by provisions enacted for the specific purpose of protecting the topographies of semiconductor products, or by a combination of these provisions.

3. However, the topography of a semiconductor product shall not be protected unless it satisfies the condition that it be original in the sense that it is the result of its creator's own intellectual effort. Where the topography of a semiconductor product consists of elements that are commonplace in the semiconductor industry, it shall not be considered original unless the combination of such elements, taken as a whole, is original and not commonplace.

Article 3

1. Protection shall apply at least in favour of natural persons who are the creators of the original topographies of semiconductor products and who are nationals of and resident in a Member State and their successors in title.

2. However, where Member States provide for registration in accordance with Article 4, they may alternatively provide that protection shall apply at least to persons registering original topographies who are either nationals and residents of a Member State or companies and firms within the meaning of Article 58 of the Treaty.

3. Member States shall extend protection to persons who do not qualify for protection under paragraphs 1 or 2 in accordance with decisions to be adopted by the Council acting by qualified majority on a proposal from the Commission.

4. Paragraphs 1, 2 and 3 shall be without prejudice to Member States' obligations under international agreements.

Article 4

1. The Member States may provide that protection shall no longer apply to the topography of a semiconductor product unless it has been registered with a public authority within two years of its first commercial exploitation. Member States may require in addition to such registration that material identifying, describing or exemplifying the topography or any combination thereof has been desposited with a public authority.

2. Member States may subject registration and deposit in accordance with paragraph 1 to the payment of fees not exceeding their administrative costs.

3. Conditions prescribing the fulfillment of additional formalities shall not be admitted.

Article 5

1. The exclusive rights referred to in Article 2 shall include the rights to authorize any of the following acts:

(a) reproduction of the topographies in whole or in part;

(b) the sale, rental or leasing, or the offering for sale, rental or leasing, or any other method of commercial distribution, or the importation of the topographies or of semiconductor products manufactured by using the topographies.

2. The exclusive right to authorize reproduction of the topographies shall not apply to reproduction for the purpose of analyzing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.

3. The exclusive rights to authorize the acts specified in paragraph 1 shall not extend to any such act in relation to an original topography created on the basis of an analysis and evaluation of another topography carried out in conformity with paragraph 2.

4. The exclusive right to authorize the acts specified in paragraph 1(b) shall not apply to any such act:

(a) committed after the topography or the semiconductor product has been put on the market in a Member State by the person entitled to authorize its marketing or with his consent; or

(b) committed by a person who has purchased a semiconductor product without reasonable grounds to believe that its manufacture infringed the exclusive right specified in paragraph 1(a).

5. Where paragraph 4(b) applies, the Member States may subject the acts specified in paragraph 1(b) to the payment of royalties.

6. The exclusive right to authorize importation of a semiconductor product manufactured by using a protected topography shall not extend to products which are part of a land vehicle, vessel, aircraft or spacecraft which enters temporarily or accidentally the territory, waters or airspace of a Member State.

Article 6

1. The exclusive rights to which reference is made in Article 2 shall come to an end on a date at least ten years from the date on which the topography is first commercially exploited or, where registration is a condition for the subsistence of protection, from the date on which the topography is first commercially exploited or the date on which it is registered, whichever is the later.

2. The exclusive rights shall come to an end not late than fifteen years from the date on which the topography is first fixed or encoded. This provision shall be without prejudice to rights conferred by the Member States in fulfillment of their obligations under the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention and to corresponding rights conferred on a Member State's nationals or persons resident on its territory.

Article 7

The protection granted to the topographies of semiconductor products in accordance with Article 2 shall not extend to any concept, process, system or technique embodied in the topography other than the topography itself.

Article 8

Where the legislation of Member States provides the semiconductor products manufactured using protected topographies may be distinctively marked, the mark to be used shall be a capital T in a circle as follows:

Chapter 3—Continued Application of Other Legal Provisions

Article 9

The provisions of this Directive are without prejudice to any legal provisions protecting the topographies of semiconductor products other than those referred to in Article 2(2).

Chapter 4—Final Provisions

Article 10

1. Member States shall bring into force the laws, regulations or administrative provisions needed in order to comply with this Directive by 1 October 1987.

2. Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11

This Directive is addressed to the Member States.

Done at. _____

For the Council _____

The President _____

[FR Doc. 86-6207 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending Coverage of Export Visa Requirement To Include Braided Luggage of Man-Made Fibers Produced or Manufactured in the Republic of Korea

March 19, 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 April 1, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, the Governments of the United States and the Republic of Korea, have agreed to further amend the existing export visa requirement to include man-made fiber braided luggage in Category 670pt. (T.S.U.S.A. number 706.3420), which will also be visaed as "670-U". This coverage is in addition to the coverage of luggage of man-made fibers in T.S.U.S.A. numbers 706.4152 and 706.4144, as described in the CITA directive of November 16, 1984 (49 FR 45985). The visa stamp is not being changed and the official of the Government Republic of Korea authorized to issue visas also remains unchanged at this time.

The expanded visa coverage will be effective for Category 670pt. (T.S.U.S.A. number 706.3420), produced or manufactured in Korea and exported on and after April 1, 1986. Merchandise in this category exported before April 1, 1986 will not be denied entry for lack of a visa.

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 (42 FR 55709), as amened 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).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

March 19, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends but does not cancel, the directive of May 19, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Republic of Korea.

Effective on April 1, 1986, man-made fiber textile products in Category 670pt. (T.S.U.S.A. number 706. 3420), produced or manufactured in the Republic of Korea and exported on and after April 1, 1986 will be required to be visaed as Category 670-U in addition to man-made fiber textile products in Category 670pt. (T.S.U.S.A. numbers 706.4152 and 706.4144). Merchandise in Category 670pt. (T.S.U.S.A. number 706.3420), which has been exported before April 1, 1986, shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreement has determined that this action falls 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. 86-6390 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products From the Polish People's Republic Effective on January 1, 1986; Correction

March 19, 1986.

On December 27, 1985 a notice was published in the **Federal Register** (50 FR 52984) announcing the aggregate, group, and individual category limits for cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The limit established for Category 635 in the directive to the Commissioner to Customs which followed that notice should have been 84,902 dozen.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-6372 Filed 3-27-86; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Meeting of Steering Committee on Methylene Chloride

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission staff will be working with a steering committee to assist industry, consumer interest representatives, and other interested parties in developing programs and efforts to reduce consumer exposure to methylene chloride. This notice announces the first meeting of the steering committee.

DATE: The meeting will be on March 27, 1986, at 10:00 a.m.

ADDRESS: The meeting will be in Room 456, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Sandra Eberle or Abbie Gerber, Office of Program Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6957.

SUPPLEMENTARY INFORMATION:

Background

Because of a recent report of animal tests conducted by the National Toxicology Program, the Consumer Product Safety Commission has been concerned about whether exposure to the vapors given off by household substances containing methylene chloride, particularly paint strippers and spray paints, presents a risk of cancer to consumers. While the Commission has not yet resolved the issue of the potential carcinogenicity of methylene chloride vapor, it has become apparent in meetings of the Commission and its staff with industry and consumer groups that there was a mutual recognition of a need to take voluntary action to reduce consumers' exposure to methylene chloride.

On February 27, 1986, the Consumer Product Safety Commission voted, unanimously, to continue a three-pronged voluntary program to reduce consumer exposure to methylene chloride. This program will be coordinated by a steering committee, whose organization and activities are described below. The Commission also voted to initiate a rulemaking proceeding to determine whether products containing methylene chloride are "hazardous substances," as defined by the Federal Hazardous Substances

Act, due to a carcinogenic risk from inhaling the vapors of this chemical.[1]

Steering Committee

As described above, the Commission's staff will be working with a steering committee to assist industry and consumer representatives in developing appropriate precautionary labeling, consumer education programs, and product reformulation efforts, which could be adopted by industry to reduce consumer exposure to methylene chloride. The screening committee will be chaired by the National Paint and Coatings Association and co-chaired by the Consumer Federation of America and the staff of the Consumer Product Safety Commission. The first meeting of the steering committee will take place on Thursday, March 27, 1986, beginning at 10:00 a.m. in Room 456, 5401 Westbard Avenue, Bethesda, Maryland.

The meeting is open to the public. Persons who would like to attend should contact Sandra Eberle or Abbie Gerber, at the address or telephone number provided above, who can also provide information on accommodations, a tentative agenda of the meeting, and other information.

Dated: March 21, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-6562 Filed 3-21-86; 10:55 am]

BILLING CODE 6355-01-M

[1] Acting Chairman Carol Dawson and Commissioners Saundra Brown Armstrong, Anne Graham, and Terrence Scanlon voted to begin the rulemaking, and Commissioner Stuart M. Statler voted against it, preferring instead to declare methylene chloride a hazardous substance immediately under section 2(p) of the Federal Hazardous Substances Act. Separate opinions of Commissioners Armstrong, Scanlon, and Statler are available from the Commission's Office of the Secretary.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATE: April 27-May 1, 1986 (Detailed agenda follows).

ADDRESS: Holiday Inn—Fair Oaks, 11787 Lee Jackson Highway, Fairfax, Virginia, unless otherwise noted in detailed agenda.

AGENDA: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions:

Sunday 27 April 1986

11:00 a.m.-4:00 p.m.
Registration
12:00 noon-1:00 p.m.
Executive Committee Meeting
1:00 pm.-2:30 p.m.
"Get Acquainted" Luncheon (DACOWITS Members Only)
MilRep Luncheon (MilReps and Liaison Officers Only)
2:15 p.m.-3:15 p.m.
Chairwoman's Procedural Session for DACOWITS Members
3:15 p.m.-4:15 p.m.
OSD Overview
4:15 p.m.-5:15 p.m.
Service Overview (DACOWITS Members & MILREPS Only)
Subcommittee
1—Army
2—Navy
3—USMC
5:30 p.m.-6:30 p.m.
Subcommittee Meetings (Orientation)
7:00 p.m.-8:30 p.m.
"No Host" Social Buffet

Monday, 28 April 1986

8:00 a.m.-9:00 a.m.
Service Overview (DACOWITS Members & MILREPS Only)
Subcommittee
1—USAF
2—USCG
3—Army
10:00 a.m.-10:35 a.m.
Official Opening—Pentagon
10:45 a.m.-11:30 a.m.
OSD Official Coffee—Pentagon
1:30 p.m.-2:30 p.m.
Service Overview (DACOWITS Members & MILREPS Only)
Subcommittee
1—Navy
2—USMC
3—USAF
2:30 p.m.-3:30 p.m.
Service Overview (DACOWITS Members & MILREPS Only)
Subcommittee
1—USCG
2—Army
3—Navy
3:30 p.m.-4:30 p.m.
Service Overview (DACOWITS Members & MILREPS Only)
Subcommittee
1—USMC
2—USAF
3—USCG
4:45 p.m.
-6:00 p.m.
Subcommittee Meetings (Evaluation and Disposition of Service Responses)
7:00 p.m.-10:30 p.m.
Official Department of Defense Reception and Dinner (By Invitation Only)

Tuesday, 29 April 1986

9:00 a.m.-10:00 a.m.
Service Overview (Wrap-up)
10:00 a.m.-11:00 a.m.
Briefing: Direct Combat Probability Coding Review
11:00 a.m.-11:45 a.m.
Briefing: Navy Temporary Additional Duty Policies
12:00 noon-1:30 p.m.
Official Department of Defense Luncheon (By Invitation Only)
1:45 p.m.-2:45 p.m.
Briefing: USMC Female Officer Review
2:45 p.m.-5:00 p.m.
Subcommittee Meetings
7:30 p.m.-8:30 p.m.
Reception—Marine Corps Museum (By Invitation Only)
8:45 p.m.-9:45 p.m.
Parade—Marine Corps Barracks (By Invitation Only)

Wednesday, 30 April 1986

9:00 a.m.-9:30 a.m.
Presentation by Members of the Public
9:30 a.m.-12:00 noon
Subcommittee Meetings
12:00 noon-2:00 p.m.
"No Host" Luncheon
2:15 p.m.-6:00 p.m.
Subcommittee Meetings

Thursday, 1 May 1986

8:00 a.m.-11:00 a.m.
General Business Session Adjournment
11:00 a.m-12:00 noon
Executive Committee Meeting

FOR FURTHER INFORMATION CONTACT: Major Marilla J. Brown, Executive Secretary, DACOWITS, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the meeting:

(1) Members of the public will not be permitted to attend the Official Department of Defense Luncheon or Dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than April 11, 1986.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentations by members of the public will be permitted only from 9:00 am. to 9:30 a.m. on Wednesday, 30 April 1986, before the full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS Executive Secretariat with a copy of the presentation or 60 copies of the statement by 16 April 1986.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Executive Secretary to consider, as feasible.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee Meetings, or the Business Session on Thursday, 1 May 1986.

March 19, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-6347 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of Section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 17, April 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lt. Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on U.S. Strategic Defense Initiative.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 19, 1986.

[FR Doc. 86-6348 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-01-M

Foreign Assistance; Determination

Pursuant to section 515(c)(1) of the Foreign Assistance Act of 1961 relating to overseas management of assistance and sales programs, and in accordance with the authority delegated by Executive Order 12163 and redelegated on February 12 and February 24, 1972, to the Director, Defense Security Assistance Agency, Phillip C. Gast, Lieutenant General, USAF, Director, Defense Security Assistance Agency has determined that United States national interests require that more than six members of the Armed Forces be assigned under section 515 of that Act to carry out international security assistance programs in Venezuela, and therefore waive the limitation that the number of members of the Armed Forces assigned to a foreign country under section 515 of that Act may not exceed six unless specifically authorized by the Congress.

The total number of seven military personnel authorized for the United States Military Group (USMILGP), Venezuela shall be effective thirty days to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 19, 1986.

[FR Doc. 86-6349 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-01-M

President's Blue Ribbon Commission on Defense Management; Closed Meeting

ACTION: Notice of closed meeting.

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 8:30 a.m. on April 16 and 17, 1986, at 735 Jackson Place NW., Washington DC 20503.

Discussion during the meeting will include classified matters of national security and other matters which cannot be addressed in open forum throughout. Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with section 10(d) of Pub. L. 92-463, the "Fedeal Advisory Committee Act," and section 552b(c)(1) and (c)(9)(B) of Title 5, United States Code, this meeting will be closed to the public.

Agenda: The Commission will meet to continue its consideration of defense management and organization issues and its preparation of further reports to the President on the defense acquisition process.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert E. Hetu (Public Affairs), 1899 L Street NW, Suite 400, Washington, DC 20036, Telephone: (202) 466-7080 or (202) 395-3198.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 19, 1986.

[FR Doc. 86-6346 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-01-M

U.S Court of Military Appeals Code Committee Meeting

ACTION: Notice of Public Hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 2:00 p.m. on April 1, 1986, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001. The agenda for this meeting will include various matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001; telephone (202) 272-1448.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-6350 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Health Care Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Secretary of the Navy Health Care Advisory Committee will meet April 8 and 9, 1986, from 9 a.m. to 4 p.m. and April 10, 1986, from 9 a.m. to noon, at Medal of Honor Hall, Naval Medical Command, 23rd and C Streets NW., Washington, DC. All sessions will be open to the public.

The purpose of the meeting is to provide guidance concerning the utilization of limited resources in the Navy Medical Department. The agenda for the meeting will consist of a series of briefings from the Office of the Surgeon General concerning key issues facing Navy medicine today.

For further information concerning this meeting, contact Captain Joseph J. Smith, MC, USN, (202) 653-1730.

Dated: March 18, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86-6312 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: April 9-10, 1986, 9:00 a.m. until conclusion of business each day.

ADDRESS: National Advisory Council on Indian Education, 2000 L Street NW., Suite 574, Washington, D.C. 20036 (202/634-6160)..

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street NW., Suite 574, Washington, D.C. 20036 (202/634-6160).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of P.L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) NACIE Budget—fiscal years1986 and 1987.

(2) NACIE activities for remainder of fiscal year 1986.

(3) Other business.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 2000 L Street NW., Suite 574, Washington, D.C. 20036.

Date: March 19, 1986. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 86-6379 Filed 3-21-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No. 9(i)(3)-86]

Legal Interpretation of Section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Statutory interpretation.

SUMMARY: On February 7, 1986, Bonneville Power Administration (BPA) published a notice of proposed legal interpretation of section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act or Act), 16 U.S.C. 839f(i)(3). (*See* 51 FR 4787 (Feb. 7, 1986.) Section 9(i)(3) imposes an obligation upon the BPA Administrator, to the extent practicable, to give priority to marketing services for capability from projects under construction on the effective date of the Northwest Power Act if the capability has been offered for sale to BPA at cost, including a reasonable rate of return, and the offer is not accepted within one year. BPA invited comments to its proposed legal interpretation and considered these comments in its decisionmaking on the following final legal interpretation. This interpretation addresses the qualification of project capability for the priority set forth in section 9(i)(3), and the meaning of a section 9(i)(3) priority in relation to BPA's marketing services.

Responsible Officials: James O. Luce, Assistant General Counsel, is the official responsible for this statutory interpretation. Thomas M. Noguchi, Director, Division of Customer Service, is the official responsible for implementing section 9(i)(3).

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the above address, 503-230 3478. Oregon callers outside Portland may use the toll-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 N.E. Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920

Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 W. Fort Street, Rm. 376, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provisions

Section 9(i)(1) of the Northwest Power Act, 16 U.S.C. 839f(i)(1), imposes an obligation on the BPA Administrator, to the extent practicable, and at the request and expense of Pacific Northwest customers of BPA, to acquire electric power required by these customers as replacement power and to dispose or assist in the disposal of power that these customers propose to sell, if such disposition does not conflict with the Administrator's other marketing obligations, the policies of the Northwest Power Act, and other applicable laws. Section 9(i)(2) of the Act, 16 U.S.C. 839f(i)(2), authorizes the BPA Administrator to prescribe policies and conditions for the independent acquisition or disposition of electric power by direct service industrial customers. Section 9(i)(3) provides:

> The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year. 16 U.S.C. 839f(i)(3).

B. Scope of Interpretation

This interpretation addresses the qualification of project capability for the priority set forth in section 9(i)(3), and the meaning of a section 9(i)(3) priority in relation to BPA's marketing services. This interpretation is not intended to address other legal issues or policy questions which may not involve section 9(i)(3) or other BPA programs and policies.

C. Public Comment Procedures

On February 7, 1986, BPA published a "Notice of Proposed Legal Interpretation of Section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act; Request for Comments." (51 FR 4787, February 7, 1986.) In the notice, BPA requested written comments from the public on the definitions and interpretation contained in the notice. BPA received comments from sixteen parties, including publicly-owned utilities, investor-owned utilities, and organizations representing these utility groups and direct service industrial customers. The following parties submitted written comments: J. Anderson, H. Wallingford, Hydropool, Basin Electric Power Cooperative, The Washington Water Power Company, Snohomish County Public Utility District No. 1, Puget Sound Power & Light Company, Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, Public Utility District No. 1 of Chelan County as representative for the Public Generating Pool, Pacific Northwest Generating Company, Public Utility Commissioner of Oregon, Sacramento Municipal Utility District, and the Public Power Council representing 115 preference customers of BPA. This legal interpretation has taken full consideration of the comments of these interested parties. These comments are addressed in BPA's Record of Decision, dated March 5, 1986, which is available upon request from the Public Involvement Office.

II. Legal Interpretation

A. Definitions

This section contains definitions of terms used in the legal interpretation for which there is no specific definition in the Northwest Power Act. These definitions are a part of the interpretation. In this interpretation terms specifically defined in the Northwest Power Act retain the meaning set forth in the Act.

1. *Project capability:* "Project capability" is the actual or planned electric power capability, or portions thereof, of a generating facility. Project capability is not output or plant ownership.

2. *Under construction:* A project is "under construction" if BPA determines there was a firm commitment to build and operate a generating facility. This commitment may be, but is not necessarily, evidenced by binding contracts for the purchase of generation equipment or machinery, site development, or construction placement, including foundation work, fabrication, or equipment installation.

3. *Offered for sale:* Project capability is "offered for sale" if there is a bona fide offer, capable of acceptance and valid for one year, which includes, but is not limited to, the following essential terms: (a) identification of project capability offered pursuant to section 6 of the Northwest Power Act; (b) the cost of the capability offered; (c) the quantity of capability offered; (d) the term of the proposed sale; (e) identification of the manner of acceptance; and (f) designation of the point of delivery from which BPA can take delivery of the power into its system.

4. *Power Marketing program:* BPA's "power marketing program" means the aggregate of BPA's power marketing actions taken and policies developed to fulfill BPA's statutory obligations and policy directives. These actions and policies are based on the exercise of broad authority to act, consistent with sound business principles, to recover adequate revenue to repay the Federal investment in the Federal system while, at the same time, encouraging the widest possible diversified use of electric power at the lowest possible rates for BPA customers. BPA's power marketing program includes the Administrator's obligation to meet his power supply obligations in the Pacific Northwest and to market surplus power in the Pacific Northwest in a manner that assures an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving regional and public preference to Federal electric power and maintaining BPA's present and future rates to all customers at the lowest level possible consistent with sound business principles. BPA's power marketing program also includes the Administrator's objectives to market surplus Federal power to the Southwest utilities at equitable prices under rates adopted pursuant to section 7(i) of the Northwest Power Act and to assist in the marketing of the region's surplus firm power to the Southwest.

B. Interpretation

1. *Qualification for the section 9(i)(3) priority.*

a. Project capability qualifies for the section 9(i)(3) priority if it is from a project:

(1) Of a Pacific Northwest utility customer of BPA;

(2) Located within or without the Pacific Northwest; and

(3) Under construction by a Pacific Northwest utility customer on December 5, 1980;

if the capability was offered for sale to BPA at cost, including a reasonable rate of return; and BPA has rejected the offer, or has not accepted the offer within one year from the date of the offer.

b. The acquisition by BPA of the offered project capability during the term of the offer, or at any time thereafter, renders inapplicable, or extinguishes, the section 9(i)(3) priority. The acquisition of the offered project capability is subject to acquisition and environmental statutory requirements.

c. In any decision to acquire project capability, or to provide a section 9(i)(3) priority, BPA shall determine:

(1) Whether the costs reflected in the offered price are associated with the project capability; and

(2) The appropriateness of the costs and the reasonableness of the rate of return included in the offered price.

2. *Relationship of the section 9(i)(3) priority to BPA's marketing services.* Project capability which qualifies for the section 9(i)(3) priority shall have a priority, in the event that there are competing requests, to BPA marketing services, including transmission, storage, and load factoring, at established rates or charges, which BPA is making available to other Pacific Northwest utility customers under policies and project capability otherwise qualifies.

The section 9(i)(3) priority does not confer independently any substantive right to services not otherwise being offered by BPA, or require any modification of any of BPA's marketing services for the reason that the statute grants a priority to the services as BPA may offer. Priority shall be provided to the extent practicable, and the services shall be provided unless BPA determines that such services cannot be furnished without substantial interference with BPA's power marketing program, applicable operating limitations, or existing contractual obligations. BPA shall not breach existing contracts or other lawful obligations to provide services. Section 9(i)(3) implicitly recognizes that the type and amount of services BPA provides are separate questions to be addressed in other BPA policies.

Issued in Portland, Oregon, on March 7, 1986.

Peter T. Johnson,

Administrator, Bonneville Power Administration.

[FR Doc. 86-6377 Filed 3-21-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

Correction

In FR Doc. 86-5837 appearing on page 9099 in the issue of Monday, March 17, 1986, make the following correction:

In the third column, under **SUPPLEMENTARY INFORMATION,** sixth line, "10 days" should read "30 days".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Project No. 9771-000, et al.]

Hydroelectric Applications (Trafalgar Power, Inc., et al.); Application Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 9771-000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Red Mill.

f. Location: On the Claverack Creek in Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934-4202.

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 19-foot-high and 176-foot-long concrete dam with a spillway crest elevation of 172 feet msl; (2) an existing 10-acre reservoir with a storage capacity of 166 acre-feet at 172 feet msl; (3) an existing 12-foot-wide gated intake structure 100 feet long; (4) a proposed penstock 3.5 feet in diameter ad approximately 20 feet long; (5) a proposed powerhouse to contain one turbine/generator for an installed capacity of 100 kW; (6) a proposed tailrace; (7) a new 4.8-kV transmission line approximately 200 feet long: and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 450,000 kWh under a hydraulic head of 12 feet. The existing facilities are owned by Mr. Joseph H. Ptaszek.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The workd proposed under the preliminary permit would inlcude economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $24,000.

2 a. Type of Application: Prelimiinary Permit.

b. Project No.: 9779-000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Niverville.

f. Location: On the Valatie Kill River in Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934-4202.

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high and 125-foot-long concrete dam with a spillway crest elevation of 288 feet msl; (2) an existing 365-acre reservoir with a storage capacity of 3285 acre-feet at 288 feet msl; (3) an existing intake structure under repair; (4) a proposed powerhouse to contain one turbine/generator with an installed capacity of 95 kW; (5) a new 4.8-kV transmission line approximately 220 feet long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 400,000 kWh operating under a hydraulic head of 16.5 feet. The existing facilities are owned by the Kinderhook Lake Corporation.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A prelimiary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would inlcude economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $23,000.

3 a. Type of Application: Preliminary Permit

b. Project No.: 9775–000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Mellenville

f. Location: On the Agawamuck Creek in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934–4202.

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 22-foot-high and 120-foot-long masonry dam with spillway crest elevation of 300 feet msl; (2) an existing 1-acre reservoir of negligible storage capacity at 300 feet msl; (3) an existing 6-foot-wide gated intake structure; (4) a proposed penstock 2.5 feet in diameter and approximately 75 feet long; (5) a proposed powerhouse to contain one turbine/generator for an installed capacity of 50 kW; (6) a proposed tailrace; (7) a new 4.8-kV transmission line approximately 200 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 225,000 kWh operating under a hydraulic head of 20 feet. The existing facilities are owned by the Town of Claverack.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environment impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $22,000.

4 a. Type of Application: Preliminary Permit

b. Project No.: 9773–000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Ancram Mills

f. Location: On the Roeliff Jansen Kill River in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trataigar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934–4202.

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 22-foot-high and 93-foot-long concrete dam with spillway crest elevation of 460 feet msl; (2) an existing 6-acre reservoir with a storage capacity of 67 acre-feet at 460 feet msl; (3) an existing intake structure to be rehabilitated; (4) a proposed penstock 5 feet in diameter and approximately 200 feet long; (5) a proposed powerhouse to contain one turbine/generator for an installed capacity of 420 kW; (6) a proposed tailrace; (7) a new 13.8-kV transmission line approximately 1000 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 1.8 million kWh under a hydraulic head of 30 feet. The existing facilities are owned by the Kimberly Clark Corporation.

k. Purpose of Project: Project power will be sold to the Central Hudson Gas & Electric Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environment impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $42,000.

5 a. Type of Application: Preliminary Permit

b. Project No.: 9503–000

c. Date Filed: October 1, 1985

d. Applicant: Tongue River Hydro Partners II

e. Name of Project: Tongue River

f. Location: On Tongue River in Sheridan County, Wyoming within the Bighorn National Forest

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Louis Rosenman, Attorney at Law, 1350 New York Avenue, #600, Washington, D.C. 20005, (202) 783–2100.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high, 150-foot-long, concrete diversion structure at elevation 6,400 feet; (2) an 8-foot-diameter, 12,000-foot-long tunnel; (3) a 72-inch-diameter, 5,000-foot-long steel penstock; (4)a surge tank; (5) a powerhouse containing a single generating unit with a rated capacity of 36,000 kW, producing an estimated average annual energy output of 155.5 GWh (6) a 20-foot-long, 10-foot-wide concrete tailrace; and (7) a 9-mile-long, 64–kV transmission line tying into an existing Montana-Dakota Utility line.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $145,000.

k. Purpose of Project: Project power would be sold to Montana-Dakota Utility Company

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6 a. Type of Application: Preliminary Permit

b. Project No.: 9777–000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Upper Stockport

f. Location: On the Claverack Creek in Columbia County, New York

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603)–934–4202.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 17.5-foot-high and 250-foot-long concrete dam with spillway crest elevation of 50 feet msl; (2) a proposed 18.5-acre reservoir with a storage capacity of 166 acre-feet at 50 feet msl; (3) a proposed intake structure; (4) a proposed capacity of 340 kW; (5) a new 13.8–kV transmission line approximately 200 feet

long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 1.4 million kWh under a hydraulic head of 17 feet. The existing facilities are owned by Marie Grasso and Albert William LaFave.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $52,000.

7 a. Type of Application: Preliminary Permit

b. Project No.: 9776–000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Lower Stottville

f. Location: On the Claverack Creek in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603)–934–4202.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 23.7-foot-high and 150-foot-long concrete dam with spillway crest elevation of 68 feet msl; (2) an existing 6-acre reservoir with a storage capacity of 72 acre-feet at 68 feet msl; (3) an existing 25-foot-wide and 20-foot-long gated intake structure; (4) an existing 5-foot-diameter penstock 100 feet long; (5) a proposed powerhouse to contain one turbine/generator with an installed capacity of 340 kW; (6) a new tailrace; (7) a new 13.8-kV transmission line approximately 1600 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 1.4 million kWh operating under a hydraulic head of 20 feet. The existing facilities are owned by Anthony J. Scott and Karl and Mary Wahlers.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $38,000.

8 a. Type of Application: Preliminary Permit

b. Project No.: 9774–000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Bingham Mills

f. Location: On the Roeliff Jansen Kill River in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603)–934–4202.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 25-foot-high and 218-foot-long dam with spillway crest elevation of 166 feet msl; (2) a proposed 33-acre reservoir with a storage capacity of 397-acre-feet at 166 feet msl; (3) an existing 25-foot-wide and 15-foot-long cyclopean concrete intake structure; (4) a proposed penstock 8 feet in diameter and approximately 500 feet long; (5) a proposed powerhouse to contain one turbine/generator for an installed capacity of 1400 kW; (6) a proposed tailrace; (7) a new 2.3-kV transmission line approximately 3500 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 6 million kWh operating under a hydraulic head of 50 feet. The owner of the existing facilities is Vernon et. al. Saulpaugh.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $62,000.

9 a. Type of Application: Preliminary Permit

b. Project No.: P–9549–000

c. Date Filed: October 21, 1985

d. Applicant: Public Service Company of New Hampshire

e. Name of Project: Franklin Development

f. Location: Winnipesaukee River, Merrimack County, New Hampshire

g. File Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Ralph S. Johnson, Vice President, Public Service Company of New Hampshire, P.O. Box 330, 1000 Elm Street, Manchester, NH 03105, (603) 669–4000.

i. Comment Date: April 24, 1986.

j. Description of Project: The proposed project would consist of: (1) A proposed concrete gravity dam, 150 feet long, 22 feet high and having a crest elevation of 400 feet mean sea level; (2) a proposed reservoir of 9 acres surface area and no storage capacity at a normal level; (3) a proposed 12-foot-diameter penstock 3,750 feet in length; (4) a proposed 32-foot-long, 50-foot-wide concrete powerhouse to house a proposed 5.5 MW capacity turbine generator operating at a hydraulic head of 84 feet; (5) a proposed 360 kW capacity turbine/generator to be located at the dam and operating at a hydraulic head of 22 feet; (6) a proposed 250-foot-long, 34.5 kV transmission line; and (7) appurtentant facilities.

The estimated annual energy production is 21,000,000 kWh. Project power would be sold to Applicant's customers.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license

to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $1,484,500.

10 a. Type of Application: Minor License

b. Project No.: 9100-000

c. Date Filed: April 9, 1985

d. Applicant: James M. Knott

e. Name of Project: Riverdale Mills

f. Location: On the Blackstone River in Worcester County, Village of Riverdale, Massachusetts

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: James M. Knott, 130 Riverdale Street, Northbridge, MA 01534, (617) 234-8715.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 142-foot-long and 14-foot-high concrete and steel dam with crest elevation of 262.35 feet mean sea level owned by the Applicant; (2) an impoundment with a surface area of 11.8 acres; (3) existing sluicegates; (4) an existing 8-foot-high and 16-foot-wide sluiceway, 115 feet long; (5) an existing 150-kW unit within a mill building; (6) an existing 231-foot-long tailrace; and (7) other appurtenances. The Applicant estimates an average annual generation of 919,800 kWh. The Applicant plans to install 2 additional similar generating units in the future using existing facilities. The project is not operating at present.

k. Purpose of Project: Project energy would be used in the Applicant's Riverdale Mills Corporation manufacturing activities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11 a. Type of Application: Preliminary Permit

b. Project No.: 9749-000

C. Date Filed: December 27, 1985

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Oneonta Hydropower Project

f. Location: On the Susquehanna River near Oneonta, Otsego County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person:

Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437-2547

Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797-5800

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam approximately 200 feet long and 10 feet high; (2) an existing 10-acre reservoir with 80 acre-feet of storage at an elevation of 1095 msl (the use of flashboards 2 feet high will be investigated); (3) a proposed intake structure, to be constructed from the existing works, up to 50 feet in width; (4) a proposed powerflume 50 feet in width and length containing either one 1,100-kW submerged bulb turbine-generator or two 550-kW submerged bulb turbine-generators; (5) a proposed tailrace channel 50 feet wide, 10 feet deep, and 100 feet long; (6) a proposed 13.8-kV transmission line 100 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 5.0 MWh. The project energy would be sold to New York State Electric and Gas Company. The dam owner is the City of Oneonta, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $21,000.

12 a. Type of Application: Preliminary Permit

b. Project No.: 9767-000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Philmont-High Falls

f. Location: On Agawamuck Creek in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934-4202.

i. Comment Date: April 28, 1986.

j. Description of Project;

The proposed project would consist of: (1) An existing 24-foot-high and 160-foot-long stone masonry dam with a spillway crest elevation of 495 feet msl; (2) a second existing 4-foot-high and 70-foot-long stone masonry dam at 470 feet msl; (3) an existing 16.5-acre reservoir with a storage capacity of 178-acre-feet at 495 feet msl; (4) a proposed gated intake structure; (5) a proposed penstock 2 feet in diameter and 750 feet long; (6) a proposed powerhouse to contain one turbine/generator for an installed capacity of 375 kW; (7) a proposed tailrace; (8) a new 13.8-kV transmission line approximately 650 feet long; and (9) appurtenant facilities. The estimated average annual energy produced by the project would be 1.5 million kWh operating under a hydraulic head of 150 feet. The existing facilities are owned by the Village of Philmont.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $36,000.

13 a. Type of Application: Preliminary Permit

b. Project No.: 9682-000

c. Date Filed: December 13, 1985

d. Applicant: Earl P. Ellis and Associates

e. Name of Project: Snyder Falls Creek

f. Location: In Chugach National Forest, on Snyder Falls Creek, in the Greater Anchorage Borough, Alaska

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Earl P. Ellis, 690 West Lake Ridge Drive, Eagle River, AK 99577

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high diversion structure at elevation 1,300 feet; (2) a 3,600-foot-long, 20-inch-diameter pipe; (3) a powerhouse containing a generator with a capacity of 1,200 kW and an average annual generation of 5.7 GWh; and (4) a 6.8-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $75,000. No new roads would be constructed or

drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Cordova Electric Cooperation, Inc.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2

14 a. Type of Application: Preliminary Permit

b. Project No.: 9696-000

c. Date Filed: December 17, 1985

d. Applicant: Lima Hydro Limited Partnership

e. Name of Project: Lima Hydro Project

f. Location: On the Red Rock River at Lima Dam in T.13S., R.6 W., Section 32 near Lima, Beaverhead County, Montana

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Rhett Hurless, P.O. Box 3474, Bozeman, MT 59772, (406) 586-7017

i. Comment Date: April 24, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 54-foot-high dam owned by Water Users Irrigation Company; (2) a 6,400 acre reservoir with a storage capacity of 84,050 acre-feet at normal water surface elevation 6,582 feet; (3) a 450-foot-long, 54-inch diameter penstock; (4) a powerhouse containing three generating units with a total capacity of 530 kW; and (5) a 7-mile-long transmission line. Applicant estimates the average annual energy production to be 1.85 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $17,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

15 a. Type of Application: Preliminary Permit

b. Project No.: 9627-000

c. Date Filed: November 19, 1985

d. Applicant: Clearwater Hydro

e. Name of Project: East Lynn

f. Location: Twelvepole Creek, Wayne County, West Virginia

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Charles Gresham, Clearwater Hydro, Route 1, Box 355, Hiawatha Road, Morristown, TN 37814, (615) 475-2125 or 581-6816.

i. Comment Date: April 28, 1986.

j. Description of Project: The proposed project would utilize the East Lynn Dam and Lake owned by the U.S. Army Corps of Engineers and would consist of: (1) An existing gate/intake structure which would house two proposed submersible turbine/generators with combined capacity of 500 kW; and (2) appurtenant facilities. The estimated annual energy production of the project is 2,700,000 kWh. The estimated hydraulic head is 50 feet. Project power would be sold to Appalachian Power Company.

k. Proposed Scope and Cost of studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $19,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16 a. Type of Application: Preliminary Permit

b. Project No: 9786-000

c. Date Filed: December 30, 1985

d. Applicant: Arktech, Inc.

e. Name of Project: George 3

f. Location: In Targhee National Forest, on Henrys Fork, in Fremont County, Idaho, Township 11N and Range 43E

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r)

h. Contact Person: Michael Arkoosh, P.O. Box 93, Gooding, ID 83330, (208) 934-8464.

i. Comment Date: April 28, 1986.

j. Competing Application: Project No. 9665, Date Filed: 12-3-85

k. Description of Project: The proposed project would consist of: (1) A headgate on the river bank at elevation 5,920 feet; (2) a 3-mile-long canal; (3) a 400-foot-long, 96-inch-diameter penstock; (4) a powerhouse containing a generating unit with a capacity of 3,547 kW and an average annual generation of 21,160 MWh; and (5) a 0.5-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $96,500. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of the Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A8, B, C and D2.

17 a. Type of Application: Preliminary Permit

b. Project No: 9665-000

c. Date Filed: December 3, 1985

d. Applicant: Henrys Fork Conservationists II

e. Name of Project: Henry Fork II

f. Location: In Targhee National Forest, on Henrys Fork, in Fremont County, Idaho

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r)

h. Contact Person: Louis Rosenman, 1333 New Hampshire Avenue, NW, Suite 1100, Washington, DC 20036, (202) 783-2100.

i. Comment Date: April 28, 1986.

j. Competing Application: Project No. 9786, Date Filed: 12-30-85

k. Description of Project: The proposed project would consist of: (a) 10-foot-high diversion dam at elevation 5,920 feet; (2) 3-mile-long canal; (3) a 400-foot-long, 96-inch-diameter penstock; (4) a powerhouse containing a generating unit with a capacity of 3,550 kW and an average annual generation of 21.16 GWh; and (5) a 2.5-mile-long Transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $145,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of the Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

18 a. Type of Application: Major License Under 5 MW

b. Project No: 5799-001

c. Date Filed: November 23, 1983

d. Applicant: New York State Energy Research and Development Authority

e. Name of Project: Mechanicville Project

f. Location: On the Champlain Barge Canal of the Hudson River in the Towns of Halfmoon and Mechanicville, Saratoga and Rensselaer Counties, New York

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r)

h. Contact Person: Ms. Jacquelyn L. Jerry, New York State Energy Research and Development Authority, Two Rockefeller Plaza, Albany, New York 12223 (518) 465-6251

i. Comment Date: April 28, 1986.

j. Competing Application: Project No. 6032, Date Filed: January 23, 1982.

k. Description of Project: The proposed project would consist of: (1) The existing 952-foot-long, 15-foot-high Mechanicville Lock and Dam in three sections consisting of: a 692-foot-long ogee-shaped spillway section, a 143-foot-long auxiliary spillway section, and a 117-foot-long sluice gate structure section; (2) a reservoir having a surface area of 385 acres, a storage capacity of 2,716 acre-feet, and a normal water surface elevation of 55.3 feet NGVD; (3) a proposed 60-foot-wide, 110-foot-long intake channel; (4) a proposed powerhouse containing two generating units having a total installed capacity of 4.95-MW; (4) a proposed 65-foot-wide, 650-foot-long tailrace; (5) a proposed 1,150-foot-long, 34.5-kV transmission line; and (6) appurtenant facilities. The Applicant estimates the average annual generation would be 56,100,000-kWh. The existing lock and dam and existing project facilities are owned by the New York State Department of Transportation and Niagara Mohawk Power Corporation.

l. Purpose of Project: All power produced would be sold to the Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

19 a. Type of Application: Preliminary Permit

b. Project No.: P-9868-000

c. Date Filed: January 6, 1986

d. Applicant: Essex Hydro Associates

e. Name of Project: Blackwater Dam

f. Location: On the Blackwater River in Merrimack County, New Hampshire

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Thomas A. Tarpey, Essex Hydro Associates, 99 North State, Concord, NH 03301, (603) 224-8333.

i. Comment Date: April 28, 1986.

j. Competing Application: Project No. 9313, Date Filed July 2, 1985

k. Description of Project: The proposed project would utilize the existing Blackwater Dam and Reservoir owned by the U.S. Army Corps of Engineers and would consist of: two alternative penstock schemes—Alternative 2, and 3: use of a proposed 10-foot-diameter and 1,500 foot long steel penstock; Alternative 3—a proposed 12-foot-diameter and 11,800 foot long steel penstock; (2) a proposed powerhouse to contain one turbine/generator with a proposed installed capacity of either 250 kW for Alternative 1, 2100 kW for Alternative 2 or 5500 kW for Alternative 3; (3) a proposed tailrace; (4) a new 23 kV transmission line approximately 3 miles long; and (5) appurtenant facilities. The estimated average annual energy production would be either 1,200,000 kWh for Alternative 1 5,665,000 kWh for Alternative 2 or 12,768,000 kWh for Alternative 3 with a new hydraulic head of either 10 feet for Alternative 1, 60 feet for Alternative 2, or 160 feet for Alternative 3.

l. Purpose of Project: All power produced would be sold to one of New Hampshire's three public utility systems.

m. This notice also consists of the following standard paragraphs: A8, B, C, & D2

n. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $128,500.

20 a. Type of Application: Transfer of License (Minor)

b. Project No.: 2608-000

c. Date Filed: January 21, 1986

d. Applicants: Premoid Corporation, Agawam Canal Co., Inc. and the James River Paper Company, Inc.

e. Name of Project: West Springfield Project

f. Location: On the Westfield River, a tributary of the Connecticut River, in the Town of West Springfield, Hampden County, Massachusetts

g. Filed Pursuant to: Section 9 of the Federal Power Act.

h. Contact Person: Mr. John D. Potter, James River Corporation, Premoid Division, Front Street, West Springfield, MA 01089, (413) 736-4554.

i Comment Date: April 28, 1986.

j. Description of Project: On September 10, 1976, a minor license was issued to the Premoid Corporation and Agawam Canal Company, Inc. to operate and maintain the West Springfield Project No. 2608. Premoid Corporation and Agawam Canal Company, Inc. intend to sell the project to James River Paper Company, Inc, a private Virginia cororation qualified to do business in the State of Massachusetts. For that reason, Premoid Corporation and Agawam Canal Company, Inc. have filed a request that the project license be transferred to James River Paper Company, Inc.

k. This notice also consists of the following standard paragraphs: B and C.

21 a. Type of Application: Partial Transfer of License (Major)

b. Project No.: P-5073-005

c. Date Filed: December 19, 1985

d. Applicant: Everett E. Whitman and Benton Falls Associates

e. Name of Project: Benton Falls

f. Location: On the Sebasticook River in Kennebec County, Maine.

g. Filed Pursuant to: Section 9 of the Federal Power Act §§ 791(a)—825(r)

h. Contact Person: Mr. Lee M. Goodwin, Wickwire, Gravin & Gibbs, P.C., 1133 21st Street, NW. Suite 500, Washington, D.C. 20036, (202) 887-5200.

i Comment Date: April 28, 1986.

j. Description of Project: On March 8, 1984, a major license was issued to Everett E. Whitman to construct, operate, and maintain the Benton Falls Project No. 5073. Everett E. Whitman intends to sell part of its interest in the project to the Benton Falls Associates. For that reason, Everett E. Whitman and Benton Falls Associates filed a request that the project license be transferred to Everett E. Whitman and Benton Associates.

k. This notice also consists of the following standard paragraphs: B and C.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established to the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the intial development application. No competing applications or notices of

intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and § 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and § 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and § 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant; include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .244. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they

may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 19, 1986.

Kenneth E. Plumb,

Secretary.

[FR Doc. 86-6314 Filed 3-21-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2988]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.* requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Unleaded Gasoline and Vapor Recovery Inspections (EPA ICR #0097). (These activities have been cleared separately in the past; there are no changes.)

Abstract: EPA requires inspections of a sample of gasoline stations to establish compliance with the unleaded gasoline regulations, the Federal Trade Commission's octane posting requlations, and the federal and federally-approved State and local regulations which require installation and use of vapor recovery equipment. Before these inspections, information about ownership of the station is asked of the attendant, owner, or manager by the inspector.

Respondents: Gas station owners and managers.

Title: National Emission Standard for Hazardous Air Pollutants (NESHAP) Development for Ethylene Oxide Emissions Sources (EPA ICR #1288). (This is a request for a new survey.)

Abstract: All ethylene oxide (EO) sterilizers and fumigators other than hospitals will be surveyed for data on EO emissions and control costs. The data will be used to estimate the health risk to the United States population, based on human exposure modeling, and to calculate the potential cost to the industry if a NESHAP were developed.

Respondents: Users of ethylene oxide sterilizers and fumigators, other than hospitals.

Office of Administration and Resources Management

Title: General Regulations of Assistance (EPA ICR #0938). This is a request to renew a formerly approved ICR; no change in proposed.)

Abstract: EPA collects information from grant recipients and applicants to assist in making awards, and to determine how recipients spend federal funds.

Respondents: States, local governments, federally recognized Indian tribal governments, trainees, and researchers.

Office of Policy, Planning, and Evaluation

Title: Survey of Consumer Inconvenience in Using Stage II Controls (EPA ICR #1266). (This is a new survey.)

Abstract: EPA will collect data from users of gasoline to determine if they perceive any inconvenience in using the current pollution control equipment on gasoline pumps, and the amount of money they would be willing to pay to avoid its use. The Agency will use the data to assist in making a policy on the regulation of gasoline marketing.

Respondents: California drivers who are familiar with current pollution control equipment.

Office of Water

Title: Estimate of Municipal Wastewater Treatment Facility Requirements—Needs Survey (EPA ICR #0318). (This is a revision of a formerly approved ICR.)

Abstract: EPA collects technical information and construction cost estimates from publicly-owned wastewater treatment facilities. EPA uses the data to prepare the Needs Survey, a biennial report to Congress. Using this report, Congress develops formulas for the allotment of funds.

Respondents: States and territories.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0154; Pesticide Dealers and Applicators, was approved 3/6/86 (OMB #2070-0024; expires 3/31/89).

EPA ICR #0163; TSCA Inspection-Related Forms, was approved 3/6/86 (OMB #2070-0007; expires 3/31/89).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

Wayne Leiss (ICR #0097 and ICR #1288), or Rick Otis (ICR #0318, ICR #0938, and ICR #1266), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: March 17, 1986

Daniel J. Fiorino,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-6222 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59214; FRL-2989-8]

Certain Chemicals Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: April 8, 1986.

ADDRESS: Written comments, identified by the document control number

"OPTS-59214]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-30

Close of Review Period. April 20, 1986.
Manufacturer. Confidential.
Chemical. 2-ethoxyethyl cyanoacetate.
Use Production. (G) Polymeric curing agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

T 86-31

Close of Review Period. April 20, 1986.
Manufacturer. Confidential.
Chemical. N-butyl cyanoacetate.
Use Production. (G) Adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: March 17, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-6364 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51615; (FRL-2989-9)]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-634—June 4, 1986.
P 86-635—June 7, 1986.
P 86-636, 86-637, 86-638, 86-639, 86-640, 86-641, 86-642, 86-643, 86-644, 86-645 and 86-646—June 8, 1986.
P 86-647, 86-648, 86-649, 86-650 and 86-651—June 9, 1986.
P 86-652 and 86-653—June 10, 1986.

Written comments by:

P 86-634—May 5, 1986.
P 86-635—May 8, 1986.
P 86-636, 86-637, 86-638, 86-639, 86-640, 86-641, 86-642, 86-643, 86-644, 86-645 and 86-646—May 9, 1986.
P 86-647, 86-648, 86-649, 86-650 and 86-651—May 10, 1986.
P 86-652 and 86-653—May 11, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51615]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room. E-201, 401 M Street SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-634

Importer. Confidential.
Chemical. (G) 1,3,2-dioxaphosphorinane, 5,5-disubstituted-2-substituted-, 2-oxide.
Use/Import. (S) Industrial and consumer flame for use in plastic applications particularly polymethyl methacrylate. Import range: Confidential.
Toxicity Date. Acute oral: 925 mg/kg; Irritation: Skin—Nonirritant, Eye—Nonirritant; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-635

Manufacturer. Confidential.
Chemical. (G) Silane modified styrenated acrylate methacrylate.
Use/Production. (G) Resin use in industrial coatings. Prod.range: 212,000-250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 40 workers, up to 8 hrs/da, up to 31 da/yr.
Environmental Release/Disposal. 12 to 104 kg/batch released to land.

P 86-636

Manufacturer. E.I. du Pont de Nemours and Company Inc.
Chemical. (G) Perfluorelastomer.
Use/Production. (G) sealing parts, tubing and laminates. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 12 workers.
Environmental Release/Disposal. Release to land. Disposal by biological treatment system and approved landfill.

P 86-637

Manufacturer. E.I. du Pont de Nemours and Company Inc.
Chemical. (G) Epoxy containing acrylic polymer.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 14 workers.
Environmental Release/Disposal. Release to land. Disposal by incineration and approved landfill.

P 86-638

Manufacturer. E.I. du Pont de Nemours and Company Inc.
Chemical. (G) Epoxy containing acrylic polymer.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 13 workers.
Environmental Release/Disposal. Release to land. Disposal by incineration and approved landfill.

P 86-639

Importer. Confidential.
Chemical. (G) Copolymer of fluoroolefin and vinyl esters.
Use/Import. (S) Industrial vehicles for coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Minimal
Environmental Release/Disposal. No data submitted.

P 86-640

Importer. Confidential.
Chemical. (G) Copolymer of fluoroolefin and vinyl esters.
Use/Import. (S) Industrial vehicles for coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Minimal
Environmental Release/Disposal. No data submitted.

P 86-641

Importer. Confidential.
Chemical. (G) Copolymer of fluoroolefin and vinyl esters.
Use/Import. (S) Industrial vehicles for coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Minimal
Environmental Release/Disposal. No data submitted.

P 86-642

Importer. Confidential.
Chemical. (G) Copolymer of fluoroolefin and vinyl esters.
Use/Import. (S) Industrial vehicles for coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Minimal
Environmental Release/Disposal. No data submitted.

P 86-643

Manufacturer. Confidential.
Chemical. (G) Polymeric isocyanate prepolymer.
Use/Production. (G) Polyurethane foam. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to .02 hr/da, up to 250 da/yr.
Environmental Release/Disposal. 25 kg/batch released to to air. Disposal by incineration.

P 86-644

Manufacturer. The Dow Chemical Company.
Chemical. (G) Magnesium aluminum hydroxy anion.
Use/Production. (S) Industrial oil well drilling fluid additive and viscosifier for water based fluids other than drilling fluids. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers.
Environmental Release/Disposal. Less than 1 kg/day released to water. Disposal by navigable waterway and on-site waste treatment plant.

P 86-645

Manufacturer. The Dow Chemical Company.
Chemical. (G) Magnesium aluminum hydroxy anion.
Use/Production. (S) Industrial oil well drilling fluid additive and viscosifier for water based fluids other than drilling fluids. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers.
Environmental Release/Disposal. Less than 1 kg/day released to water. Disposal by navigable waterway and on-site waste treatment plant.

P 86-646

Manufacturer. The Dow Chemical Company.
Chemical. (G) Magnesium aluminum hydroxy anion.
Use/Production. (S) Industrial oil well drilling fluid additive and viscosifier for water based fluids other than drilling fluids. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers.
Environmental Release/Disposal. Less than 1 kg/day released to water. Disposal by navigable waterway and on-site waste treatment plant.

P 86-647

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-648

Manufacturer. Confidential.
Chemical. (G) Polyurea urethane acrylate.
Use/Production. (G) Used in formulation an industrial specialty polymeric material having an open use. Prod. range: Confidential
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 53 workers, up to 8 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. 6 to 90 kg/batch released to land. Disposal by incineration and landfill

P 86-649

Manufacturer. Confidential.
Chemical. (G) Alkoxylated diol diacrylate.
Use/Production. (G) Radiation curing coatings; an open, non-dispersive use. Prod. range: 16,000-50,000 kg/yr.
Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Slight, Eye—Slight; Ames test: Negative.
Exposure. Manufacture: dermal, a total of 8 workers, up to 6 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. No release.

P 86-650

Manufacturer. Confidential.
Chemical. (G) Methacrylic ester.
Use/Production. (S) For use in acrylic resin formulations. Prod. range Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-651

Manufacturer. Confidential.
Chemical. (G) Diurea compound.
Use/Production. (S) For use as a sag control agent in resinous systems. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-652

Manufacturer. AZS Corporation.
Chemical. (G) 1,2-propanediol, 2,5-furandione, 1,2-ethanediol, 1,3-isobenzofurandione, aliphatic glycol, 1,4-benzenedicarboxylic acid.
Use/Production. (S) Site-limited and industrial cross linkable base for use in fiber reinforced products and aggregate filled composites. Prod. range: 280,000-500,000.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 1.0 hr/da, up to 12 da/yr.
Environmental Release/Disposal. 24 kg/batch released to water. Disposal by publicly owned treatment works (POTW) and biological treatment system.

P 86-653

Manufacturer. Confidential.
Chemical. (G) Mixed glycol and oligoesters of aromatic and aliphatic dicarboxylic acids.
Use/Production. (S) Component for polyurethane foam insulating material. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 18 workers, up to 4 hrs/da, up to 22 da/yr.

Environmental Release/Disposal. 5 to 30 kg/batch released to control technology. Disposal by incineration.

Dated: March 17, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-6362 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59757; FRL-2989-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eight such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-96, 86-97 and 86-98—March 27, 1986.

Y 86-99, 86-100 and 86-101—March 31, 1986.

Y 86-102—April 1, 1986.

Y 86-103—April 2, 1986.

FOR FURTHER INFORMATON CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Managememnt Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-96

Manufacturer. Confidential.

Chemical. (G) Alkyl-substituted acrylate copolymer ammonium salt.

Use/Production. (G) Open, non-dispersive, destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y86-97

Manufacturer. Confidential.

Chemical. (G) Alkyl-substituted acrylate copolymer.

Use/Production. (G) Open, non-dispersive, destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-98

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Import. (G) Polyester resin for photocopy. Import range: Confidential.

Toxicity Data. Acute oral: >9.35 g/kg; Irritation: Skin-Slight, Eye-Slight; Intradermal (Skin): Low; Ames test: Not mutagenic.

Exposure. Processing: dermal, inhalation and ocular.

Environmental Release/Disposal. Less than 0.1% of dust released to air. Disposal by authorized disposal company.

Y 86-99

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-100

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-101

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Butyl acrylate, methyl methacrylate, carboxylated acrylate polymer.

Use/Production. (S) Pressure sensitive adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-102

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (G) An alkyd resin to be used in an open non-dispersive manner. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-103

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Resin for coating and inks and a modifier for coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: March 17, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-6365 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50651; FRL-2991-5]

Receipt of Applications for Experimental Use Permits; Genetically Engineered Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received two applications from the University of California for EPA experimental use permits (EUPs) for two genetically engineered microbial pesticides. These are among the first genetically engineered biological agents to be proposed for EUPs under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136c. The Agency has determined that these applications may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on these applications.

DATE: Written comments must be received on or before April 23, 1986.

ADDRESS: Comments, in triplicate, should bear the docket control number OPP-50651 and be submitted to:

Information Services Section, 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.

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. Information on the proposed tests and all written comments will be available for public inspection in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry M. Jacoby, Product Manager (PM) 21, 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. 37, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA has received two applications from the University of California, Berkeley, CA 94720 for EUPs. One of the applications was assigned EPA file symbol 55269-EUP-R and proposed the application of the genetically engineered product UCBPP1.1 (*Pseudomonas syringae*, Strain Cit7dellb, in an aqueous solution containing no more than 3×10^9 colony forming units (CFUs) per ml) to potato plants for the control of frost damage by replacement of naturally occurring ice nucleating bacteria. 1.2×10^{13} CFUs (4.0 liters) will be applied to approximately 0.15 acres for each of 3 years for a total of 3.6×10^{13} CFUs (12 liters). The second application was assigned EPA file symbol 55269-EUP-E and proposed the application of the product UCBPP2.1 (*Pseudomonas syringae*, Strain TLP2dell, in an aqueous solution containing no more than 3×10^9 CFUs per ml) also to potato plants for the control of frost damage by replacement of naturally occurring ice nucleating bacteria. 1.2×10^{13} CFUs (4.0 liters) will be applied to approximately 0.15 acre for each of 3 years, for a total of 3.6×10^{13} CFUs (12 liters). The field testing will be conducted at a single test site at the University of California's Tulelake Experiment Station at Tulelake, California. The treated areas for both EUPs will not exceed 0.3 acres and the potatoes and treated plants will be destroyed or used for research purposes during or following the field trial. Treatments are scheduled to begin in early May, 1986 and early August, 1986. The applications propose that the permits be issued for 3 years, beginning May 1, 1986 and ending May 1, 1989.

Proposed labeling states:

"Toxicological properties not fully investigated, applicators should wear full protective clothing including goggles and respirator, apply only during calm weather to avoid drift, do not enter treated areas unprotected for 12 hours after application, dispose of unused material and rinse water by autoclaving and for use only in accordance with the terms and conditions of the Experimental Use Permit."

The proposed EUP programs include collection of data on the dissemination and survival of the bacteria in the environment and monitoring of bacterial populations on plants, in the soil, and in or on bees and other insects associated with the treated potato plants during the proposed field trials.

Following review of the University of California applications and any comments received in response to this notice, EPA will decide whether to issue or deny the EUPs and, if issued, under what conditions the experiments are to be conducted. Any issuance of an EUP by the Agency will be announced in the **Federal Register**.

Dated: March 20, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6499 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New

Title: Measurement of Positive Response Levels of Essential Workers Under Stress of Emergency Situations

Abstract: For Emergency Preparedness planning FEMA needs to be able to predict the positive response levels of essential workers under stress of emergency situations. The attached instruments is designed to measure behavior under stress. It is to be used to test a representative sample of 1466 essential workers to measure their positive response levels under stress.

Type of Respondents: Individuals or households State or Local Governments Businesses or other for-profit Non-profit institutions

Number of Respondents: 1,466

Burden Hours: 388.5

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Walter A. Girstantas, Director,

Administrative Support.

[FR Doc. 86-6326 Filed 3-21-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. 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, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-01092.

Title: Port of San Francisco Terminal Agreement.

Parties:

San Francisco Port Commission

Zim-American Israeli Shipping Co., Inc. (Zim)

Synopsis: The proposed agreement provides that in return for utilizing the Port of San Francisco as its published, regularly scheduled Northern California port of call, Zim will pay less than 100%

of port tariff charges for wharfage, dockage and demurrage. During the ten year term of the agreement Zim guarantees 31 vessel calls annually.

Agreement No.: 024-010904.

Title: Port of Seattle Terminal Agreement.

Parties:

Port of Seattle (Port)

Stevedoring Services of America (SSA)

Synopsis: The proposed agreement would permit the parties to resolve disputes and apportion responsibility for claims, judgements, payments and expenses arising from injury to SSA employees which result in claim against SSA or the Port. It would supersede any provision to the contrary in any existing leases, contracts or agreements between the parties. It would also apply only to SSA personal injury claims and any future claims which relate to an event or occurrence which arises on or during the period from January 1, 1986 through December 31, 1986. The parties have requested a shortened review period.

Dated: March 19, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-6339 Filed 3-21-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Interagency Committee on Smoking and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1) announcement is made of the following national advisory body scheduled to assemble during the month of June 1986.

Interagency Committee on Smoking and Health

June 4, 1986; 9:00 a.m.-3:00 p.m., Hubert H. Humphrey Building Room 503A, 200 Independence Avenue, SW., Washington, DC 20201

Open

Contact: John Bagrosky, Executive Secretary, Interagency Committee on Smoking and Health, Park Building, Room 1-10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1575.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services and the Assistant Secretary for Health on a wide range of smoking and health issues.

Agenda: The entire meeting will be open to the public. It will include a discussion of the smoking and health issue with emphasis on the role of free cigarette sampling and other related marketing techniques.

Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from the contact person listed above.

Dated: March 13, 1986.

John Bagrosky,

Executive Secretary.

[FR Doc. 86-6386 Filed 3-21-86; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 85E-0582]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tambocor; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that announced that the agency had determined the regulatory review period for Tambocor. This document corrects an editorial error.

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-433-1382.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-4602 appearing on page 7497 in the issue of Tuesday, March 4, 1986, the following correction is made on page 7497:

In the third column, first complete paragraph, the last sentence is corrected to read "Based on this approval, Riker Laboratories, Inc., now seeks patent term restoration."

Dated: March 18, 1986.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 86-6319 Filed 3-21-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0053]

Stericon Laboratories, Inc.; Premarket Approval of Crystalens ™ Saline Spray

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Stericon Laboratories, Inc., San Jose, CA, for premarket approval, under the Medical Device Amendments of 1976, of Crystalens ™ Saline Spray for use with soft (hydrophilic contact lenses. Crystalens ™ Saline Spray is indicated for sue in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 23, 1986.

ADDRESS: Written request for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HRA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On September 6, 1985, Stericon Laboratories, Inc., San Jose, CA 95120, submitted to CDRH an application for premarket approval of Crystalens ™ Saline Spray. The device is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses.

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 24, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard F. Lippman (HFZ-460), address above.

The labeling of Crystalens™ Saline Spray states that the solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved soft

contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the contact lens manufacturer or PMA holder. Such notice informs new users of soft contact lenses of appropriate solutions for use in the care of soft contact lenses, and avoids the use of inappropriate products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (2 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 23, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 14, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–6318 Filed 3–21–86; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 678772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 50 FR 26053, June 24, 1985), is amended as follows:

1. To reflect the following changes in the Office of Program Support and the Office of Biosafety: (a) Transfer of CDC library services from the Management Analysis and Services Office to the Information Resources Management Office; (b) transfer of nonelectronic documentary security from the Personnel Management Office to the Information Resources Management Office; (c) transfer of responsibility for domestic and international travel policies and procedures from the Financial Management Office to the Management Analysis and Services Office; and (d) assignment of the responsibility for environmental assessments of CDC activities and facilities from the Center for Environmental Health to the Office of Biosafety; and

2. To change the title "Executive Officer" to "Director, Office of Program Support" in the functional statements for the Office of Administrative and Management Services, National Institute for Occupational Safety and Health, and the Office of Administrative Services, Center for Infectious Diseases.

Section HC–B, Organization and Functions, is hereby amended as follows:

1. After the heading and statements for the *Office of Program Support (HCA5),* make the following changes:

(a) Under the heading *Financial Management Office (HCA53),* delete item (11) and renumber items (12) and (13) as items (11) and (12);

(b) Under the heading *Information Resources Management Office (HCA54),* change item (10) to read: (10) develops and coordinates the implementation of information security programs;

(c) Under the heading *Management Analysis and Services Office (HCA59),* in item (1), delete the words library services; renumber items (2) and (3) as items (3) and (4), and insert the following as item (2): (2) serves as the focal point for domestic and international travel policy, procedures, and interpretation;

(d) Under the heading *Personnel Management Office (HCA57),* in item (4), change the words "performance evaluation" to "performance management"; and change item (11) to read: (11) conducts CDC's personnel security program.

2. Under the heading *Office of Biosafety (HCA1),* delete the statement in its entirety and insert the following:

Office of Biosafety (HCA1), Under the direction of CDC's Assistant Director for Science: (1) Develops and implements a CDC-wide program for the identification and control of biological, chemical, radiological, and physical hazards to protect CDC employees and the surrounding community; (2) issues permits for importation and distribution of etiologic agents, hosts, and vectors, and regulates packaging of etiologic agents shipped in interstate commerce; (3) plans, directs, and coordinates environmental and occupational safety and health programs at CDC; (4) conducts environmental assessments of CDC activities and facilities; (5) plans, directs, and coordinates the physical security program at CDC facilities; (6) provides a comprehensive program of occupational medical services for CDC employees; (7) serves as a World Health Organization Collaborating Center for Applied Biosafety Programs and Training.

3. Under the heading *National Institute for Occupational Safety and Health (HCC), Office of Administrative and Management Services (HCC11),* in item (8), change the title Executive Officer to Director, Office of Program Support.

4. Under the heading *Center for Infectious Diseases (HCR), Office of Administrative Services (HCR13), in* item (6), change the title Executive Officer to Director, Office of Program Support.

Dated: March 14, 1986.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 86–6385 Filed 3–21–86; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability and Public Hearings Draft; Southern Rio Grande Plan Amendment/Environmental Impact Statement (SRGPA/EIS)

AGENCY: Bureau of Land Management (BLM), Las Cruces District, Las Cruces/Lordsburg Resources Area, New Mexico Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared a Draft Plan Amendment/Environmental Impact Statement to consider a proposed State of New Mexico land exchange (73,560 acres of offered State land in the White Sands Missile Range and 5,000 acres in the Organ Mountains for 10,000 acres of selected public land east of Las Cruces, New Mexico) and other land tenure adjustments for Dona Ana County, New Mexico.

DATE: Written comments on the Draft SRGPA/EIS should be sent to the Las Cruces/Lordsburg Resource Area no later than July 2, 1986.

ADDRESS: Comments should be sent to: William J. Harkenrider, Jr., Area Manager, Las Cruces/Lordsburg Resource Area, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James, SRGPA/EIS Team Leader (same as above address), Telephone: (505) 525-8228 or FTS 571-8353.

SUPPLEMENTARY INFORMATION: Copies of the Draft SRGPA/EIS have been distributed to a mailing list of identified interested parties. A limited number of additional copies are available at the Las Cruces/Lordsburg Area Office, 1800 Marquess Street, Las Cruces, New Mexico 80005. Public reading copies are available for review at the BLM State Office, U.S. Federal Building, Santa Fe, New Mexico, at public and university libraries in Alamogordo, Carrizozo, Las Cruces, Socorro and Truth or Consequences, New Mexico, and in El Paso, Texas.

Public Hearings: Public hearings will be held at 1:30 p.m. and 7:30 p.m. on June 4, 1986, at the BLM Las Cruces District Office Conference Room, 1800 Marquess Street, Las Cruces, New Mexico.

During the public hearings, oral comments on the content of the Draft SRGPA/EIS will be limited to 10 minutes and should be accompanied with written text. Anyone wishing to register for the public hearings to present oral comments should contact Marvin M. James, SRGPA/EIS Team Leader at the Las Cruces/Lordsburg Resource Area Office, phone (505) 525-8228, prior to June 4, 1986.

Dated: March 17, 1986.

Charles W. Luscher,

State Director.

[FR Doc. 86-6363 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-FB-M

[AA-6709-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Ounalashka Corporation for approximately 8 acres. The lands involved are in T. 72 S., R. 117 W., and T. 73 S., R. 118 W., Seward Meridian, in the vicinity of Unalaska, Alaska.

A notice of the decisions will be published once a week for four (4) consecutive weeks in The Anchorage Times and once in the Aleutian Eagle. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions shall have until April 23, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-6375 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-JA-M

Emergency Closure of Public Lands; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency Closure of Public Lands.

SUMMARY: Notice is hereby given that effective immediately the following described public lands within the Roswell District are closed to all uses and publics except those having written authorization in their possession by authorizing officer:

New Mexico Principal Meridian

SW¼ of Section 1 and NW¼ of Section 12 of T. 21 S., R. 19 E., N.M.P.M.

The area described above contains 320 acres of public land, more or less. The area which is closed to all uses and publics are identified on maps available upon request from the following Bureau of Land Managment Offices: Roswell District Office, 1717 W. Second Street, P.O. Box 1397, Roswell, NM 88201; or Carlsbad Resource Area Office, 101 E. Mermod, P.O. Box 1778, Carlsbad, NM 88220.

The purpose of this closure is to prevent possible adverse affects to public land users, because of conditions existing on the property, and for protection of public health and safety.

The authority for this closure is 43 CFR 8346.1. Penalties for any person who fails to comply with this closure are a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months (43 CFR 8360-7 Penalties). This closure will remain in effect until such time as the described above no longer poses any possible adverse affect to public land users.

Dated: March 14, 1986.

Francis R. Cherry, Jr.,

District Manager.

[FR Doc. 86-6376 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Services' clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Application for Federal Bird Marking and Salvage Permit.

Abstract: The Migratory Bird Treaty Act requires persons who wish to engage in migratory bird banding, marking and salvage activities to obtain a permit. The information requested enables the Service to determine the applicant's eligibility and ensures that such permits are issued to qualified persons.

Service Form Number: 3-481.

Frequency: On occasion.

Description of Respondents: Individuals or households, State and Federal Government employees who wish to trap and mark wild birds.

Annual Responses: 450.

Annual Burden Hours: 225.

Acting Service Clearance Officer: James E. Pinkerton, 202-653-7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: March 5, 1986.

Walter O. Stieglitz,

Acting Associate Director—Wildlife Resources.

[FR Doc. 86-6334 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Advisory Committee on Water Data for Public Use; Meeting

Pursuant to Pub. L. 92-463, effective January 5, 1973, notice is hereby given that an open meeting of the Advisory Committee on Water Data for Public Use (ACWDPU) will be held April 22-23, 1986, at the Ramada Hotel, 6815 Menaul Boulevard, NE., Albuquerque, New Mexico. The Committee consists of individuals and representatives of water-resources oriented groups, including national, State, and regional organizations, professional and technical societies, and the academic community. Its principal responsibility is to represent the interests of the non-Federal community in plans, policies, and procedures related to water-data programs. The Director of the U.S. Geological Survey (USGS) is the Chairman of the Committee.

The meeting will convene at 8:30 a.m. on Tuesday, April 22, 1986. Some specific items on the agenda include: (1) The USGS Water Quality Assessment Program; (2) Ground-Water Data Management Activities; and (3) Coordination of Water Research. The meeting will adjourn at 2:30 p.m. on Wednesday, April 23, 1986.

The meeting wil be open to the public, and anyone wishing to attend or desiring more information should contact Edgar A. Imhoff, Chief, Officer of Water Data Coordination, U.S. Geological Survey, 417 National Center, Reston, Virginia 22092. His telephone number is (703) 648-5016. Verbatim transcripts of the meeting will be available for inspection at Mr. Imhoff's office in Reston, Virginia, approximately 4 weeks after the meeting. A report summarizing the meeting will also be available form the Office of Water Data Coordination subsequent to the meeting.

Dated: March 14, 1986.

Edgar A. Imhoff,

Chief, Officer of Water Data Coordination.

[FR Doc. 86-6353 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

Rock Creek Watershed, TN, Lands Unsuitable for Surface Mining and Reclamation Operations: Availability of Draft Petition Evaluation Document and Draft Environmental Impact Statement, Comment and Hearing

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

ACTION: Notice of availability of the draft combined petition evaluation document/environmental impact statement (PED/EIS) for the Rock Creek watershed in Bledsoe and Hamilton Counties, Tennessee, lands unsuitable for surface coal mining and reclamation operations petition. Notice of public hearing to receive comments on the Rock Creek draft PED/EIS.

SUMMARY: OSMRE has prepared a draft combined PED/EIS addressing the petition to designate lands within the Rock Creek watershed as unsuitable for surface coal mining and reclamation operations. The document evaluates the allegations raised in the petition, and considers the impacts of alternative unsuitability decisions for the Rock Creek watershed on the human environment, the economy, and the supply of coal. Copies of the PED/EIS are being made available today. Public comment on PED/EIS is solicited and public hearing will be held as described below.

DATES: Written comments on the PED/EIS must be received at the address given below under "**ADDRESSES**" on or before May 19, 1986, at 5:00 p.m. local time. Comments may also be presented at a public hearing starting at 1:00 p.m. and 7:00 p.m. on May 8, 1986, at the address given below.

ADDRESSES: Public hearing on the draft PED/EIS will be held at the Bledsoe County Courthouse in Pikeville, Tennessee, on Thursday, May 8, 1986, beginning at 1:00 p.m. and 7:00 p.m. local time.

Written comments on the draft PED/EIS must be mailed or hand delivered to Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902, to the attention of Willis L. Gainer. All comments will be on file and available for inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement (telephone: 615/673-4348 or FTS 854-4348) at the address listed above.

PED/EIS availability: Copies of the draft PED/EIS are available for inspection at the Bledsoe and Hamilton County Courthouses and at the OSMRE office listed above. In addition, copies of the document may be obtained, while supplies last, at the above listed office.

SUPPLEMENTARY INFORMATION: The public hearing on the draft PED/EIS has been scheduled for the date and address listed above. Anyone who wishes to comment will be given the opportunity to do so, but initial comments will be limited to 15 minutes of oral testimony. Time limits may be extended at the discretion of the presiding officials. Persons wishing to present testimony are encouraged to contact OSMRE at the address given below. OSMRE would appreciate receiving a written copy of the testimony four days prior to the public hearing.

The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony is encouraged as this will facilitate the job of the court reporter. The public hearing will commence at the times identified above and will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and who wish to do so will be heard at the end of the scheduled speakers.

OSMRE encourages the public to comment on the content of the draft PED/EIS. In particular, OSMRE solicits comments which identify errors, omissions, or alternatives not yet considered. Whenever possible, public comments should be supported by technical data or other source material. All comments from the public on the draft PED/EIS will be considered during preparation of the final document.

Dated: March 17, 1986.

H. Leonard Richeson,

Acting Assistant, Program Operations.

[FR Doc. 86-6342 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Application To Consolidate, Merge or Acquire Control Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, or lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 13344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2 If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6.

Decided: March 18, 1986.

MC-F-17275. filed March 7, 1986. Schiavone Transportation Corp. (STC) (254 College Street, New Haven, CT 06510)—Continuance in Control—New York Airport Services Corp. (NYAS) (230 Old Gate Lane, Milford, CT 07460). Representative: Palmer, S. McGee, Jr.; Day, Berry & Howard; City place, 185 Asylum Street; Hartford, CT 06103-3499. STC, a noncarrier, seeks authority to continue in control of NYAS which has recently been granted authority in No. MC-184935. STC also owns Connecticut Limousine Service (MC-123748) and Connecticut American Charters, Inc. (MC-109865). STC and Schiavone Carrier Corp. (SCC), also a noncarrier, are controlled by The Schiavone Corporation, a noncarrier controlled by Joel Schiavone. SCC controls Grey Line New York Tours Corp. (MC-109897), Walters Transit Corp. (MC-46879), and Carey Transportation Inc. (MC-36031). All of these entities have some common officers and directors.

James H. Bayne,

Secretary.

[FR Doc. 86-6329 Filed 3-21-86; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86-22)]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Aviation Safety Reporting Systems (ASRS).

DATES: Date and time: April 15, 1986, 9:00 a.m. to 5:00 p.m.; April 16, 1986, 8:00 a.m. to 12:00 p.m.

ADDRESS: Ames Research Center, Building 200, Director's Committee Room, Moffett Field, CA.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Reynard, Ames Research Center, Moffett Field, CA 94035, (415/694-6467).

SUPPLEMENTARY INFORMATION: The Subcommittee on ASRS Operations was established to review the ASRS Operations and NASA Operations and NASA actions taken in response to Subcommittee recommendations. The Subcommittee, chaired by Mr. John Winant, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 90 persons including the Subcommittee members and participants).

Type of meeting: Open.

Agenda:

April 15, 1986

9 a.m.—Chairperson's Opening Remarks.

9:20 a.m.—Operations Report.

10:30 a.m.—Research Report.

1 p.m.—Discussion of Federal Aviation Administration Issues.

2 p.m.—Discussion of Report Volume Increases, Processing and Consequences.

3 p.m.—Re-evaluation of the Identification of Aircraft Make and Model.

4 p.m.—Discussion of Policy regarding ASRS Publications and Other Output.

5 p.m.—Adjourn.

April 16, 1986

8 a.m.—Technology Transfer of ASRS Design.

9 a.m.—Advisory Subcommittee Membership.

10:15 a.m.—Advisory Subcommittee Evaluation Plan and Schedule.

11 a.m.—Open Discussion.

12 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

March 18, 1986.

[FR Doc. 6309 Filed 3-21-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice 86-24]

NASA Advisory Council (NAC), Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee (SAAC).

DATES: Date and time: April 9, 1986, 1 p.m. to 5 p.m.; April 10, 1986, 8 a.m. to 5 p.m.; April 11, 1986, 8:30 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room Nos. as noted in the agenda below, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. This committee

is chaired by Dr. Artur Mager and is composed of 34 members. The committee operates both through a number of informal subcommittees and as a whole. The session on April 11, 1986, from 8:30 a.m. to 9:30 a.m., of the Remote Sensing Subcommittee and each of the sessions of three subcommittees—Communications Subcommittee, Information Systems Subcommittee, and the Microgravity Subcommittee—on April 11, 1986, from 8:30 a.m. to 10:30 a.m., will be closed to the public. During these sessions the subcommittees will discuss and evaluate candidates being considered for membership. Throughout these sessions the qualifications of candidates will be candidly discussed and appraised. Since these sessions will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that they should be closed to the public.

Type of meeting: Open—except for 4 closed sessions as noted in the agenda below.

Agenda

Remote Sensing Subcommittee

April 9, 1986, Room 226B

1 p.m. Discussion, Review, and Redrafting of Remote Sensing Research and Development (R&D) Policy Paper.

5 p.m. Adjourn.

April 10, 1986, Room 226A

10:30 a.m. Formulation of Recommendation on Landsat Act Amendments.

2 p.m. Briefing on Remote Sensing for Public Health (by the Director, Life Sciences Division).

3:30 p.m. Formulation of Approach for Long-Range Applications Plan.

5 p.m. Adjourn.

April 11, 1986, Room 226A

8:30 a.m. Closed Session on Membership.

9:30 a.m. Discussion of FY88 Planning and Budget Strategy.

10:30 a.m. Wrap-up Discussion and Review of Subcommittee Report.

11 a.m. Adjourn for Reconvening of the Full Committee.

Communications Subcommittee

April 10, 1986, Room 226B

10:30 a.m. Discussion of Long-Range Planning and Summer Study.

3 pm. Discussion of FY88 Planning and Budget Strategy.

5 p.m. Adjourn.

April 11, 1986, Room 226B

8:30 a.m. Closed Session on Membership.

10:30 am. Wrap-up Discussion and Review of Subcommittee Report.

11 a.m. Adjourn for Reconvening of the Full Committee.

Information Systems Subcommittee

April 10, 1986, Suite 770, Capitol Gallery Building

10:30 a.m. Discussion of FY88 Planning and Budget Strategy.

12 p.m. Depart NASA Headquarters to visit Information Processing Facilities at the Goddard Space Flight Center.

5 p.m. Adjourn.

April 11, 1986, Suite 770, Capitol Gallery Building

8:30 a.m. Closes Session on Membership.

10:30 a.m. Wrap-up Discussions and Review of Subcommittee Report.

11 a.m. Adjourn for Reconvening of the Full Committee.

Microgravity Subcommittee

April 10, 1986, Room 305, Capitol Gallery Building

10:30 Background Discussion with New Members of the Subcommittee.

11 a.m. Discussion of Documentation of Program Achievements ("Nuggets").

1 p.m. Discussion FY88 Planning and Budget Strategy.

3 p.m. Discussion of Long-Range Planning.

5 p.m. Adjourn.

April 11, 1986, Room 305, Capitol Gallery Building

8:30 a.m. Closed Session on Membership.

10:30 a.m. Wrap-up Discussion and Review of Subcommittee Report.

11 a.m. Adjourn for Reconvening of the Full Committee.

Full Committee

April 10, 1986, Room 226A

8 a.m. Opening Remarks by the Chairperson.

8:30 a.m. Update on Program Status, Congressional Testimony, etc., by the executive Secretary.

9 a.m. Discussion of FY88 Planning and Budget Issues with Dr. Edelson.

9:45 a.m. Dr. Edelson's Request for SAAC Formulation and Recommendations of an Applications Long-Range Plan.

10:15 a.m. Recess Full Committee to Convene Subcommittee Meetings.

April 11, 1986, Room 226A

11:15 a.m. Discussion of Subcommittee Reports

12:30 p.m. Adjourn Full Committee

2 p.m. Convene Meeting of Subcommittee Chairperson to Review SAAC Report to the NAC.

5 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 19, 1986.

[FR Doc. 86-6359 Filed 3-21-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (83-23)]

NASA Advisory Council, Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Advisory Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee and the Aerospace Research and Technology Informal Subcommittee.

DATES: Date and time: May 8, 1986, 8:30 a.m. to 5:00 p.m.; May 9, 1986, 8:30 a.m. to 4:40 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Activities Building, 21000 Brookpark Road, Cleveland, Ohio 44135.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne O. Teague, Code R, National Aeronautics and Space Administration, Washington, DC 20546; Telephone: (Area Code 202/453-2727).

SUPPLEMENTARY INFORMATION: The Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST).

The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the SSTAC and the Aeronautics Advisory Committee (AAC) and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Norman R. Augustine, is comprised of 21 members. Total anticipated attendance is 75 members. The meeting will be open to the public up to the seating capacity of the room (approximately 100 persons including the Subcommittee members and other participants).

Type of Meeting: Open.

Agenda

May 8, 1986

8:30 a.m.—Chairperson's Remarks.
9 a.m.—Overview of NASA/OAST.
9:45 a.m.—Space Technology Overview.
11 a.m.—Parallel Program Review Sessions.
5:00 p.m.—Adjourn.

May 9, 1986

8:30 a.m.—Continuation of Parallel Program Review Sessions.
3 p.m.—Summary Session.
4:30 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

March 18, 1986.

[FR Doc. 86-6310 Filed 3-21-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: April 17-18, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1986.

Date: April 21-22, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1986.

Date: April 28-29, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1986.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86-6344 Filed 3-21-86; 8:45 am]

BILLING CODE 7536-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATE: Comments on this information collection must be submitted by April 21, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: Extension of a currently approved public use report with revisions is requested. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504 (h).

Title: Basic State Grant Application Narrative Format.
Frequency of Collection: Average of one response per 1.87 years
Respondents: State governments and regional consortia of state governments

Use: Requested information is needed to enable the Endowment to determine whether applicants meet eligibility requirements and published criteria to provide the Endowment with information on past performance of applicant agencies; and to provide information needed for routine liaison with the state agencies.

Estimated Number of Respondents: 30.
Estimated Hours for Respondents to Provide Information: 413.

D.K. Stephens,

Asst. Director for Administration, National Endowment for the Arts.

[FR Doc. 86-6345 Filed 3-21-86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

Cleveland Electric Illuminating Co. et al., Perry Nuclear Power Plant, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-45 to the Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Toledo Edison Company (licensees) which authorizes operation of the Perry Nuclear Power

Plant, Unit 1 (the facility), at reactor core power levels not in excess of 3579 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition limiting operation to five percent of full power (178 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

Perry Unit 1 is a boiling water reactor located near Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

The license is effective as of the date of issuance. The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on February 13, 1981 (46 FR 12372).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-45, with Technical Specifications (NUREG-1162) and the Environmental Protection Plan; (2) the reports of the Advisory Committee on Reactor Safeguards, dated July 13, 1982 and March 17, 1986; (3) the Commission's Safety Evaluation Report, dated May 1982 (NUREG-0887), and Supplements 1 through 9; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated August 1982 (NUREG-0884).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street NW., Washington, DC 20555, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of Facility Operating License NPF-45 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 9 (NUREG-0887) and the Final Environmental Statement (NUREG-0884) may be purchased at current rates from the Superintendent of Documents, US Government Printing Office, Post Office Box 37082, Washington, DC 20012-7982 or by calling (202) 275-2060 or (202) 275-2171.

Dated at Bethesda, Maryland, this 18th day of March 1986.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86-6397 Filed 3-21-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric and Gas Co., Hope Creek Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is issuing exemptions from certain requirements of 10 CFR Part 50 to Public Service Electric and Gas Company (the Applicant) for the Hope Creek Generating Station, located in Salem County, New Jersey.

Enviornment Assessment

A. Deferral of Certain Radiation Monitors at Fuel Load

Identification of Proposed Action. The proposed action would provide relief to the applicant with regard to having fully operational portions of a radiation monitoring system as described in Hope Creek FSAR section 11.5. The specific relief requests and supporting evaluations are identified in submittals from PSE&G dated September 10 and December 26, 1985, and February 12 and 25, 1986. The relief requests proposed alternative methods for providing the radiation monitoring function for identified radiation monitors and associated hardware that would not be functional at fuel load.

The applicant's request for exemption and the basis therefore are contained in letter dated February 25, 1986.

Need for the Proposed Action. The exemption is required in order to provide the applicant with the ability to load fuel and perform Power Ascension Testing without having fully operational the completed radiation monitoring system (RMS) as described in Hope Creek FSAR section 11.5. This will provide the applicant with greater pre-operational flexibility and therefore expedite the start of power operation.

Environmental Impact of the Proposed Action. The proposed temporary relief would permit implementing the RMS in accordance with the proposed alternative temporary system as described in submittals dated September 10, December 26, 1985, and February 12, 1986. Requiring that the RMS as described in Hope Creek FSAR section 11.5 be fully functional at fuel load would result in hardship for the applicant, without a compensating increase in safety. The applicant has proposed using temporary radiation monitoring system to ensure offsite doses remain acceptable low. The probability of an accident has not been increased and the post-accident radiologial releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupations exposure. Likewise the relief does not effect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiologial environmental impacts associated with this proposed relief.

Alternative to the Proposed Action. The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of Hope Creek Generating Station operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

B. Deferral of Traversing—Incore—Probe Preoperational Test at Fuel Load Identification of Proposed Action. The proposed action would provide relief to the applicant with regard to having a Traversing-Incore-Probe (TIP) system preoperationally tested at fuel load. Preoperational testing of the TIP system will be complete by initial criticality. The specific relief requests and supporting evaluations are identified in submittals from PSE&G dated November 29, 1985, and January 15, 1986 and February 10 and 25, 1986.

Regulatory Guide 1.68, Revision 2, Appendix A. Paragraph 5.y requires that the TIP system be calibrated as necessary and proper operation verified. In complying with this regulatory guide, the Hope Creek Generating Station (HCGS) Technical Specifications 3.3.7.7 requires that the TIP system be operable when used for the aforementioned

calibration or monitoring. TIP system operability is nomally demonstrated during preoperational testing of the system hardware and electronics.

The TIP is a power generation system. It serves no safety function as it is not taken for in the FSAR for a design basis accident nor does if function to mitigate any expected or abnormal transient incidents. The Technical Specification 3.3.7.7 requirement has been incorporated to require that use of the TIP system is suspended when it is inoperable. Prior to initial criticality, there is no Technical Specification requirement for the TIP system to perform its intended function i.e., monitor, minimum critical power ratio (MCPR), average planar linear heat generation rate (APLHGR), linear heat generation rate (LHGR) or the maximum fraction of limiting power density (MFLPD). Since the TIP system does not provide a precise indication at low power levels which would allow a reliable calibration of the Low Power Range Monitor gains, the TIP system cannot be used for calibration prior to initial criticality. As a result, the applicant has requested an exemption from the requirement to have the TIP system operable prior to achieving initial criticality.

The applicant's request for exemption and the basis are contained in a letter dated February 25, 1986.

Need for the Proposed Action. The exemption is required in order for the applicant to be able to load fuel without having a preoperationally tested TIP system. Calibration and preoperational testing of the TIP system will be complete prior to initial criticality. This action is based upon the inability of the TIP system to allow a precise indication at low power levels such that a reliable calibration of the Low Power Range Monitor (LPRM) gains could be performed.

Environmental Impact of the Proposed Action. The exemption would allow the applicant to defer completing preoperational testing of the TIP system until prior to achieving initial criticality.

The staff concludes that the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impact associated with this proposed relief.

Alternative to the Proposed Action. The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of Hope Creek Generating Station operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

C. Deferral of the Offgas System, Preoperational Test at Fuel Load

Identification of Proposed Action. The proposed action would provide relief to the applicant with regard to having an Offgas System preoperationally tested at fuel load. Preoperational testing of the Offgas System will be complete prior to fully tensioning the reactor pressure vessel (RPV) head closure bolts. The specific exemption request and supporting evaluations are identified in the PSE&G submittals dated November 29, 1985, January 15, 1986 and February 10 and 25, 1986.

The Code of Federal Regulations Title 10 Part 20 (10 CFR 20), 10 CFR 50 Appendix A, General Design Criteria (GDC) 60 and 64 require the control of releases of radioactive materials to the environment. Complying with these regulations, Hope Creek Generating Station (HCGS) Technical Specification 3.11.2.1 requires that the dose rate due to radioactive materials released in gaseous effluents from the site to areas at and beyond the site boundary be limited to specified values at all times. To meet this requirement, Technical Specification 3.11.2.4 requires that gaseous radwaste treatment system, which includes the Offgas System, be operable whenever the Steam Jet Air Ejectors (SJAEs) are operating. Offgas System operability is normally demonstrated during preoperational testing of the system hardware and electronics with the acceptance criteria for the testing specified in the preoperational test specification.

The applicant states that the Offgas System is not required until after the RPV closure bolts are fully tensioned since the Main Steam Isloation Valves (MSIVs) will be closed thereby prohibiting steam admission to the turbine/consenser. SJAEs may be tested or operated on auxiliary steam prior to bolt tensioning in order to fulfill Technical Specification surveillance and test requirements. Therefore, no offgas constituents will enter the condenser or SJAEs nor be available for offsite release.

The applicant's request for exemption and the basis are contained in letter dated February 25, 1986.

Need for the Proposed Action. The exemption is required in order to allow the applicant to load fuel without having completed preoperational testing of the Offgas System. Preoperational testing of the Offgas System will be complete prior to fully tensioning the RPV head bolts.

Environmental Impact of the Proposed Action. The exemption would allow the applicant to defer completing preoperational testing of the Offgas System until fully tensioning the RPV closure bolts. This exemption is based upon the MSIVs being closed thereby prohibiting steam admission to the turbine/condenser. Therefore no offgas constituents will enter the condenser or SJAEs nor be available for offsite release.

The staff concludes that the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the relief does not effect non-radiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed relief.

Alternative to the Proposed Action. The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of Hope Creek Generating Station operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

D. Deferral of Standby Diesel Generator "D" Preoperational Testing at Fuel Load

Identification of Proposed Action. The proposed action would exempt the applicant from having to complete the Standby Diesel Generator (SDG) "D" preoperationaly testing prior to fuel load. The applicant alternatively proposes to complete the SDG-D preoperational testing prior to initial criticality. The specific exemption

request and supporting evaluation is contained in the applicants submittal dated February 25, 1986.

Need for the Proposed Action. The exemption is required in order to provide the applicant with the ability to load fuel without having completed preoperational testing of SDG–D. Preoperational testing of SDG–D will be completed prior to initial criticality.

Environmental Impact of the Proposed Action. The exemption would allow the applicant to defer completing preoperational testing of SDG–D until initial criticality. During initial fuel loading and precritical testing, the reactor will remain at essentially ambient temperatures and atmosphee conditions. Under these conditions, radioactive species will be produced, therefore, there are no environmental impacts associated with the proposed action.

The staff concludes that the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the relief does not affect non-radiological plant effluents and has no other environmental impact.Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action. The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental inpact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of Hope Creek Generating Station operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources. These actions in the granting of the exemption above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the Hope Creek Generating Station, dated December 1984.

Agencies and Persons Consulted. The NPC staff reviewed the licensee's requests that support the requested exemption above. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the requested exemption.

Based upon the foregoing environmental assessment, we conclude that the requested actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemption as listed herein, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

Dated at Bethesda, Maryland, this 18th day of March 1986.

For The Nuclear Regulatory Commission.

Anthony Bournia,

Acting Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86–6396 Filed 3–21–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–07022; License No. 29–13613–02; EA 86–17]

Radiation Technology, Inc.; Conditional Rescission of Order Suspending the License

I

Radiation Technology, Incorporated, Lake Denmark Road, Rockaway, New Jersey 07866 (the licensee) is the holder of a byproduct material license issued by the Nuclear Regulatory Commission (the Commission or NRC) pursuant to 10 CFR Part 30. The license, which was issued on November 18, 1970, most recently renewed on August 17, 1981, and due to expire on August 31, 1986, authorizes the licensee to perform certain activities using byproduct material in accordance with criteria specified therein. This authorization includes, among other activities, the use of specified radioactive sources, not to exceed 12,000 curies per source and 2,000,000 curies total, for service irradiation in the licensee's Radiation Technology (RT) Model 2102 service irradiator.

II

An Order Suspending the License (Effective Immediately) was issued on March 3, 1986. The Order suspended all operations authorized by License No. 29–13613–02 and required that the licensee place and maintain all sources in their fully shielded position at the bottom of the irradiator pools, and conduct only those licensed activities required to maintain the facility in a safe condition.

The Order was based on the finding, during several NRC inspections, that licensee personnel had defeated required safety interlocks associated with the RT–2102 irradiator in violation of Commission requirements, including 10 CFR 20.203 and Conditions 17 and 18 of its license. Consequently, the NRC lacked reasonable assurance that the facility would be operated in a manner that assured that the health and safety of the public, including licensee employees, would be protected. The Order was made immediately effective pending the completion of an ongoing Commission investigation of these matters.

III

On March 6, 1986, licensee representatives met with NRC Region I staff to discuss planned improvements to the licensee's management controls as described in a letter to the NRC dated March 4, 1986. At that meeting the licensee requested the license suspension be lifed based on the improvements set forth in the March 4, 1986 submittal. During the March 6, 1986 meeting, the staff responded to the licensee's March 4 submittal and outlined those aspects which were inadequate. Subsequently, on March 10, 1986, the licensee provided the NRC with a more detailed description of its plans for addressing the NRC's concerns in the areas of procedural compliance, staff competence, electrical and mechanical system reliability, and clarification of license provisions.

IV

The licensee in its March 10, 1985 letter described improvements to upgrade its radiation safety program which included the hiring of two knowledgeable and qualified independent radiological safety consultants to (1) supervise the daily safety operations at the facility, and (2) provide oversight of those operations. Although the licensee remains responsible for all activities under its license, I have determined that these consultants have been given sufficient authority by the licensee to make necessary safety decisions, including shutdown of the facility, when necessary and appropriate. Accordingly, I have concluded that public health and safety will not be endangered by rescinding the Order Suspending the License (Effective Immediately). My decision is contingent, however, on the licensee's acceptance of and adherence to the conditions described in this

Order. Failure to comply with those conditions may result in reinstatement of the suspension ordered on March 3, 1986.

V

In view of the foregoing, and pursuant to sections 81, 161b and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, the suspension of licensed activities imposed by the Order Suspending License (Effective Immediately) is hereby rescinded pending further order of the Commission subject to the following conditions:

A 1. Prior to the first use of licensed material following issuance of this Order, the Region shall receive a copy of the licensee's contract with Hydro Nuclear Services, Inc. so that the NRC can verify that the consultant's authority and responsibilities are in compliance with this order. The consultant shall have the authority to override any production schedule and/or directive and suspend all operations at the Rockaway facility should conditions arise that would cause or threaten to cause plant activities to be conducted in noncompliance with accepted radiological safety practices or NRC regulatory requirements including NRC license conditions. The consultant shall notify the Commission immediately if for any reason their ability to safely supervise daily operation of the facility is compromised.

Nothing in this Order relieves the licensee of its responsibilities under the license to safely operate the facility and direct its shutdown if problems are identified.

2. All licensed activities conducted under authorization of the license shall be supervised by the licensee's independent consultant (designated in the March 10 letter to be Hydro Nuclear Services, Inc.) in accordance with the statements, representations and procedures included in section 1.0 (Management Controls) and section 2.0 (Demonstration of Third and Fourth Party Independence) of the licensee's letter to the NRC dated March 10, 1986. At least one of the Hydro Nuclear Services, Inc. employees named in the March 10, 1986 letter, or other person approved by NRC Region I, in writing, shall be physically present at the licensee's Rockaway facility at all times when licensed material is in use. At any time when at least one of these named individuals is not present at the licensed facility, all licensed material shall remain in safe storage and the licensee may perform only activities necessary to maintain the facility in a safe condition. The independent consultant responsible for daily operation and supervision shall provide the licensee's Board of Directors a written report every seven days summarizing the licensee's activities, any problems identified, and corrective actions taken. A copy shall be sent simultaneously to the Regional Administrator, Region I.

3. Prior to the first use of licensed material following issuance of this Order, the licensee shall assure that each person who will be performing any of the supervisory functions required by Section V.A.2 has received specific instructions in the RT-2102 irradiator system design and operation, or the R&D irradiator as appropriate, all control and safety devices, environmental controls (i.e., temperature and ozone), appropriate emergency response actions, and notification as described in section 7.0 (Training) of the licensee's letter to the NRC dated March 10, 1986.

4. Prior to the first use of licensed material following issuance of this Order, the licensee shall instruct all personnel at the Rockaway facility in the organizational changes made and in the role and authority of each of the independent consultants. Each person who actually manipulates the controls of the irradiators shall be provided with a copy of this Order and the licensee's letter to the NRC dated March 10, 1986.

5. One of the individuals named in section V.A. 2 of this Order shall be physically present in the control room of the RT-2102 irradiator or at the controls of the R&D pool irradiator hoist during each startup or shutdown operation of the R&D irradiator until each operator has been observed and evaluated through three complete startup and shutdown (or operation) cycles. Following the three cycles of operation, the operator shall either be certified as qualified to operate the irradiator or removed from such duties and a retraining and requalification plan prepared and implemented. Records of the certification and any retraining and requalification shall be made and maintained for inspection by the Commission.

6. At least once in each calendar week (Monday through Sunday), Michael J. Slobodien, or other approved fourth party auditor, shall conduct an unannounced audit of the Rockaway facility to examine the operation of the interim operations organization and implement the quality assurance program for radiological safety in accordance with section 6.0 (Quality Assurance Program) of the licensee's letter to the NRC dated March 10, 1986. The first such visit shall be conducted within seven days following commencement of operations. Written results of the audits shall be submitted to the licensee's Board of Directors, with a copy sent simultaneously to the Regional Administrator, Region I, within seven days of the conclusion of the audit. Should Mr. Slobodien terminate his services, or be terminated by the licensee, the Regional Administrator shall be immediately notified. Unless another individual is substituted for Mr. Slobodien after prior approval of NRC Region I, at the beginning of the eighth day following his last audit of the facility all licensed material shall be placed in safe storage and the licensee may perform only those activities necessary to maintain the facility in a safe condition.

7. The licensee shall develop a written surveillance and preventive maintenance program for all components and systems important to safe operation of the facility and take all other actions described in section 5.0 (Surveillance System) of the licensee's letter to the NRC dated March 10, 1986. The written plan shall specifically identify each component or system important to safe operation of the facility and shall be submitted to the Commission by June 30, 1986 with a request to amend the license to include the plan.

8. The licensee shall develop a comprehensive written plan for documenting and controlling physical changes and repairs to the RT-2102 and R&D pool irradiators. This plan shall include drawing control, written approval of each physical change of components or systems important to safe operation of the facility, and an as-built inspection of each repair and/or change by an individual who has not performed the change or repair. This plan shall be submitted to the Commission by July 31, 1986 with a request to amend the license to include it.

9. All notifications required by this Order shall be made by telephone to the NRC Region I Office at 215-337-5000 during normal business hours and at 301-951-0550 during other hours. Each such notification shall be confirmed in writing the next business day. Written reports and notifications shall be addressed to the Regional Administrator, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

10. The licensee shall operate the RT-2102 irradiator using the conveyor interlock system described in the licensee's letters to the NRC dated January 9, January 15, and February 7, 1986.

B. Except as specifically provided by section V.A of this Order, the licensee shall possess and use licensed material in accordance with the existing license, as renewed on August 17, 1981 and most recently amended on August 9, 1985, and the statements, representations, and procedures contained in the licensee's letter to the NRC dated March 10, 1986.

C. The Regional Administrator, Region I, may relax or rescind any of the above provisions upon demonstration of good cause by the licensee.

This Conditional Rescission of Order Suspending License is effective upon written consent to its terms by the licensee. The licensee's consent to the terms of this Order shall be submitted to NRC Region I.

Dated at Bethesda, Maryland, this 13th day of March 1986.

For The Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-6394 Filed 3-21-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System, WPPSS Nuclear Project No. 2; Exemption

I

Washington Public Power Supply System (WPPSS or the Licensee) is the holder of Facility Operating License No. NPF-21 which authorizes the operation of the WPPSS Nuclear Project No. 2 (WNP-2 or the facility) at steady-state power levels not in excess of 3323 megawatts thermal. The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor (BWR) located at the licensee's site in Benton County, Washington.

II

On February 14, 1973, the Commission published Appendix J to 10 CFR 50, "Reactor Containment Leakage Testing for Water-Cooled Power Reactors" (38 FR 4386). Revisions to Appendix J were published in the **Federal Register** on September 22, 1980 (45 FR 62789). Paragraph II.G of Appendix J defines "Type B Tests", in parts as those intended to detect local leaks and measure leakage across pressure-containing or leakage-limiting boundaries for primary reactor containment whose design incorporates resilient seals, gaskets or sealant compounds. Paragraph III.D.2(a) of Appendix J states in part, "Type B tests, except tests for air locks, shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than two years." Facility Technical Specification 4.6.1.2.d also requires Type B tests to be performed at intervals no greater than 24 months (with specified exceptions not applicable to this action).

By letter dated January 17, 1986, the licensee requested an exemption from the 24 month requirement for the type B test of the drywell head "O" ring seals. The licensee also requested amendment of related Technical Specification 4.6.1.2.d, to permit the type B test of these seals to be extended beyond the 24 month limit. The licensee's request is prompted by the requirement the reactor be shut down and a major shield plug be removed in order to perform this test. Instead of performing the test within the prescribed 24 month period (which expires March 19, 1986), the licensee proposes to perform the test during a refueling outage which is expected to commence within a few weeks following the March 19th date (between April 15 and May 15, 1986).

III

In support of this request the licensee states the twenty-four month test interval is based on exposure to service conditions for a period of that duration, and that due to plant outages, and conduct of the power ascension program during this initial fuel cycle, the "O" ring seals have not been exposed to the normal service operating environment for the full two year period. The licensee estimates the cumulative duration of outages and reduced power operation (resulting in a less severe operating environment since the last test in 1984) is approximately six months. Based on this, the licensee states a test concurrent with the Spring 1986 refueling outage would satisfy the intent of the two year interval specified in Appendix J.

As for the timing of the Spring 1986 outage, the licensee states it is difficult to predict exactly when the facility will shut down for the planned refueling because an effort is made to coordinate operations with those of the Bonneville Power Administration (BPA). BPA operations, however, are affected by hydroelectric capacity, and this in turn is influenced by spring runoff conditions. Nonetheless, taking into account the uncertainties, the licensee estimates the refueling outage would commence sometime between April 15 and May 15, 1986.

The licensee states that granting the exemption is in the public interest since it would eliminate the need for a specal plant outage solely for the leak test, and the attendant loss of power generation capacity during a period of high demand (prior to the Spring runoff). In addition, the licensee states granting the exemption will contribute to the goal of maintaining personnel radiation exposures as low as reasonably achievable.

In reviewing the licensee's basis for this request, it is noted the regulations provide that type B tests ". . . shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than two years." It is thus seen that in addition to prescribing a surveillance interval experience had demonstrated to be appropriate and conservative for these tests, the wording of the regulation was selected based on the typical refueling interval of twelve to eighteen months. The two year limit was included to provide operational flexibility with respect to a nominal 18 month refueling interval, while placing a finite upper limit on that flexibility. The regulations, therefore, are based not only on technical requirements, but also on the normal or typical schedule of an operating facility.

While such a premise is appropriate for plants that have completed one or more operating cycles, it is less appropriate for facilities during the first operating cycle (i.e. prior to the first refueling). This is because such facilities frequently identify problems during the first cycle which require plant shutdown for corrective action; and this, of course, extends the duration of the cycle. Such has been the case for this facility. On December 20, 1983, the facility received an operating license permitting operation at up to 5% of rated thermal power (166 MWt). On March 19, 1984, the licensee completed the type B test of the drywell head "O" ring seals. Amendment No. 1 to the facility license, which permitted full power operation (3323 MWt), was issued on April 13, 1984; and, following completion of the power ascension tests, the facility achieved commercial operation on December 13, 1984. In early 1985, the facility experienced difficulty sustaining full power operation. This was due to vibration problems with one of the reactor recirculation pumps.

Although a refueling outage had originally been planned for the April-May period of 1985, delays experienced during power ascension testing and the power level limit imposed by the problems with one reactor recirculation pump combined to limit the fuel burnup achieved by that date. Therefore, based

on the presence of sufficient reactivity in the fuel to permit operation for a substantial additional period without refueling, the licensee postponed the refueling activity. Nonetheless, because significant maintenance was necessary, the licensee initiated a reactor shutdown in early May 1985. This maintenance shutdown continued until June 29, 1985.

Discussions with the licensee indicate consideration was given to performing the type B test of the drywell head "O" ring seals at the time of this maintenance shutdown. This option, however, was rejected because no other task scheduled to be performed during the outage required removal of the shield plug, and because removal of the shield plug and performance of the test at times other than during refueling outages would not be consistent with "as low as reasonably achievable" radiation exposure considerations. Accordingly, the licensee decided to postpone the test until the next refueling outage.

The two month maintenance outage in mid-1985, combined with reduced fuel burnup due to operation at a reduced power level (not exceeding 72%) since that time, however, has now served to extend the possible operating cycle beyond the two year limit. This, of course, has led to the situation which prompts the present exemption request.

The licensee justifies the extension of the test interval by stating: (1) the two year criterion is based upon exposure of components to service conditions for such a period, and (2) that due to extended outages the "O" ring seals have not been exposed to service conditions for this full period. By "service conditions", the licensee is referring to the environmental conditions to which the seal material is exposed during operation of the reactor at power, which may cause the seal material to degrade. These include temperature, pressure, humidity, ionizing radiation, age, etc.

As indicated earlier, the required test interval stated in Appendix J is primarily established based on accumulated operating experience. Further, experience to date has shown such an interval, based on typical refueling outage frequencies, or two years, to be acceptable. In addition, however, it is noted this experience typically involves exposure of the sealing components and materials to full service conditions over the full duration of an operating cycle. The licensee's request, therefore, is in essence a request that the two year limit be waived and the facility be allowed to perform the leak test following exposure of the seal to full or near-full service conditions for a cumulative duration not exceeding that of a full operating cycle.

Regarding exposure of the seal to service conditions for the full operating cycle, we have examined the monthly operating reports issued by the facility for the period from initial criticality through November, 1985. This examination indicates the reactor generated 20,581 GWh of thermal energy during this 20-month period. This is approximately 47% of the 43,694 GWh of thermal energy that theoretically could have been generated if the reactor had operated at full power for 18 months, or 56% of the energy that could have been generated at full power in fifteen months. From the fact the reactor has generated less than half the thermal energy possible under existing regulatory limits (based on 18-months of full power operation), it is clear the seals theoretically could be exposed to full service conditions for an additional nine months of full power operation without exceeding the exposure permitted by the regulations. More realistically, even allowing for fifteen months of full power operation in an 18-month operating cycle, 6.6 months of full power operation would remain before reaching the service conditions possible with 15 months of operation. It is noted that this additional 6.6 months of operation (measured from December 1985) would allow operation until mid-May, 1986. Based on the present limit on reactor power (72%—a value which is unlikely to be changed prior to refueling), the plant could actually operate through July, 1986 before equaling the exposure to service conditions associated with fifteen months of full power operation.

Based on the above considerations, the Commission concludes permitting the licensee to postpone the type B test of the drywell head "O" ring seals beyond the normal twenty-four month limit specified in Appendix J until a refueling outage scheduled to commence no later than May 15, 1986, will not subject the drywell head "O" ring to service conditions more severe than those already permitted by the regulations.

Because requiring literal confomance with the two-year test requirement of Appendix J in this instance would cause a loss of electrical power generating capactity during a period of high demand (prior to the spring runoff), we also conclude granting the requested exemption is in the public interest.

Finally, because requiring literal conformance with the two-year test requirement would cause personnel radiation exposure not required by technical considerations of safety, we conclude granting the requested exemption conforms to the Commission's policy of maintaining radiation exposures as low as reasonably achievable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(iii), are present justifying the exemption, namely that application of the regulation in the particular circumstances would result in undue hardship and other costs that are significantly in excess of those contemplated when the regulation was adopted and that are significantly in excess of those incurred by others similarly situated. If the plant were forced to shut down by March 19, 1986, solely to comply with the Appendix J regulation, an undue hardship and financial burden would result from the loss of power generation during a period of high demand (prior to the spring runoff) that would be significantly in excess of that contemplated when the regulation was adopted. When the regulation was adopted, it was contemplated that the testing would be accomplished during the normally anticipated and scheduled refueling outages. Since the Commission has previously granted similar exemptions, e.g., Browns Ferry Unit 2, Brunswick Unit 1, and TMI Unit 1 under similar circumstances, the cost and hardship imposed on WNP-2 by failing to grant the exemption would be considerably in excess of that incurred by others similarly situated. Therefore the Commission hereby approves the following exemption request:

With respect to the type B test of the drywell head "O" ring seals at the subject facility, which, pursuant to the regulations, is due to be performed no later than March 19, 1986, exemption is granted from the provision of section III.D.2 of Appendix J to 10 CFR 50 requiring such tests to be performed at intervals not greater than two years. The exemption is granted subject to the following conditions:

(1) The licensee is to commence shutdown for the first refueling outage no later than May 15, 1986, and

(2) The licensee is to perform this test prior to startup following the first refueling outage.

It is further determined the exemption does not authorize a change in effluent

types or total amounts nor an increase in power level and will not result in any significant environmental impact. In light of this determination and as reflected in the Environmental Assessment and Finding of No Significant Impact prepared pursuant to 10 CFR 51.2 and 51.30 through 51.32, it is concluded the instant action is insignificant from the standpoint of environmental impact and an environmental impact statement need not be prepared.

For further details with respect to this action, see the licensee's request dated January 17, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland Public Library, Swift and Northgate, Richland, Washington 99352. Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (51 FR 8258 dated March 10, 1986).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 18th day of March 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86-6395 Filed 3-21-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-440, 50-441]

Cleveland Electric Illuminating Co., et al., (Perry Nuclear Power Plant, Units 1 and 2); Issuance of Director's Decision

Notice is hereby given that the Director of the Office of Nuclear Reactor Regulation has taken action with regard to two Petitions for action under 10 CFR 2.206 with respect to the Perry Nuclear Power Plant, Units 1 and 2.

By Petition dated February 3, 1986, the Ohio Citizens for Responsible Energy (OCRE) requested that the Commission take certain actions with regard to the Perry plant prior to issuing an operating license or permitting fuel loading of the facility. Specifically, the Petition requested that, prior to licensing of Unit 1, the plant be thoroughly inspected for damage resulting from an earthquake on January 31, 1986; that post-earthquake functional testing of all plant systems be completed; that a comprehensive investigation of the earthquake and reevaluation of local seismicity be conducted by the NRC, the licensee, and other scientific entities; that the Appeal Board complete a hearing and issue a decision on OCRE's seismic design contention, and that installation of any required seismic upgrading on the Perry plant be completed. OCRE asserted as grounds for its request that the magnitude of the January 31st earthquake indicates that the FSAR analysis of site area seismicity needs to be redone and that conclusions in the FSAR and the staff's SER are erroneous.

By Petition dated February 4, 1986, the Western Reserve Alliance (WRA) requested that the Commission take immediate action to suspend the construction of the Perry plants, Units 1 and 2, require an independent design and construction verification program to assess the integrity and implementation of the Perry quality assurance (QA) programs, and review and require an audit of an application of Centerior Energy Corporation (CEC) seeking the approval of the Securities and Exchange Commission (SEC) to acquire all outstanding shares of the Cleveland Electric Illuminating Company (CEI) and Toledo Edison and of mergers by which this will be effectuated.

The WRA asserted as grounds for its request that construction be suspended, that the seismic design of the Perry plant is inadequate, and as grounds for its request that an independent design and construction verification program be undertaken that CEI and its contractors have failed to implement an acceptable QA program that meets the requirements of 10 CFR Part 50, Appendix B. Included with the WRA Petition were 48 allegations of various construction problems. The Petition further asserted that the application of CEC before the SEC should be audited because it will adversely impact the ability of CEC, CEI and Toledo Edison to meet the requirements of 10 CFR Part 140.

Upon consideration of the Petitions, the Director, Office of Nuclear Reactor Regulation, has determined to deny OCRE's and WRA's Petitions, with the exception of OCRE's requests for inspection of the Perry facility for damage resulting from the January 31 earthquake and an investigation of the earthquake and evaluation of local seismicity. The Staff has conducted an extensive investigation of the effects of the earthquake upon the Perry structure and equipment, and is reevaluating the geology and seismology of the Perry site. The Director has determined that no adequate basis exists to require the other measures requested by the Petitioners.

The reasons for this decision are fully described in the "Director's Decision Under 10 CFR 2.206" (DD 86-04) which is available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. 20555, and in the local public document room for Perry Nuclear Plant located at Perry Public Library, 3753 Main Street, Perry, Ohio 44081. Copies of the Petitions are also available for public inspection at those locations. A copy of the Director's Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 18th day of March 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-6393 Filed 3-21-86; 8:45 am]

BILLING CODE 7590-01-M

Low-Level Radioactive Waste Policy Amendments Act of 1985; Availability of Draft Technical Position in Low-Level Waste Program

Correction

In FR Doc. 86-5686 beginning on page 8922 in the issue of Friday, March 14, 1986, the subject heading should have read as set forth above.

BILLING CODE 1505-02-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of the Services Policy Advisory Committee

The U.S. Trade Representative has taken steps to renew the Services Policy Advisory Committee. This Committee will be renewed pursuant to section 135(c)(1) of the Trade Act of 1974 (19 U.S.C. 2155(c)(1)), as amended; the Federal Advisory Committee Act (5 U.S.C. App. 1); Section 4(d) of Executive Order No. 11846, March 27, 1975; and Executive Order No. 121888.

The Services Committee will advise, consult with, and make recommendations to the U.S. Trade Representative on policy issues related to trade in services.

The Committee will meet at irregular intervals at the call of the U.S. Trade Representative. The frequency of committee meetings will be approximately three or four times per year, depending upon the needs of the U.S. Trade Representative.

Representatives from the private sector wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600—

17th Street, NW., Room 103, Washington, DC 20506, (202) 395-6120.

Signed,

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 6330 Filed 3-21-86; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23017; File No. SR-MSRB-86-6]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Information Concerning Associated Persons

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 13, 1986, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission a 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.

(Italics indicate new language. Brackets indicate deletions.)

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule G-7. Information Concerning Associated Persons

(a) No change.

(b) (i)-(ii) No change.

(iii) [all educational institutions attended] (starting with high school) and whether degree from each was received;] *a complete, consecutive statement of employment and personal history for at least the immediately preceding ten years, including full time and part time employment, self-employment, military service, unemployment, or full-time education. For each period of employment, the position held at the time of leaving said employment;*

[(iv) a complete, consecutive statement of all business connections for at least the immediately preceding ten years, including the reason for leaving each prior employment, the position held at each prior employment, and whether employment was part time or full time;]

[(v)] *(iv)* a record of all residential addresses for at least the immediately preceding [ten] *five* years;

(vi) through (vii) renumbered *(v)* through *(vi)*. No substantive change.

[(viii)] *(vii)* a record of any permanent or temporary injunction entered against such person [or against any broker, dealer, or municipal securities dealer with which such person was associated in any capacity at the time such injunction was entered] pursuant to which such person [or such broker, dealer or municipal securities dealer] was enjoined from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, [or as an affiliated person or employee of any investment company, bank, or insurance company,] or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with purchase or sale of any security;

(ix) through (xi) renumbered as *(viii)* through *(x)*. No substantive change.

A completed Form U-4 or similar form prescribed by the Commission or a registered securities association for municipal securities brokers and municipal securities dealers other than bank dealers or, in the case of a bank dealer, *a completed Form MSD-4 or similar form prescribed* by the appropriate regulatory agency for such bank dealer, containing the foregoing information, shall satisfy the requirements of this paragraph.

(c) through (i) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Section (b) of Board rule G-7 specifies the information which brokers, dealers and municipal securities dealers must obtain and retain regarding associated persons. The rule may be satisfied by maintaining a completed Form U-4 (Uniform Application for Securities Industry Registration or Transfer), provided such form contains all of the information required in Board rule G-7(b). Recently, however, the National Association of Securities Dealers, Inc. ("NASD") and the North American Securities Administrators Association ("NASAA") amended Form U-4 with the permission of the Commission. The revisions, with minor exceptions, were incorporated by the Commission into its recent amendments to SEC rule 17a-3(a)(12) regarding mandatory application information. These amendments eliminated certain items of information, which are required to be kept by Board rule G-7(b).

The proposed rule change would conform the requirements of Board rule G-7(b) to the recent amendments of SEC rule 17a-3 so that maintenance of a Form U-4, completed in its entirety, shall continue to satisfy the requirements of the rule.

The proposed rule change also would incorporate the provision, consistent with the Board's longstanding position, that maintaining a completed Form MSD-4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) shall satisfy the requirements of the rule.

The proposed rule change affects the following information:

1. *Education and business affiliations:* Rule G-7(b) requires that information be retained concerning an associated person's education, starting with high school, and that information be retained of all business connections over the previous 10 years, including the reason for leaving, position held, and whether the job was full or part time. The proposed rule change would combine these two information categories and require the candidate to account for all time over the past 10 years. The amended rule does not require a candidate to disclose the reasons for leaving previous employment.

2. *Residence:* Rule G-7(b) requires information on residences for the immediately preceding 10 years. The proposed rule change would shorten this time period to five years.

3. *Injunctions:* Rule G-7(b) requires information concerning injunctions, whether permanent or temporary, entered against the candidate or any broker, dealer, or municipal securities dealer with whom that person has been associated in any capacity. The proposed rule change would require that only injunctions entered against the associated person in connection with any investment-related activity be retained and does not require the associated person to disclose injunctions applicable to a firm with which the person has been associated, provided the injuction did not affect the associated person.

It should be noted that the NASD now permits a previously submitted Form U-4 to be updated by submission of a partially completed Form U-4 which does not contain the personal data, residential history, and employment and personal history sections otherwise provided in a full filing. The Board has determined, however, that maintenance

of a Form U-4 would satisfy the requirements of Board rule G-7 only in the event that such form contains all of the information required by rule G-7(b); maintenance of a partial Form U-4, therefore, would not satisfy the requirements of Board rule G-7(b).

The Board has adopted the proposed rule change pursuant to section 15B(b)(C) of the Securities Exchange Act of 1934. Section 15B(b)(2)(C) requires in pertinent part that the Board's rules be designed to foster cooperation and coordination with persons engaged in regulating . . . transactions in municipal securities. . . .

The proposed rule change also is adopted pursuant to section 15B(b)(2(A) of the Act which empowers and requires the Board to adopt standards of operational capability and professional qualification and section 15B(b)(2)(G) of the Act which empowers and directs the Board to prescribe records to be made and kept by municipal securities brokers and municipal securities dealers and the periods for which such records are to be preserved.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will effect any burdens on competition in the municipal securities industry because the proposed rule change will be equally applicable to all participants in the industry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither solicited nor received comments on the proposed rule change.

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 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 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. Copies of such filing also will 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 14, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

March 14, 1986.

[FR Doc. 86-6354 Filed 3-21-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23027; File No. PHLX 86-5]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Transaction Value Charge

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 12, 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

Philadelphia Stock Exchange ("PHLX") files as a rule change the following interpretation with respect to the meaning and administration of its Transaction Value Charge, also known as T.F., payable to the Exchange by members and member firms.

Philadelphia Stock Exchange, Inc. (PHLX), Transaction Value Charge ("T.F."), Interpretive Release.

This release is issued by direction of the PHLX Board of Governors to restate the administration and applicability of the PHLX T.F.

The T.F. is a fee, payable to the Exchange by members and member firms, based upon the contract value per month of transactions effected upon the Exchange. The T.F. rates currently in effect, are as follows:

(a) Twelve cents per thousand dollars of contract value or fraction thereof on that portion of transactions per month not over ten million dollars in contract value;

(b) Ten cents per thousand dollars of contract value or fraction thereof on that portion of transactions per month over ten million dollars in contract value but not over fifty million dollars in contract value;

(c) Eight cents per thousand dollars of contract value or fraction thereof on that portion of transactions per month over fifty million dollars in contract value.

The T.F. is applicable in the manner and at the rates set forth above to the following types of transactions:

(a) A T.F. is payable by members or member firms on their non-specialist equity and options transactions. When an equity clearing firm clears such equity transactions for its client, (other than in a specialist margin account established for its client at the Stock Clearing Corporation of Philadelphia) the T.F. shall be paid by the clearing firm.

(b) A T.F. is payable on all equity trades cleared in proprietary margin accounts carried for members by Stock Clearing Corporation of Philadelphia.

(c) A T.F. is payable by Registered Options Traders on their market-making transactions.

(d) A T.F. is not payable by self-clearing equity specialists on their specialist transactions.

(e) A T.F. is not payable by options specialists on their specialist transactions.

(f) A T.F. is payable by an equity clearing firm on equity specialist transactions cleared on behalf of a client.

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 Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

As part of the normal budgetary process, the Board of Governors received a report from the Finance Committee on its overall review of Exchange fees. In conducting its review, the latter committee appointed a Subcommittee to review certain member concerns.

In summary, two equity clearing firms had requested that they not be assessed a T.F. for equity specialist transactions cleared on behalf of their clients because self-clearing equity specialists who clear through Stock Clearing Corporation of Philadelphia (SCCP) do not pay this fee. In the alternative, they requested that if they are to continue to pay this fee for specialist transactions, a comparable fee should be paid by self-clearing specialists. A market maker on the options floor had suggested that option specialists be required to pay a T.F., a charge paid by Registered Options Traders (ROT's).

The Subcommittee's recommendation to the Finance Committee was that the current fee structure is equitable and no changes should be made at this time.

The Subcommittee believes that the clearing firms have mischaratereized the issue. The question is not whether the Exchange discriminates against clearing firms by charging them a T.F. Rather the question is whether or not a T.F. is fairly charged to such firms. Under the Act, the Exchange is permitted to charge different types of members different fees as long as the fees are reasonable and are equitably allocated among its members.

Even so, the Subcommittee looked at the issue of competition and concluded that the clearing firms were not competitively disadvantaged. An equity specialist makes a business decision of whether it will clear its transactions directly, as a member of SCCP, or clear its transactions directly, as a member of SCCP, or clear its transactions through a clearing firm which is a member of SCCP. That a fair number of equity specialist have chosen to clear firm business is viable and that a T.F. is not an unreasonable burden on competition. The Subcommittee also noted that clearing firms have the option of establishing equity specialist accounts for their customers at SCCP, and thereby not being charged a T.F.

Since the issue raised by the clearing firms is whether or not the fee at issue is equitably allocated to them, the Subcommittee looked at the services provided by the equity floor, the costs of providing these services, and the allocation of these costs among various types of businesses which operate on the equity floor. It noted that a positive cash flow is needed to support the growth and development of the equity floor. The Subcommittee also noted that clearing firms, which derive income from the equity floor, would not be contributing to the support of that floor at all if they were not charged a T.F. While in the past year, the equity floor operated at a modest profit, the equity floor faces substantial additional expenses in connection with automation, surveillance and NMS initiatives. The Subcommittee concluded that the Exchange needed the revenue currently provided by the clearing firms which pay a T.F. to continue providing and to improve equity floor services. It considered the proposal that specialists and clearing firms both pay a T.F. at a lower level per transaction which would generate the revenue needed. However, it concluded that this method would be less equitable since equity specialists, unlike clearing firms, have affirmative and negative responsibilities which require large capital investment and staffing requirements. Also, equity specialists pay fees which clearing firms do not pay (*e.g.*, post rental fees). Because clearing firms do have customers and are profiting from their services to such customers, the Subcommittee noted that the Finance Committee has previously reasoned that they are analogous to retail firms which pay a T.F.

In connection with the issue raised by the market maker on the options floor, the Subcommittee concluded that option specialists should not pay a T.F., but it should continue to be charged to market makers because: first, the specialist as the primary market maker has a higher obligation to conduct a fair and orderly market than do ROT's; and second, the specialist organization is subject to a higher level of operating costs then ROT's and pay other fees.

The Finance Committee concurred with the findings of its Subcommittee. The Committee also concluded it was intended that all equity trades cleared in proprietary margin accounts carried by SCCP should be subject to a T.F. The Board of Governors accepted the recommendations and conclusions of the Finance Committee. The Board also considered it timely to restate its interpretation of the applicability of T.F. and to file the same as a rule change.

(b) The interpretation on the applicability of the T.F. is consistent with section 6(b)(4) of the Act in providing for the equitable allocation of reasonable dues, fees and other charges among members and users of its facilities. Determinations of whether or not member firms are subject to the charge are based upon the varying obligations and rules in differing types of business operations recognized and conducted in the securities industry. In this context it is fair to assess charges for access to and use of Exchange facilities for varying categories of member firm operations.

B. Self-Regulatory Organizations Statement on Burden on Competition

PHLX does not perceive any burden on competition as a result of the proposed rule change. The administration of the T.F. does not have as its object unreasonable restraint or the injury of competitors. Its applications and exemptions have been adopted for business reasons consistent with the financial support of the equity floor and the responsibilities and activities of specialists and not with the intent to discriminate between brokers or dealers. If there be any perceived effect upon competition it is reasonable and not substantially adverse. The interpretation is consistent with the Act in that it does not permit unfair discrimination between brokers or dealers (Section 6(b)(5)) or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act (Section 6(b)(8)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the interpretation which is the subject of this rule change were not solicited. Comments were, however, previously received on portions thereof. These comments and the issues raised have been summarized and responded to in Section I.A. of his notice.

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 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 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 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 14, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 17, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-6355 Filed 3-21-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14998; File No. 812-6250]

Paribas Bank of Canada; Application

March 17, 1986.

Notice is hereby given that Paribas Bank of Canada ("Applicant") c/o Philip Werner, Esq., Wender Murase & White, 400 Park Avenue, New York, New York 10022, filed an application on December 5, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Applicant from all provisions of the Act so that it may publicly offer U.S. dollar-denominated short-term notes ("Notes") in the United States. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the provisions referred therein and in the application.

According to the application, Applicant, a wholly-owned subsidiary of Banque Paribas, a French banking corporation and a subsidiary of Compagnie Financiere de Paribas ("Paribas"), commenced operations as a foreign bank subsidiary under the Canadian Bank Act in January, 1982. Applicant offers corporate banking services through its head office in Toronto and its branch in Montreal, including commercial lending, deposit-taking, discounting trade bills, issuing letters of credit and foreign exchange trading. As of October 31, 1984, its total assets were equivalent to U.S. $169,392,000, with authorized capital stock consisting of 198,000 shares of common stock and 2,000 perference shares, both having a par value of Can. $100 per share, and paid up capital of Can. $20,000,000. Applicant represents that various aspects of its business, including deposit reserves and insurance, permissible powers, loan volume and dividend policy, are subject to regulation under the Canadian Bank Act. Furthermore, it is subject to various reporting and accounting requirements and to the supervision of the Canadian Inspector General of Banks, the regulatory authority charged with the administration of the Canadian Bank Act.

The Applicant states that Paribas is a holding company incorporated under the laws of France as an *etablissement financier* or "financial institution". It is further stated that Paribas ranks 32nd in size among banking organizations in the world, with its largest asset being Banque Paribas, the 81st largest commercial bank in the world, in each case on the basis of total assets. As of December 31, 1984, Paribas had total consolidated assets equivalent to approximately U.S. $55 billion, total consolidated deposits equivalent to approximately U.S. $46 billion, and equity capital equivalent to approximately U.S. $1.9 billion. Paribas is made subject to the restrictions imposed on bank holding companies under the Bank Holding Company Act of 1956, as amended ("BHCA"), pursuant to the International Banking Act of 1978 ("IBA"). The application further states that under the BHCA and IBA, Paribas is subject to regulation by the Board of Governors of the Federal System with respect to, among other things, the types of activities in the United States in which it may engage.

Applicant states that it proposes to issue and sell Notes in the United States commercial paper market in order to broaden its sources of finance as well as to provide it with an alternative means of obtaining United States dollars. Payment of principal of, and interest, if any, on the Notes would be unconditionally guaranteed by Paribas. Applicant represents that the Notes will arise out of, or the proceeds of the Notes (to the extent not applied to the repayment of the Notes) will be used for, "current transactions" of the Applicant, and the Notes will have other characteristics such as to qualify them for the exemption from registration under section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicant represents that it will not issue or sell any Notes until it has received an opinion of its United States counsel or a "no-action" letter issued by the Staff of the Commission to the effect that the Notes would be entitled to such exemption.

Applicant also represents that the proposed issue of Notes and any future issue in the United States of its debt securities shall have received, prior to issuance, on the basis of the guarantee thereof by Paribas, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organizations and that applicant's United States counsel shall have certified that such rating has been received. However, no such rating will be obtained if, in the opinion of Applicant's United States counsel, having taken into account the doctrine of intergration, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act.

According to Applicant, the Notes will be issued and sold in minimum denominations of $100,000 directly and/or through one or more major commercial paper dealers. Applicant states that it will secure an undertaking from each such dealer that the Notes will be sold to institutional investors and other entities and individuals who normally purchase commercial paper and will not be offered for sale to the general public. Applicant will provide each such dealer with sufficient information to prepare, and will undertake to insure that each dealer will provide each offeree of the Notes with, a memorandum ("offering memorandum") which describes the business of Paribas and Applicant and contains the most recently published financial statements of Paribas and Applicant audited in accordance with French and Canadian auditing practices, respectively. In addition, it is represented that the offering memorandum will include brief paragraphs highlighting the material differences between generally accepted accounting principles applicable to United States financial institutions and (i) French accounting principles applicable to French financial

institutions and use by Paribas and (ii) Canadian accounting principles applicable to Canadian banks and used by the Applicant, as well as any other information that would be required by the prior order granted to Paribas discussed below. Applicant asserts that the offering memorandum will be at least as comprehensive as those customarily used by United States issuers in offering commercial paper in the United States and will be updated periodically to reflect material adverse changes in the business or financial status of Paribas or Applicant.

The application states that the Notes will be direct liabilities of Applicant, and will rank *pari passu* among themselves and with all other unsecured unsubordinated indebtedness (except indebtedness preferred by operation of law), including deposit liabilities, of Applicant and superior to rights of shareholders. The guarantee by Paribas as to payment of principal of and interest on the Notes will rank *pari passu* with all other unsecured unsubordinated indebtedness (except indebtedness preferred by operation of law) of Paribas and superior to rights of shareholders.

Applicant states that in connection with the issuance and sale of the Notes the Applicant will appoint a bank or trust company in the United States as authorized agent to issue on behalf of the Applicant the Notes sold in the United States. Applicant further states that Paribas and Applicant will each expressly submit to the jurisdiction of New York State and United States Federal courts sitting in The City of New York for the purpose of any suit, action or proceeding brought on the Notes or the guarantees, and in that connection, will each appoint an agent located in New York City (which may be Banque Paribas' New York Branch) to accept service of process in respect of any such action. Applicant further states that such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due in respect of the Notes and the guarantees have been paid.

Applicant states that it may, from time to time, offer and sell in the United States debt securities other than the Notes. According to Applicant, in the case of any such offering in the United States, the payment of principal of, premium, if any, and interest on any such debt securities will be unconditionally guaranteed by Paribas. Applicant undertakes to provide to any person to which it offers its debt securities in the United States (and undertakes to assure that any underwriter or dealer through whom it makes such offers will provide to each person to whom such offers are made) disclosure documents which are at least as comprehensive in their description of Applicant and Paribas as those which may be used by United States issuers in United States offerings of such securities. Such documents will contain the financial statements of Applicant and Paribas and will be updated periodically to reflect material adverse changes in the business or financial status of Applicant or Paribas. The application also states that Applicant and Paribas will each expressly submit to the jurisdiction of the New York State and United States Federal courts sitting in the City of New York with respect to any suit, action or proceeding brought on the debt securities or the guarantees of Paribas, and in that connection, will each appoint an agent located in New York City (which may be Banque Paribas' New York Branch) to accept service of process in respect of any such action. Such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due in respect of such debt securities and such guarantees have been paid.

Applicant notes that the Commission has also exempted Paribas Finance Inc., a wholly-owned Delaware subsidiary of Banque Paribas, from the provisions of the Act, thereby entitling it to sell debt securities in the United States bearing the unconditional guarantee of Paribas (Investment Company Act Release No. 12948, January 6, 1983). Applicant asserts that, although it is a Canadian chartered bank offering corporate banking services and is therefore not a mere vehicle for the sale of securities of Paribas as is Paribas Finance, the analysis of its application should be the same as that for Paribas and Paribas Finance because all of its proposed Notes or other debt securities (together, the "Securities") will be unconditionally guaranteed by Paribas. Applicant asserts that, as in the case of the application of Paribas and Paribas Finance, the unconditional guarantee of Paribas has the effect that the holders of securities would look to Paribas as the ultimate obligor. For these reasons, Applicant asserts, the purchase of securities issued and sold by Applicant would be the equivalent of purchasing obligations of Paribas.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 11, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued 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.

John Wheeler,

Secretary.

[FR Doc. 86-6356 Filed 3-21-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0216]

Engle Investment Co.; License Surrender

Notice is hereby given that Engle Investment Company, 135 West 50th Street, New York, New York 10020, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Engle Investment Company was licensed by the Small Business Administration on January 15, 1963.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on February 26, 1986, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 14, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-6352 Filed 3-21-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Advisory Committee to United States Section International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on April 7, 1986, at the Four Seasons Hotel, 791 W. Georgia Avenue, in Vancover, British Columbia, at 1:00 p.m. This meeting will discuss proposed amendments to the 1978 Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, and fishery developments as they affect the International North Pacific Fisheries Commission. This session will be open to the public.

The Advisory Committee will also meet from 3:00 p.m. to 5:00 p.m. April 7, 1986. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the meeting of the International North Pacific Fisheries Commission to be held in Vancouver, B.C. April 8–9, 1986. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee . . . shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section", the members of the Advisory Committee will examine various options for the negotiating position at the meeting, and these consideration must necessarily involve review of classified matters. Accordingly the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(d) and 5 U.S.C. 552(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Robert Ford, Pacific Fisheries Officer, OES/OFA, Room 5806, U.S. Department of State, Washington, D.C. 20520. Mr. Ford can be reached by telephone at (202) 647–2009.

Dated: March 20, 1986.

R. Tucker Scully,

Acting Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 86–6509 Filed 3–21–86; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Agreements Filed Under Sections 408, 409, 412, and 414 During the Week Ending March 14, 1986

Answers May Be Filed Within 21 Days From the Date of Filing

Date filed	Docket No.	Parties	Subject	Proposed effective date
Mar. 10, 1986	43858, R-1 & R-2	Members of International Air Transport Association	Australia-Europe excursion fares	Apr. 1, 1986.
Do	43859, R-1-R-11	do	Amends/increases fares within Europe	Do.
Do	43864, R-1-R-39	do	1986-87 intra-Europe fares structure	Do.
Mar. 13, 1986	43865	do	French Proportional Fares to/from France	Do.
Do	43866	do	Adjustment factor—Lebanon	Mar. 29, 1986.
Do	43867	do	Rate Increase from Yugoslavia/Lebanon	Feb. 1, 1986, Apr 1, 1986.
Do	43868	do	Increase Greece-Africa fares for tax	Apr. 1, 1986.
Do	43869, R-1-R-15	do	South Pacific fares	Do.
Mar. 14, 1986	43871, R-1-R-19	do	Cargo Service Resolutions	Oct. 1, 1986.
Mar. 10, 1986	43858, R-1 & R-2	Members of International Air Transport Association	Australia-Europe excursion fares	Apr. 1, 1986.
Do	43859, R-1-R-11	do	Amends/increases fares within Europe	Do.
Do	43864, R-1-R-39	do	1986-87 intra-Europe fares structure	Do.
Mar. 13, 1986	43865	do	French Proportional Fares to/from France	Do.
Do	43866	do	Adjustment factor—Lebanon	Mar. 29, 1986.
Do	43867	do	Rate Increase from Yugoslavia/Lebanon	Feb. 1, 1986, Apr. 1, 1986.
Do	43868	do	Increase Greece-Africa fares for tax	Apr. 1, 1986.
Do	43869, R-1-R-15	do	South Pacific fares	Do.
Mar. 14, 1986	43871, R-1-R-19	do	Cargo Service Resolutions	Oct. 1, 1986.
Mar. 10, 1986	43860	Pam American World Airways, Inc., c/o David M. O'Connor, 1660 L Street, N.W., #901, Washington, D.C. 20036. Application of Pan American World Airways, Inc. pursuant to Sections 412 and 414 of the Act, requests approval of an agreement between Pan Am and the General Department of International Air Services (Aeroflot Soviet Airlines (Aeroflot)).		
Mar. 14, 1986	43837	Trans World Airlines, Inc., c/o James T. Lloyd, Preston, Thorgrimson, Ellis & Holman, 1735 New York Avenue, N.W. Suite 500, Washington, D.C. 20006.. Ozark Holdings, Inc. and Ozark Air Lines, Inc., c/o Thom G. Field, Neale, Newman, Bradshaw & Freeman, Suite 1-130, 1949 E. Sunshine, One Corporate Centre, Springfield, Missouri 65804. Joint Application of Trans World Airlines, Inc., Ozark Holdings, Inc. and Ozark Air Lines, Inc. apply pursuant to Section 408 of the Act to allow TWA to acquire control of Ozark.		

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86–6402 Filed 3–21–86; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 86-017]

Coast Guard Academy Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Monday and Wednesday, April 14 and 16, 1986. The session on Monday will be held from 10:45 to 11:45 a.m. Another open session will be held on Wednesday from 10:15 to 11:15 a.m. The agenda for this meeting consists of the following items:

1. Faculty
2. Curricula

The Coast Guard Academy Advisory Committee was established in 1937 by Pub. L. 75-38 to advise on the course of instruction at the Academy and to make recommendations as necessary.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: CAPT David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, phone (203) 444-8275.

Issued in Washington, DC, on March 14, 1986.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 86-6374 Filed 3-21-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[AC No. 120-XX]

Availability of Proposed Advisory Circular of Advanced Training Devices (Airplane Only)

AGENCY: Federal Aviation Administration.

ACTION: Request for comments on proposed Advisory Circular (AC) 120-XX, Advanced Training Devices (Airplane Only).

SUMMARY: The proposed advisory circular (AC) provides information, guidelines, and criteria regarding the evaluation and use of airplane Advanced Training Devices (ATD) that may be used in training programs or for airman training or checking under Part 135 of the Federal Aviation Regulations (FAR). The proposed AC includes the required equipment validation tests and tolerances for ATD's as well as a listing of the maneuvers and procedures that may be approved to be conducted in an ATD in lieu of an airplane when accomplished in accordance with an operator's FAA approved FAR Part 135 training program.

DATE: Comments must be received on or before May 23, 1986.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Training and Technical Standards Branch, AFS-260, 800 Independence Avenue, SW, Washington, DC 20591. Comments may be inspected at this address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Cook, AFS-260, at the above address, telephone (202) 426-3460.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Comments should be identified as pertaining to AC-120-XX and submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Training and Technical Standards Branch and the National Simulator Program Office before issuing the final AC.

Discussion

Over the past three decades the Federal Aviation Administration (FAA) has made extensive provisions in its regulations to encourage the use of flight simulators. Continuing efforts in this regard have been hindered by the previous lack of a comprehensive and systematic analysis of simulator and/or training device uses in pilot training, checking, or certification. In recognition of these problems a recently completed research project has provided the information to conclude that a non-motion, non-visual training device which meets a certain level of fidelity in given ares may be appropriately used for some pilot training or checking activities under Title 14 of the Code of Federal Regulations (CFR). The proposed AC contains procedures and criteria for application of this training device under FAR Part 135.

Issued in Washington, D.C., on March 8, 1986.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 86-6306 Filed 3-21-86; 8:45 am]

BILLING CODE 4910-3-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: March 19, 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, NW., Washington, DC 20220.

United States Customs Service

OMB Number: 1515-0104
Form Number: None
Type of Review: Revision
Title: Declaration of Foreign Shipper or Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes
Clearance Officer: Vince Olive, (202) 566-9181, U.S. Customs Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: 1545-0013
Form Number: IRS Form 56
Type of Review: Revision
Clearance Officer: Garricik Shear, (202)

566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

John Poore,

Departmental Reports Management Office.

[FR Doc. 86–6398 Filed 3–21–86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirement Submitted to OMB for Review

Dated: March 19, 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 NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0058

Form Number: ATF F 698 (5120.25)

Type of Review: Extension

Title: Application by Proprietor of Bonded Winery or Bonded Wine Cellar

Clearance Officer: Robert G. Masarsky, (202) 566–7641, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

John Poore,

Departmental Reports Management Office.

[FR Doc. 86–6399 Filed 3–21–86; 8:45 am]

BILLING CODE 4810-25-M

Comptroller of the Currency

[Docket No. 86-7; Delegation Order 26]

Order of Succession to Act as Comptroller

By virtue of the authority contained in 12 U.S.C. 4 and 4a, and by Treasury Order No. 129 (Rev. No. 2), dated April 22, 1955, it is ordered as follows:

A. During a vacany in the Office or during the absence or disability of the Comptroller, the following officers shall possess the power and perform the duties attached by law to the Office of the Comptroller of the Currency in the order of succession enumerated:

(1) Dean S. Marriott, Senior Deputy Comptroller for Bank Supervision;

(2) Robert J. Herrmann, Deputy Comptroller for the Southeastern District;

(3) Michael Patriarca, Deputy Comptroller for Multinational Banking; and

(4) John F. Downey, Chief National Bank Examiner.

B. In the event of an enemy attack on the continental United States, all Deputy Comptrollers for the Districts, including any acting Deputy Comptroller for the Districts, are authorized in their respective districts to perform any function of the Comptroller of the Currency or the Secretary of the Treasury, whether or not otherwise delegated, which is essential to carry out responsibilities otherwise assigned to them. The respective officers will be notified when they are to cease exercising the authority delegated in this paragraph.

C. Delegation Order No. 25 is hereby repealed.

Dated: March 18, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86–6369 Filed 3–21–86; 8:45 am]

BILLING CODE 4810-33-M

UNITED STATES INFORMATION AGENCY

[Delegation Order No. 86-3]

Authority Delegations to the Deputy Director

Pursuant to the authority vested in me as Director of the United States Information Agency by the Convention on Cultural Property Implementation Act (Title III of Pub. L. 97–446, hereinafter referred to as the "Act") and by Executive Order No. 12555 of March 10, 1986, I hereby delegate to the Deputy Director:

Section 1. *Functions Conferred on the Director by the Act.*

a. The functions conferred by section 306(e)(2) of the Act relating to the convening of Cultural Property Advisory Committee meetings;

b. The functions conferred by section 306(i)(1)(A) of the Act relating to the designation of officers and employees of the United States to receive information submitted in confidence by the private sector;

c. The functions conferred by section 306(i)(2) of the Act relating to the issuance of rules governing the disclosure of information submitted in confidence to the Cultural Property Advisory Committee by officers and employees of the United States Government;

Section 2. *Functions Conferred on the Director by the Executive Order.*

a. The functions conferred by section 303(a)(1) of the Act concerning determinations to be made prior to initiation of negotiations of bilateral or multilateral agreements;

b. The functions conferred by section 303(d) of the Act with respect to the determinations concerning the failure of other parties to an agreement to take any or satisfactory implementation action on their agreement; provided, however, that the Secretary of State will remain responsible for interpretation of the agreement;

c. The functions conferred by section 303(e) of the Act relating to the determinations to be made prior to the initiation of negotiations for the extension of any agreement;

d. The functions conferred by section 303(f) of the Act relating to the actions to be taken upon receipt of a request made by a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization;

e. The functions conferred by section 303(g)(1)(B) of the Act relating to the notification of Presidential action and the furnishing of reports to the Congress;

f. The functions conferred by section 304(b) of the Act to the extent that they involve determinations by the President that an emergency condition applies with respect to any archaeological or ethnological material of any State Party to the Convention, subject to the limitations of sections 304(c)(1), 304(c)(2), and 304(c)(3);

g. The functions conferred by section 304(c)(3) of the Act to the extent that they involve determinations to be made and the receipt and consideration of an advisory report from the Cultural

Property Advisory Committee by the President prior to extensions of emergency import restrictions;

h. The functions conferred by sections 306(f)(6) and 306(g) of the Act relating to the receipt of reports prepared by the Cultural Property Advisory Committee; and

i. The functions conferred by section 306(h) of the Act relating to the determinations to be made about the disclosure of matters involved in the Cultural Property Advisory Committee's proceedings;

Section 3. *Functions Involving Consultations by Others with the Director.*

The functions conferred by section 305 of the Act and by sections 2 and 3 of the Executive Order relating to consultations by the Secretary of State and the Secretary of Treasury with the Director; and

Section 4. *Functions Involving the Participation of the Director.*

The functions under section 2 of the Executive Order involving the participation of the Director in the exercise of the functions delegated to the Secretary of State by Executive Order.

The functions delegated in section 2 of this Delegation Order must be exercised in consultation with the Secretary of State and the Secretary of Treasury or their designees.

Notwithstanding any other provision of this Order, (1) the Director may at any time exercise any function delegated herein, and (2) Delegation Order No. 84-4 of March 5, 1984 shall remain in effect.

These functions may be redelegated. This Delegation Order takes effect immediately.

Dated: March 18, 1986.

Charles Z. Wick,

Director.

[FR Doc. 86-6371 Filed 3-21-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 56
Monday, March 24, 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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Federal Mine Safety and Health Review Commission	4,5
Federal Reserve System	6
National Transportation Safety Board	7

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, March 31, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Revisions of the Commission's Regulations on Employee Responsibilities and Conduct

Closed

1. Litigation Authorization: General Counsel Recommendations
2. Discussion of Certain Commissioners' Charges

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

This Notice Issued March 19, 1986.

Dated: March 19, 1986.

Cynthia C. Matthews,

Executive Secretariat.

[FR Doc. 86–6510 Filed 3–20–86; 3:36 pm]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:10 p.m. on Tuesday, March 18, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,457–L
The First National Bank of Midland, Midland, Texas

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: March 19, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–6438 Filed 3–20–86; 11:12 am]

BILLING CODE 6714-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

March 19, 1986.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

TIME AND DATE: March 26, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda, 832nd Meeting—March 26, 1986, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 9315–002, Sheep Falls Associates
CAP–2.
Project Nos. 8820–002 and 8822–002, City of New York, NY
CAP–3.
Project No. 9250–001 Montana Natural Energy, Inc.
CAP–4.
Project No. 9477–001, Pan Pacific Hydro, Incorporated
CAP–5.
Project No. 9716–001, Hydrodynamics, Inc.
CAP–6.
Project No: 9147–000, Baltic Associates
Project No. 9522–001, Swift River/Hafslund Company
CAP–7.
Project No. 7360–003, Panther Power Partnership
Project No. 9620–001, Panther Power Company
CAP–8.
Project No. 6967–003, California Hydroelectric
CAP–9.
Project No. 6758–003, Holden Village, Inc.
CAP–10.
Project No. 2374–001, Watervliet Paper Company
CAP–11.
Omitted
CAP–12.
Project Nos. 4796–008 and 012, Niagara Mohawk Power Corporation and Glen Park Associates
Project No. 4939–001, Brownville Power Company
CAP–13.

Docket Nos. ER86-262-000, ER85-598-001, ER85-634-001, ER85-607-001, ER85-621-001, ER85-648-001 and ER85-763-001, New York State Electric & Gas Corporation

CAP-14.
Docket No. ER86-273-000, Kansas City Power & Light Company

CAP-15.
Docket No. ER86-277-000, Central and South West Services, Inc.

CAP-16.
Docket No. ER86-282-000, Utah Power and Light Company

CAP-17.
Docket No. ER86-76-002, Commonwealth Edison Company

CAP-18.
Docket No. ER84-679-005, Florida Power Corporation

CAP-19.
Docket No. EL85-37-001, Marjorie Linder Cooley v. Clifton Power Corporation

CAP-20.
Docket No. ER86-170-002, New England Power Company

CAP-21.
Omitted

CAP-22.
Docket No. ER85-608-001, Public Service Company of New Mexico

CAP-23.
Docket Nos. ER85-461-005, and ER85-521-002, Kansas Gas and Electric Company

CAP-24.
Docket No. ER86-2041-000, Bonneville Power Administration

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA83-4-001, Duke Power Company

CAM-2.
Docket No. FA84-12-001, Pennsylvania Power & Light Company

CAM-3.
Omitted

CAM-4.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Riverside Pipeline Company)

CAM-5.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company)

CAM-6.
Docket No. GP85-51-000, State of Texas, section 108 determination, Mitchell Energy Corporation, Bertha Collins #2 Well, FERC JD No. 85-26032

CAM-7.
Docket No. RO85-12-000, Dorchester Gas Corporation

CAM-8.
Docket No. RA83-8-001, Asamera Oil (U.S.) Inc.

CAM-9.
Docket No. RO85-6-000, Exxon Company, U.S.A.

CAM-10.
Docket Nos. IS85-9-000 and OR 85-1-000, Kuparuk Transportation Company

Consent Gas Agenda

CAG-1.
Docket Nos. TA86-1-53-004, TA84-1-53-016, TA83-1-53-005, TA82-1-53-003, TA81-1-53-007 and RP82-8-004, K N Energy, Inc.

CAG-2.
Docket Nos. TA86-1-52-003 and TA86-1-52-004, Western Gas Interstate Company

CAG-3.
Docket Nos. TA86-1-33-006 (PGA86-1b), 007 and 008, El Paso Natural Gas Company

CAG-4.
Docket No. RP86-35-002, Great Lakes Gas Transmission Company

CAG-5.
Docket No. RP86-45-001, El Paso Natural Gas Company

CAG-6.
Docket No. RP86-52-000, Kentucky West Virginia Gas Company

CAG-7.
Docket No. RP86-50-000, Arkla Energy Resources, a Division of Arkla, Inc.

CAG-8.
Docket No. RP85-194-005, Panhandle Eastern Pipe Line Company

CAG-9.
Docket No. RP83-30-043, Transcontinental Gas Pipe Line Company

CAG-10.
Omitted

CAG-11.
Docket Nos. TA86-3-42-000, TA86-4-42-000 and 001 (PGA86-4), Transwestern Pipeline Company

CAG-12.
Docket Nos. TA86-4-324-000, 001 and TA85-2-34-000, Florida Gas Transmission Company

CAG-13.
Docket Nos. TA86-4-5-000, 001 and RP86-33-001, Midwestern Gas Transmission Company

CAG-14.
Docket Nos. TA86-3-32-000 and 001, Colorado Interstate Gas Company

CAG-15.
Omitted

CAG-16.
Docket Nos. TA86-3-7-000 and 001, Southern Natural Gas Company

CAG-17.
Docket No. TA86-1-52-002, Western Gas Interstate Company

CAG-18.
Docket Nos. TA86-2-9-003 (PGA86-2a) and TA86-2-9-004 (PGA86-2b), Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG-19.
Docket Nos. TA86-2-38-000 and 001 (PGA86-2), Ringwood Gathering Company

CAG-20.
Omitted

CAG-21.
Docket Nos. TA86-2-8-000 and 001 (PGA86-2), South Georgia Natural Gas Company

CAG-22.
Docket Nos. TA86-4-51-000 and 001, Great Lakes Gas Transmission Company

CAG-23.
Omitted

CAG-24.
Docket Nos. TA85-2-11-003, TA86-1-11-002 and TA86-2-11-002, United Gas Pipe Line Company

CAG-25.
Docket No. RP86-22-001, ANR Pipeline Company

CAG-26.
Docket No. RP86-27-001, Midwestern Gas Transmission Company

CAG-27.
Docket No. RP85-141-007, Texas Gas Transmission Corporation

CAG-28.
Docket Nos. RP84-108-007 and 007, Texas Eastern Transmission Corporation

CAG-29.
Docket Nos. RP86-16-002 and RP86-17-002, Northwest Pipeline Corporation

CAG-30.
Docket Nos. RP84-15-000, TA83-2-47-000, TA84-1-47-000, TA84-2-47-000, TA85-1-47-000 and TA86-1-47-000, MIGC, Inc.
Docket Nos. RP84-7-000 and GP85-20-000, Colorado Interstate Gas Company

CAG-31.
Docket No. RP83-109-000, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., complainant, v. Chevron, U.S.A. Inc., Gulf Oil Corporation, Pan-Canadian Petroleum Company, J.E. Stack, Jr., System Fuels, Inc., Texaco, Inc., Tomlinson Interests, Inc., Mobil Oil Exploration & Producing Southeast, Inc., Sun Exploration & Production Company, Forest Oil Corporation, The Stone Petroleum Corporation, Mislatex Minerals Corporation, Hanover Petroleum Corporation and Floyd Kimble d/b/a Red Hill Development, respondents

CAG-32.
Docket No. RI78-68-002, Neleh Gas & Oil Corporation

CAG-33.
Docket No. G-7083-001, Cities Service Oil and Gas Corporation
Docket No. CI85-523-000, Peake Operating Company

CAG-34.
Omitted

CAG-35.
Docket No. CP86-6-000, Northern Natural Gas Company, a Division of HNG Internorth, Inc.

CAG-36.
Docket No. CP86-167-000, Colorado Interstate Gas Company and Ralston Processing Associates, Inc.

CAG-37.
Omitted

CAG-38.
Docket No. CP86-112-000, United Gas Line Pipe Line Company

CAG-39.
Omitted

CAG-40.
Omitted

CAG-41.
Docket No. RP86-57-000, Northwest Pipeline Corporation

CAG-42.
Docket No. RP85-178-008, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAC–43.
Docket No. RI86–1–001, Cenergy Exploration Company

I. Licensed Project Matters

P–1.
Reserved

II. Electric Rate Matters

ER–1.
Docket No. QF85–504–000, Luz Solar Partners II, Ltd.
ER–2.
Docket No. QF84–135–001, Union Camp Corporation

Miscellaneous Agenda

M–1.
Reserved
M–2.
Reserved
M–3.
Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (the Board of Trustees of the University of Illinois)
M–4.
Docket No. RM85–1–000 (Parts A–D), regulation of gas pipelines after partial wellhead decontrol (Clarco Gas Company, Inc.)
M–5.
Docket No. RM85–1–000 (Parts A–D), regulation of gas pipelines after partial wellhead decontrol (North Central Public Service Company)
M–6.
Omitted
M–7.
(A) Docket Nos. RM85–1–144, 145 and 147 through 152 (Parts A–D) regulation of natural gas pipelines after partial wellhead decontrol (Panhandle Producers and Royalty Owners Association, Mesa Petroleum Company, Atlanta Gas Light Company, ANR Pipeline Company, the Costal Corporation and Colorado Interstate Gas Company, Natural Gas Pipeline Company of America, Southern Natural Gas Company, Interstate Natural Gas Association of America, Texas Eastern Transmission Corporation and the State of Louisiana)
(B) Docket Nos. RM85–1–160 and 161 (Parts A–D) regulation of natural gas pipelines after partial wellhead decontrol (Michigan Consolidated Gas Company and the Maryland People's Counsel)
(C) Docket Nos. RM85–1–156, 158, 163, 164, 165, 166, 167 and 168 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Associated Gas Distributors, Interstate Natural Gas Association, Michigan Consolidated Gas Company, Transcontinental Gas Pipe Line Corporation, the Process Gas Consumers Group, the American Iron and Steel Institute, the Georgia Industrial Group, Southern Natural Gas Company and American Gas Association)

I. Pipeline Rate Matters

RP–1.
(A) Docket No. RP86–53–000, Transwestern Pipeline Company
(B) Docket No. RP86–54–000, Florida Gas Transmission Company
RP–2.
(A) Docket No. TA82–1–21–021, Columbia Gas Transmission Corporation
(B) Docket Nos. CP86–258–000 and 001, Columbia Gas Transmission Corporation
RP–3.
Docket Nos. TA86–3–33–000 and 001, El Paso Natural Gas Company
RP–4.
Omitted

II. Producer Matters

CI–1.
Docket No. CP83–452–047, Columbia Gas Transmission Corporation
Docket No. CI86–19–003, Amoco Production Company
Docket No. CI85–685–001, Exxon Corporation
Docket No. CI85–632–002, Tenngasco Corporation and Tenngasco Exchange Corporation
Docket No. CI85–633–003, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd. and Tenneco West, Inc.
Docket No. CI86–229–000, Diamond Shamrock Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership
Docket No. CI86–237–000, the Louisiana Land and Exploration Company and Lloxy Holdings, Inc.
Docket No. CI85–29–006, Odeco Oil & Gas Company
Docket No. CI86–33–001, Sun Exploration and Production Company

III. Pipeline Certificate Matters

CP–1.
Docket No. TC82–43–000, K N Energy, Inc.
CP–2.
Docket No. TC79–8–000, Transcontinental Gas Pipe Line Corporation
CP–3.No. RP86–14–004, Columbia Gulf Transmission Company
Docket No. RP86–15–004, Columbia Gas Transmission Corporation
CP–4.
Omitted
CP–5.
Omitted
CP–6.
Docket Nos. CP84–519–000 and 001, Rural Energy Systems, Inc.
CP–7.
Docket No. CP86–265–000, Transcontinental Gas Pipe Line Corporation
CP–8.
Docket No. CP84–342–002, Southern Natural Gas Company

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–6456 Filed 3–20–86; 12:42 p.m.]

BILLING CODE 6717-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 19, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, March 26, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the already announced items, the Commission will consider and act upon the following:

2. Wilfred Bryant v. Dingess Mine Service, etc., Docket No. WEVA 85–43–D. (Consideration of a petition for interlocutory review filed by Mullins Coal Co.).

Note.—The previously announced item No. 2, consideration of Commission Procedural Rule 44, 29 CFR 2700.44, will be considered Item No. 3 in closed session.

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86–6452 Filed 3–20–86; 12:02 pm]

BILLING CODE 6735-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 19, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, March 26, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the already announced item, the Commission will consider and act upon the following:

2. Commission Procedural Rule 44, 20 CFR 2700.44, dealing with the temporary reinstatement of miners, in light of *Southern Ohio Coal Co.* v. *Donovan*, 774, F.2d 693 (6th Cir. 1985), *reh'g denied*, 781 F.2d 57 (1976).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86–6453 Filed 3–20–86; 12:02 pm]

BILLING CODE 6735-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, March 28, 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. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–6515 Filed 3–20–86; 3:55 pm]

BILLING CODE 6210-01-M

7

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Wednesday, April 2, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report:* Explosion and Fire on Board the U.S. Chemical Tankship PUERTO RICAN in the Pacific Ocean near San Francisco, California, October 31, 1984.
2. *Marine Accident Report:* Sinking of the U.S. Fishing Vessel SANTO ROSARIO about 35 Nautical Miles East of New Smyrna Beach, Florida, July 23, 1985.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382–6525.

Catherine T. Kaputa,

Federal Register Liaison Officer.

March 19, 1986.

[FR Doc. 86–6400 Filed 3–19–86; 4:38 pm]

BILLING CODE 7533-01-M

federal register

Monday
March 24, 1986

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 263, 270, and 271

Hazardous Waste: Generators of Hazardous Waste (100 to 1000 Kilograms Per Month), on Site Storage, etc.; Final Rule

40 CFR Part 262

Hazardous Waste: Generators of Hazardous Waste (100 to 1000 Kilograms Per Month), Waste Minimization; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 270, and 271

[SWH-FRL-2969-2(b)]

Hazardous Waste Management System: General; Identification and Listing of Hazardous Waste; Standards for Generators of Hazardous Waste; Standards for Transporters of Hazardous Waste; EPA Administered Permit Programs; Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 1, 1985, the U.S. Environmental Protection Agency (EPA) proposed regulations under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), that would be applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month ("100–1000 kg/mo generators"). Based in large measure on the existing hazardous waste regulatory program, the proposed rules represented the Agency's efforts to balance the statutory mandate to protect human health and the environment with the statutory directive to keep burdensome regulation of small businesses to a minimum.

EPA is today promulgating final regulations for these generators which modify certain aspects of the proposal. These modifications relate to the "small quantity generator" provisions of § 261.5 and the use of the multi-copy manifest in lieu of the proposed single copy system. Exemptions from exception and biennial reporting as well as from the manifest system for certain reclamation shipments and from certain of the requirements applicable to on-site accumulation have been retained in the final rules. The effect of this rule would be to subject generators of between 100 kg and 1000 kg of hazardous waste in a calendar month to the hazardous waste regulatory program.

DATES: *EFFECTIVE DATE:* September 22, 1986.

Compliance Dates: The Part 262 standards will become applicable to 100–1000 kg/mo generators on September 22, 1986.

The Part 264 and 265 standards will become applicable to 100–1000 kg/mo generators treating, storing, or disposing of hazardous waste on-site using non-exempt management practices on March 24, 1987.

For off-site facilities managing wastes from 100–1000 kg/mo generators, the Part 264 or 265 standards will apply to the wastes from generators of 100–1000 kg/mo on September 22, 1986.

For off-site facilities managing wastes exclusively from generators of less than 1000 kg/mo, the requirement to obtain interim status as a hazardous waste facility for wastes from 100–1000 kg/mo generators will become applicable on September 22, 1986.

Off-site facilities managing waste from both large quantity generators and generators 100–1000 kg/mo will need to modify their Part A permit applications (as well as Part B if already submitted) by September 22, 1986 to reflect these newly regulated wastes from 100–1000 kg/mo generators.

ADDRESSES: The public docket for this rulemaking is located in Rm S-212-C, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. The RCRA Docket is available for viewing 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, (800) 424–9346, (in Washington, DC, call 382–3000), the Small Business Hotline, (800) 368–5888, or Robert Axelrad, (202) 382–5218, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background and Summary of Final Rule
A. The Hazardous and Solid Waste Amendments of 1984
1. Codification Rule
2. Minimum Rulemaking Requirements
3. March 31, 1986 Hammer Provisions
4. August 1, 1985 Proposal
B. Summary of Final Rule
III. Response to Comments and Anaylsis of Issues
A. EPA's Approach To Regulating 100–1000 kg/mo Hazardous Waste Generators
B. Applicability Issues
1. Definition of "Small Quantity Generator"
2. Generator Category Determination
a. Counting Amendment to section 261.5
b. Generators of Acutely Hazardous Waste
c. Generators of Non-Acutely Hazardous Waste in Quantities of Less than 100 kg/mo
d. Determination of Generator Status
C. Part 262 Generator Responsibilities
1. Notification and Identification Number Requirements—section 262.12
2. The Hazardous Waste Manifest System—Part 262, Subpart B
a. Number of Copies and Use of Manifest
b. Manifest Exemption for Certain Reclamation Shipments
c. Waste Minimization
3. Recordkeeping and Reporting—Part 262, Subpart D
a. Recordkeeping—section 262.40
b. Exception Reports—section 262.42
c. Biennial Reports—section 262.41
4. On-site Accumulation—section 262.34
a. Time and Quantity Limitations
b. Standards Applicable to On-site Accumulation
i. Standards for Preparedness and Prevention—Part 265, Subpart C
ii. Standards for Contingency Plans, Emergency Procedures—Part 265, Subpart D, and Personnel Training Requirements
iii. Standards for Accumulation in Containers—Part 265, Subpart I
iv. Standards for On-site Accumulation in Tanks—Part 265, Subpart J
5. International Shipments
D. Transportation Issues
E. Part 264/265 Facility Standard Issues
1. Activities Requiring Permits
2. Applicability of Permitting Requirements to Recycled Wastes
3. Permit by Rule
4. Modifications to Part A Permit Applications
IV. Delayed Effective Dates
V. Impact on Authorized States
A. Applicability in Authorized States
B. Effect on State Authorizations
VI. CERCLA Impacts
VII. Executive Order 12291—Regulatory Impact
A. Estimates of Per Firm Costs
1. Part 262 Generator Standards
2. Transportation Costs
3. Treatment, Storage, and Disposal Costs
a. On-site Accumulation
b. Treatment and Disposal
B. Estimates of Nationwide Incremental Cost Burden on Generators of 100–1000 kg/mo
C. Estimates of the Economic Impacts of Today's Rule
VIII. Regulatory Flexibility Act
IX. Paperwork Reduction Act
X. List of Subjects

I. Authority

These regulations are being promulgated under authority of section 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, 3015, 3017, and 3019, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, 6935, 6939, 6991, and 6993.

II. Background and Summary of Final Rule

A. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed Pub. L. 98–616, titled The Hazardous and Solid Waste Amendments of 1984 (HSWA). These comprehensive amendments will have far-reaching ramifications for EPA's hazardous waste regulatory program and will impact a very large number of businesses in the United States. Further, Congress has established in these amendments ambitious schedules for the imposition of the requirements that EPA must promulgate.

With respect to regulation of small quantity generators (*i.e.*, generators of less than 1000 kg of hazardous waste in a calendar month) the HSWA added a new subsection (d) to Section 3001 of RCRA designed to modify EPA's current regulatory exemption of wastes generated by small quantity generators from full Subtitle C regulation (40 CFR 261.5). Section 3001(d) directs EPA to develop a comprehensive set of standards which will apply to hazardous wastes produced by small quantity generators of between 100 and 1000 kg of hazardous waste in a calendar month ("generators of 100–1000 kg/mo"). EPA is required to promulgate final standards no later than March 31, 1986. Today's final rule satisfied this requirement. In addition, section 3001(d) imposes certain minimum requirements on these generators prior to that date and requires EPA to complete a number of studies before April 1987.

1. Codification Rule

On July 15, 1985, EPA published in the **Federal Register** a Final Rule which codified a number of legislatively mandated provisions contained in the HSWA (see 50 *FR* 28702–28755, July 15, 1985). Among those provisions is the requirement of section 3001(d)(3) that effective 270 days from the date of enactment, all off-site shipments of hazardous waste from generators of greater than 100 kg but less than 1000 kg of hazardous waste during a calendar month must be accompanied by a copy of the Uniform Hazardous Waste Manifest, signed by the generator, and containing the following information:

- The name and address of the generator of the waste;
- The U.S. Department of Transportation (DOT) description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA);
- The number and type of containers;
- The quantity of waste being transported; and
- The name and address of the facility designated to receive the waste.

The information required by this provision (codified at 40 CFR 261.5(h)(3)) corresponds to Items 3, 9, 11, 12, 13, 14, and 16, of EPA form 8700–22 and accompanying instructions promulgated on March 20, 1984 (49 *FR* 10490). These information requirements conform to DOT shipping requirements designed to provide necessary information to handlers of hazardous materials (*e.g.*, transporters and emergency response personnel).[1] The interim manifest requirement applies only until the effective date of the regulations being promulgated today. These final rules will supersede the existing manifest requirements for these generators.

The HSWA provisions, together with existing regulations, distinguish three main classes of small quantity generators for regulatory purposes: (1) Those generating between 100 and 1000 kg of non-acutely hazardous waste per calendar month; (2) those generating up to 100 kg of non-acutely hazardous waste per calendar month; and (3) those generating acutely hazardous wastes in quantities currently set forth in § 261.5(e). These classes of small quantity generator are distinguished in the July 1985 "Codification Rule". Until the effective date of today's final rules, under the regulatory system imposed by 40 CFR 261.5 implementing section 3001(d) of the HSWA, a small quantity generator in the first group (*i.e.*, producing between 100 and 1000 kg of non-acutely hazardous waste in a calendar month) is subejct to the following requirements:

(1) He must determine if his waste is hazardous under 40 CFR 262.11 (§ 261.5(h)(1));

(2) He may conditionally accumulate hazardous waste on-site provided he does not exceed the quantity limitation contained in § 261.5(h)(2);

(3) After August 5, 1985, he must partially complete and sign a single copy of the Uniform Hazardous Waste Manifest to accompany any off-site shipment of hazardous waste (§ 261.5(h)(3)); and

(4) He must treat or dispose of his hazardous waste on-site, or ensure delivery to an off-site treatment, storage, or disposal facility. The on-site or off-site facility must be either: (i) Permitted by EPA pursuant to Section 3005 of RCRA or by a State having an authorized permit program under Part 271; (ii) in interim status under Parts 270 and 265; (iii) permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or (iv) a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to reuse, recycling or reclamation (§ 261.5(h)(4)).

As discussed in the remainder of this preamble, 100–1000 kg/mo generators will be regulated under Part 262–266 and Parts 270 and 124 when today's rules become effective, to the extent that rules apply.

Generators of less than 100 kg of hazardous waste in a calendar month will remain conditionally exempt from most of the hazardous waste program, as provided in § 261.5(g). For example, generators of less than 100 kg are not required to comply with any manifesting provisions. No additional requirements apply to this class of hazardous waste generator under the existing rules unless the quantity limitations contained in § 261.5(g) are exceeded.

Generators that produce acutely hazardous waste and do not exceed the quantity limitations for such waste under § 261.5(e) will also be conditionally exempt from regulation. No additional requirements apply to this class of generators unless the quantity limitations contained in § 261.5(e) are exceeded, at which point the acutely hazardous waste becomes subject to the full generator requirements of 40 CFR Part 262.

2. Minimum Rulemaking Requirements

Section 3001(d)(1) of the HSWA requires EPA to promulgate, by March 31, 1986, standards under sections 3002, 3003, and 3004, for hazardous wastes generated by a generator in a total quantity greater than 100 but less than 1000 kilograms in a calendar month. Standards developed under this section must be sufficient to protect human health and the environment but *"may vary from the standards applicable to hazardous waste generated by larger quantity generators"* [emphasis added] (section 3001(d)(2)). EPA is further authorized to promulgate standards for generators of less than 100 kg/mo of hazardous waste if the Administrator determine it is necessary to do so to protect human health and the environment (section 3001(d)(4)).

At a minimum, standards issued pursuant to section 3001(d)(1) must require that all treatment, storage, and disposal of hazardous wastes from

[1] While 100–1000 kg/mo generators are not now required to complete the entire manifest under Federal law, many States operating their own hazardous waste programs may already require additional information on the manifest or require use of the State's version of the Uniform Hazardous Waste Manifest.

generators of between 100 and 1000 kg of hazardous waste in a calendar month occur at a facility with interim status or a permit issued under section 3005 of RCRA. The standards must also allow generators of between 100 and 1000 kg of hazardous waste during a calendar month to store waste on-site for up to 180 days without being required to obtain a RCRA permit. If a generator must ship or haul his waste greater than 200 miles, that generator may store up to 6000 kg of hazardous wastes for up to 270 days without a permit (section 3001(d)(6)). These minimum requirements are embodied in today's final rule.

In addition, the Agency has interpreted the statute to require that, at a minimum, EPA's regulations must provide for continuation of the August 1985 requirement that off-site shipments of hazardous waste from 100–1000 kg/mo generators be accompanied by a single copy of the Uniform Hazardous Waste Manifest containing at least the information specified in section 3001(d)(3). See H.R. Report No. 198, 98th Cong, 1st Sess. 25–28 (1983); S. Rep. No. 284, 98th Cong. 1st Sess. 8 (1983); H.R. Rep. No. 133, 98th Cong., 2nd Sess., 101–103 (1984).

The Agency believes that at a minimum Congress intended that the Agency's regulations incorporate the partial Uniform Hazardous Waste Manifest requirements in order to provide notice of the hazardous nature of the waste to transporters and facilities. In addition, the Agency is specifically authorized to expand the manifest requirements if necessary to protect human health and the environment. See section 3001(d)(3). As discussed in Unit III.C.2. of today's preamble, EPA has concluded that additional manifest requirements are necessary to ensure protection of human health and the environment.

3. March 31, 1986 Hammer Provisions

If EPA had failed to promulgate standards for hazardous waste generators producing greater than 100 kg but less than 1000 kg in a calendar month by March 31, 1986, these generators would have been subject to certain legislatively stipulated provisions.

The promulgation of today's final rule prior to March 31, 1986, however, effectively voids the hammer provisions of the HSWA with respect to small quantity generators. Consequently, the requirements promulgated today are the only requirements which 100–1000 kg/mo generators must comply with. As discussed in Unit IV, the Part 262 requirements applicable to 100–1000 kg/mo generators that manage waste off-site will take effect six months from today while the requirements of Parts 264 and 265 applicable to generators that manage waste on-site will take effect twelve months from today.

It should be noted that the HSWA specifically states that the requirements of this Section should not be construed to be determinative of the requirements appropriate for small quantity generators in developing a regulatory program. The hammer provisions of HSWA, therefore, do not dictate the content of these final rules for generators of 100–1000 kg/mo.

4. August 1, 1985 Proposal

On August 1, 1985, EPA proposed rules that would apply to generators of 100–1000 kg/mo of hazardous waste. The proposed rules represented the Agency's efforts to balance the need for regulation of this group of generators in a manner that would protect human health and the environment with the need to minimize the impacts of such regulation on small firms.

The proposed rules modified the existing standards for generators and treatment, storage, and disposal facilities to reflect the generally smaller quantities of waste and small business nature of many of these firms. In essence, EPA concluded that some relief from the administrative and paperwork requirements embodied in the Part 262 Generator Standards was appropriate for generators of 100–1000 kg/mo of hazardous waste.

EPA proposed to remove 100–1000 kg/mo generators from the existing § 261.5 small quantity generator provision, thus subjecting them to Part 262. In addition, the Agency proposed specific amendments to Part 262 to relieve these generators of some of the requirements of that Part. Under the proposed rules, generators of 100–1000 kg/mo would have been required under Part 262 to:

- Determine whether their wastes are hazardous (already required under § 261.5);
- Obtain an EPA identification number;
- Store hazardous waste on-site for no more than 180 or 270 days in compliance with specially modified storage standards (unless they comply with the full regulations for hazardous waste management facilities);
- Offer their wastes only to transporters and facilities with an EPA identification number;
- Comply with applicable Department of Transportation (DOT) requirements for shipping wastes off-site;
- Use a single copy of the Uniform Hazardous Waste Manifest to accompany the waste from the generation site.

The proposed requirements for generators of 100–1000 kg/mo were intended to be less stringent than those applicable to large quantity generators in two significant respects. First, under the proposed rules, generators of 100–1000 kg/mo would not have been required to comply with the full manifest system required of larger hazardous waste generators that ship waste off-site for treatment, storage, or disposal. Instead, the Agency proposed a "single copy" manifest system intended to serve as a "notification" to subsequent handlers of the waste (*i.e.*, transporters and facilities) that the material is a hazardous waste and to provide essential information to those handlers as well as emergency personnel. EPA proposed to specifically exempt these generators from the existing manifest requirements pertaining to number and distribution of manifest copies as well as from the recordkeeping and reporting requirements associated with the full manifest system (*i.e.*, use and retention of manifest copies and exception and biennial reporting). EPA also proposed to exempt 100–1000 kg/mo generators from all of the manifest requirements under certain circumstances where the waste is reclaimed under contractual arrangements where either the generator or a reclaimer retains ownership of the material throughout the generation, transportation, and reclamation of the waste. Under such circumstances, EPA believed that the manifest would be unnecessary, provided that specific conditions are met.

A second significant difference for 100–1000 kg/mo generators was the proposed requirements affecting accumulation (*i.e.*, short-term storage) of hazardous waste on-site prior to shipment of waste off-site or management on-site in a treatment, storage, or disposal facility. The proposed rules implemented the statutory requirement to allow generators of 100–1000 kg/mo to accumulate (*i.e.*, store) waste on-site in tanks or containers for up to 180 days (or 270 days if they must ship their waste over 200 miles for treatment or disposal), without obtaining interim status or a permit. In addition, the proposed rules provided that these generators would need to comply with specific storage requirements which were reduced somewhat from those applicable to large quantity generators. Unlike large quantity generators, those producing between 100–1000 kg/mo would not be required to prepare a written contingency plan or have

formalized personnel training programs. They would, however, be subject to a reduced set of specific requirements for contingency and emergency procedures, and for ensuring that their employees are fully cognizant of those procedures as well as proper hazardous waste handling methods. Generators of 100–1000 kg/mo that accumulate wastes in tanks or containers would, however, be subject to the same requirements of existing Subparts I and J of Part 265 applicable to larger generators as well as to the preparedness and prevention standards contained in Subpart C of Part 265.

EPA also proposed that those 100–1000 kg/mo generators who treat, store, or dispose of their hazardous waste in on-site facilities and who do not qualify for the 180- or 270-day exclusion would be subject to the full set of Parts 264 and 265 facility standards currently applicable to other hazardous waste treatment, storage, and disposal facilities, including the need to obtain interim status and a RCRA permit. EPA saw no basis for reducing the technical standards for these generators since the potential hazards to human health and the environment appeared to be equivalent to those from other fully regulated treatment, storage, and disposal facilities. However, because of the major impact which these facility requirements would be likely to have on many of these firms, the Agency proposed to delay the effective date of this portion of the regulations an additional six months (*i.e.*, 1 year from the date of publication in the **Federal Register** of the final rules) to allow these firms additional time to either arrange for off-site management or to up-grade their on-site practices for compliance with the full set of Parts 264 and 265 facility standards.

B. Summary of Final Rule

Today's final rule adopts most of the provisions of the proposed rules for generators of 100–1000 kg/mo. Today's final rule subjects generators of 100–1000 kg/mo to regulation under Parts 262, 263, 264, 265, and 266 of the hazardous waste regulations by removing these generators from the conditional exclusion provisions of § 261.5. However, the Agency has decided not to formally redefine a "small quantity generator" as one who generates no more than 100 kg of non-acutely hazardous waste since the Agency has concluded that such a redefinition would increase, rather than reduce, confusion. Consequently, the term "small quantity generator" will continue to apply to all generators of less than 1000 kg of hazardous waste in a calendar month.

As a result of today's final rule subjecting generators of 100–1000 kg/mo to the Part 262 requirements, these generators will be required to:

- Determine whether their wastes are hazardous (already required under § 261.5);
- Obtain an EPA identification number;
- Store hazardous waste on-site for no more than 180 or 270 days in compliance with specially modified storage standards (unless they comply with the full regulations for hazardous waste management facilities);
- Offer their wastes only to transporters and facilities with an EPA identification number;
- Comply with applicable Department of Transportation (DOT) requirements for shipping wastes off-site;
- Use a multi-part "round-trip" Uniform Hazardous Waste Manifest to accompany the waste to its final destination; and
- Maintain copies of manifests for three years;

EPA is today finalizing a number of the proposed modifications to the Part 262 requirements applicable to generators of 100–1000 kg/mo. These generators will not be required to submit biennial reports or file exception reports if a copy of the manifest is not returned by the destination facility. In addition, the proposed modifications to the accumulation provisions of § 262.34 exempting these generators from the requirements to prepare a formal contingency plan and conduct formal personnel training are also being finalized, as is the proposed exemption from all manifest requirements for wastes reclaimed under certain contractual arrangements. The Agency is also exempting 100–1000 kg/mo generators from the 50' buffer zone requirements for container storage of ignitable or reactive wastes during periods of on-site accumulation.

The most significant departure from the proposed rules is the Agency's determination that the multiple copy manifest system does not impose a significant burden and that, in fact, the multiple copy manifest system is essential to ensure protection of human health and the environment. Therefore, the modifications to the existing manifest system proposed for 100–1000 kg/mo generators are not being adopted in today's final rule. The reasons for this change are discussed in detail in Unit III.C. of this preamble.

III. Response to Comments and Analysis of Issues

This Section of the preamble addresses the comments received on the August 1, 1985, proposed rules ("Proposal") and describes the Agency's position on the major issues raised in the proposal and during the comment period.

A. EPA's Approach To Regulating 100–1000 kg/mo Hazardous Waste Generators

As discussed in the preamble to the Proposal, EPA's approach in developing standards for 100–1000 kg/mo generators was one of balancing the two competing goals inherent in section 3001(d)—protecting human health and the environment and avoiding unreasonable burdens on the large number of small businesses affected by the standards. In assuring protection of human health and the environment, the Agency deemed it appropriate and consisent with Congressional intent to consider the "relative risk" posed by the small aggregate amounts of waste generated by the 100–1000 kg/mo generators. Given the lower relative risk that these generators pose compared to larger generators in terms of quantity of waste, varying the standards from those applicable to large quantity generators would still assure protection of human health and the environment.

EPA also evaluated the potential impact of full Subtitle C regulations with respect to both administrative and technical considerations, and concluded that the technical requirements were more essential than the administrative requirements to the general goal of protecting human health and the environment because they are directly concerned with controlling releases to the environment. In addition, Congress anticipated reducing administrative requirements, such as reporting and recordkeeping, as a means to reduce impacts on the 100–1000 kg/mo generators. Thus, EPA proposed to relieve these generators of some Part 262 standards that are administrative in nature while retaining all existing technical standards. The relief was only provided to generators who accumulate on-site for the statutorily-prescribed periods, because, given that the amount of waste accumulated would necessarily be limited, the relative risk from releases of such waste would be less than that from the unlimited amounts of waste accumulated by off-site facilities.

Most persons who commented on EPA's approach to regulation in this area supported the concept of reducing

burdens on small businesses and of fashioning the degree of relief provided from the level of risk involved; however, several commenters disagreed on the level of risk posed by waste from 100–1000 kg/mo generators. One commenter argued that the "relative risk" approach was not technically sound because the synergistic and antagonistic properties of waste streams were not considered, and mismanagement of even small quantities of waste, if not controlled or regulated, would eventually have the same impact as larger amounts of waste. One commenter pointed out that the relative risk approach is difficult to justify on a regional or local basis, where 100–1000 kg generators may contribute much more than the 0.3 percent nationwide contribution, and their proximity to populations as compared to large quantity generators should have been considered. Several commenters also asserted that Congress has judged the hazardousness of a given waste to be imparted by its inherent properties, not by its quantity.

As EPA explained in the Proposal, the Agency believes it to be both appropriate and consistent with Congressional intent to consider the relative risk posed by the smaller quantities of waste generated by 100–1000 kg/mo generators. Although it did evaluate several Congressionally-specified factors, such as waste characteristics, the Agency found that the only useful factor in drawing meaningful distinctions between large quantity generators and 100–1000 kg/mo generators was the quantity of waste generated. Thus, the Agency considered both the inherent properties and the quantities of waste generated in developing standards to assure protection of human health and the environment.

The Agency is aware that there can be concentrations of 100–1000 kg/mo generators in populated areas, and that their 0.3 percent nationwide contribution can be increased accordingly in some cases; however, overall the quantities of waste capable of being leaked or spilled during storage or transportation, as compared to that of large quantity generators, still poses relatively less risk. Moreover, the only type of relief being provided is where the technical standards deemed necessary to protect human health and the environment are not compromised in substance. The Agency believes that, by retaining all technical standards for storage, transportation, and treatment required of large quantity generators and by modifying some requirements of an administrative nature for the 100–1000 kg/mo generators, a fair balance between the goals of reducing burdens and protecting health and the environment is reached. The Agency does not believe that exempting the 100–1000 kg/mo generators from these administrative requirements will significantly increase the risks from storage, transportation, or disposal of the waste. In addition, as discussed below, the Agency's decisions to require the multiple-copy manifest, which will allow "tracking" of the waste to ensure proper disposal, will further reduce any potential risks.

Another group of commenters criticized EPA's approach in that it did not consider bases for providing relief in addition to that proposed. For example, several commenters asserted that 100–1000 kg/mo generators use less sophisticated waste management practices than large quantity generators, due in large part to economic constraints. This, along with the lesser relative risks, they asserted, dictates imposing less costly regulatory requirements, such as eliminating on-site storage permitting requirements for longer periods of time and larger quantities than EPA proposed.

While EPA did consider differences in waste management practices that would distinguish 100–1000 kg/mo generators from large quantity generators, it found that both classes use many of the same waste management practices (see 50 *FR* 31285 (Col. 1) (August 1, 1985). The comments received on this subject do not provide evidence indicating otherwise. The Agency has recognized that the 100–1000 kg/mo generators generally have less manpower and fewer economic resources available to them, and that this would affect their ability to comply with the full regulatory requirements applicable to large quantity generators. However, Congress has already provided for on-site storage for longer periods of time to allow for more economical shipments. In addition, as discussed below, EPA is modifying certain facility requirements for on-site accumulation to simplify the requirements for contingency plans, emergency procedures, and personnel training (contained in Part 265, Subpart D and § 265.16). These requirements are being modified because they would be unduly burdensome and the underlying environmental objectives can be achieved in their modified form. However, full Parts 264–265 requirements would apply to generators that store their waste in tanks or containers for very long periods of time (*i.e.*, longer than 180 or 270 days) because the quantity of waste present, over time, becomes significant. Similarly, the potential for release of hazardous waste to the environment becomes significant where 100–1000 kg/mo generators engage in waste management in surface impoundments, waste piles, landfills, or land treatment facilities. Thus, in order to fulfill its mandate to protect human health and the environment, EPA has rejected any suggestions to reduce the Parts 264 and 265 facility standards.

B. Applicability Issues

1. Definition of "Small Quantity Generator"

In the August 1, 1985 proposal, EPA proposed to amend 40 CFR 261.5 to redefine a small quantity generator as one who generates no more than specified quantities of acutely hazardous waste and no more than 100 kg of other hazardous waste in a calendar month. The effect of the proposed redefinition would have been to remove 100–1000 kg/mo generators from the § 261.5 exemption for small quantity generators and subject them, instead, to Parts 262–266, 270, and 124 of the hazardous waste regulatory program. Under the proposed rules, generators of 100–1000 kg/mo would have been one of two classes of large quantity generator. The Agency also proposed changes to Part 262 that would specifically exempt these 100–1000 kg/mo generators from a number of the otherwise applicable administrative requirements.

A number of commenters expressed concern about the proposed redefinition of the small quantity generator provision to exclude generators of 100–1000 kg/mo. In particular, they stated that many of these generators were only now becoming aware of their status as regulated hazardous waste generators and that, for the most part, they recognized themselves as "small quantity generators". Changing these generators to large quantity generators, it was felt, would add to confusion and reduce the likelihood of compliance. It was also pointed out that many of the education materials being used to acquaint these generators with the RCRA requirements, including many of EPA's own materials, referred to this class of generator as "small quantity generators". Commenters suggested several specific labels to differentiate the various classes of generators, including such terms as "small *de minimis*", "very small quantity generators" or "extremely small quantity generators".

In proposing to remove the 100–1000 kg/mo generators from § 261.5, the Agency was attempting to address the complexity and confusion caused by having multiple classes of small quantity generator subject to significantly different standards. The Agency is sympathetic to the concerns of these commenters and in no way intended the redefinition to add to the confusion which many of these firms may experience in becoming subject to the bulk of the RCRA regulatory program for the first time. For the reasons discussed below, EPA has decided not to alter the existing definition of "small quantity generator" but is making modifications to § 261.5 that will provide a more explicit labeling scheme for regulatory purposes.

Section 261.5 has historically addressed those hazardous waste generators that were conditionally exempt from most of the hazardous waste regulatory program. Until the HSWA of 1984 and the subsequent codification of its early enactment provisions on July 15, 1985, only two major classes of small quantity generator existed: those generating or accumulating acutely hazardous wastes below certain quantity cutoffs and those generating or accumulating below 1000 kg of most hazardous wastes. Furthermore, both classes were largely exempt from the standards applicable to large quantity generators.

However, with the addition of a new class of small quantity generator designated by Section 3001(d) of HSWA (*i.e.*, those generating between 100 kg and 1000 kg of hazardous waste in a calendar month) that would be subject to most of the standards applicable to large quantity generators, continued use of the term "small quantity generator" would have no regulatory significance and would lead to confusion for the previously exempt class of generators.

The proposed redefinition was intended to distinguish between small quantity generators that were conditionally exempt from regulation under § 261.5 (*i.e.*, <100 kg/mo) and those that would be subject to most of the requirements applicable to large quantity generators (*i.e.*, 100–1000 kg/mo). By removing the 100–1000 kg/mo generator from § 261.5 and referring to these generators by their actual quantity limitations, the Agency intended to provide a more explicit, and therefore less confusing, regulatory scheme.

The Agency does not believe that the commenters' suggestion of retaining the term "small quantity generator" solely for 100–1000 kg/mo generators or creating new labels for different categories of small quantity generators will reduce confusion; such labels would probably cause more confusion, especially where states have established their own small quantity generator definitions and exclusion levels. In fact, as a result of these comments, the Agency believes that the term small quantity generator is no longer sufficiently precise for most regulatory purposes.

For this reason, the Agency is making three regulatory changes affecting the use of the term "small quantity generator". First, the Agency is adding a definition of "small quantity generator" to Section 260.10 as follows:

> "Small quantity generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

This definition *conforms to the existing definition of the term* and is being added to § 260.10 to alleviate any potential confusion over the definition of "small quantity generator".

Second, EPA is finalizing the proposed removal of generators of 100–1000 kg/mo from the conditional exclusion provisions of § 261.5 and will instead refer to these generators in the regulatory language as generators of 100–1000 kg/mo. This will retain the original premise of the redefinition which was to segregate in the regulations those generators that are predominantly exempt from regulation (*i.e.* generators of less than 100 kg/mo of hazardous waste and generators of acutely hazardous waste in less than specified quantities) from those who are more fully regulated (*i.e.* 100–1000 kg/mo generators). Since the 100–1000 kg/mo generators are no longer excluded from most of the Part 262 regulations by inclusion in § 261.5, the applicable portions of Parts 262–266, 270, and 124 will apply to these generators, as proposed.

Finally, the Agency is also modifying references to the term "small quantity generator" in § 261.5 and in other parts of the regulations to provide more explicit descriptions of the various classes of small quantity generator. Thus, generators of less than 100 kg/mo of hazardous waste or less than specified quantities of acutely hazardous waste will also be referred to by their quantity cutoffs or as generators who are conditionally exempt under Section 261.5. Section 261.5 will now be titled "Special Requirements for Hazardous Wastes Generated by Conditionally Exempt Small Quantity Generators."

The removal of the term "small quantity generator" from most regulatory use will in no way preclude continued use of the term "small quantity generator" for general reference and educational purposes. The Agency recognizes the widespread use of the term "small quantity generator" by States, trade associations, Congress and others and has no intention of interfering with the continued use of that term by anyone choosing to use it to refer to the broad class generating less than 1000 kg in a calendar month. EPA will also continue to use the term "small quantity generator" in describing the collective group of generators below 1000 kg/mo but will use the terms "generators of less than 100 kg/mo" and "100–1000 kg/mo generator" for regulatory purposes. For example, in discussing methodology for counting quantities in order to determine generator status, it would be appropriate to refer to the small quantity generator class since it includes both the 100–1000 kg/mo generators and generators of less than 100 kg/mo.

2. Generator Category Determination

In the Proposal, the Agency discussed a number of issues relevant to making a determination of which generator category a given firm belonged to at any given point in time in order to determine what requirements that establishment was actually subject to. Among the issues covered were which wastes need not be included in quantity determinations (*e.g.*, spent lead-acid batteries destined for reclamation and used oil) and how to count wastes for purposes of determining generator status (*e.g.*, counting of wastes reclaimed on-site). The comments received on these proposed rules raised a variety of additional issues with respect to what types of activities and wastes were intended to be covered by the proposed rules, and whether the rules were applicable to "episodic generators" who might be fully regulated in one month but conditionally exempt the next. These issues are discussed below. In addition to the explanation provided in this preamble, the Agency intends to develop detailed, plain-English guidance and education materials to help the 100–1000 kg/mo generators understand and comply with the hazardous waste regulations.

a. Counting Amendment to § 261.5: In an effort to help clarify for small hazardous waste generators which wastes must be counted in determining their generator category, the Agency proposed an amendment to § 261.5.

The proposed amendment stated that for purposes of making quantity determinations under § 261.5, a generator need not count wastes which are specifically exempted from

regulation (see, *e.g.*, § 261.4, or § 264.1(g)(2), (4), (5) and (6)) or which were not subject to substantive regulation under Parts 263, 264, 265, and the on-site accumulation provisions of § 262.34 were not subject to counting for purposes of determining generator status. Wastes that were subject to the provisions of § 261.6 (b) and (c) (recyclable materials), however, would be required to be counted in making quantity determinations. The proposal was designed to ensure that wastes that are not regulated are not counted. In addition, the counting amendment was intended to eliminate the multiple counting of wastes that are reclaimed and then reused many times during the calendar month. In this situation, the waste would only be counted once, even though it is reused and subsequently becomes a hazardous waste again after such reuse.

While the proposed amendment was intended to make it clear that any hazardous waste that is excluded or exempted from substantive regulation need not be included in the quantity determinations, a number of commenters either misunderstood the scope of the amendment or believed that additional clarification was necessary for the amendment to be understood. Although virtually all commenters on the proposed amendment supported the concept, several recommended specific changes to improve the clarity of the provision. Consequently, the Agency is today finalizing a slightly modified version of the amendment to § 261.5 to clarify which wastes are counted in making generator category determinations.

One commenter correctly noted that the amendment, as written, would not apply to generators of 100–1000 kg/mo since the amendment referred only to the quantity determinations under § 261.5. Since, under the rules being promulgated today, 100–1000 kg/mo generators will no longer be subject to the conditional exclusion provisions of § 261.5, the counting amendment would not have applied to these generators as proposed. Since this was contrary to the Agency's intent that the § 261.5(c) amendment be used by all generators in determining their generator status, the final regulatory language of this provision is modified to indicate that the amendment applies to quantity determinations under Parts 261–266 and 270 of the hazardous waste rules.

A second modification to this provision will make it clear that wastes which are not regulated under Parts 262–266 and 270 are not counted in making quantity determinations.

The majority of commenters on this provision asked for clarification on which wastes or processes were actually intended to be exempted from counting since the references to broad regulatory provisions or concepts such as "subject to substantive regulations" left many readers uncertain as to what the Agency considered to be "substantive regulation". For purposes of this provision, the term "substantive regulation" includes regulations which are directly related to the storage, transportation, treatment, or disposal of hazardous wastes. Regulations which would not be considered "substantive" for purposes of this provision would be requirements to notify and obtain an EPA identification number or to file a biennial report.

As a general guide, the following materials are included in the general category of exempted or excluded wastes that would not be counted in making quantity determinations for purposes of determining hazardous waste generator status:

- Any waste excluded from regulation under § 261.4. For example, wastes discharged to publicly owned treatment works (POTWs) and commingled with domestic sewage are not considered to be solid wastes when discharged, under § 261.4(a). Therefore, they are excluded from regulation under Subtitle C of RCRA and not counted for purposes of making quantity determinations (unless they are stored or treated in regulated units prior to being discharged). Such wastes are regulated instead under the Clean Water Act.[2]
- Any waste exempt from regulation under § 261.6 or wastes that are not stored or transported prior to being reclaimed. For example, under § 261.6(a)(3)(ii), spent lead-acid batteries that are returned to a battery manufacturer for regeneration are exempt from regulation under Parts 262–266, 270, and 124, and, therefore, are not counted in the quantity determination.

Also, used oil exhibiting a characteristic of hazardous waste, unless mixed with other hazardous wastes, is also currently exempt under § 261.6(a) and is not counted for purposes of making quantity determinations. EPA recently proposed to list used oil as a hazardous waste and proposed special management standards for used oil that is recycled. (See 50 *FR* 49164, November 29, 1985.) These proposals, if finalized, will continue to exclude used oil from the quantity determinations of Parts 261–266 and 270. Under the proposed rules for used oil, generators would count their used oil separately from their other hazardous wastes against a separate small quantity generator cutoff that would be established for recycled oil. Under those proposed rules, generators would be subject to less stringent standards for their recycled used oil than for their other hazardous wastes, provided they do not mix other hazardous wastes with their used oils or dispose of the used oil rather than recycle it. Used oil which is disposed of, or mixed with other hazardous wastes, would be regulated like any other hazardous waste and counted separately against the 100 kg/mo cutoff being promulgated today for other hazardous waste generators.

- Any waste reclaimed on-site if it is not accumulated prior to recycling in such a way as to become subject to the accumulation provisions of § 262.34 or the permitting requirements for storage facilities under Parts 264 or 265 (*i.e.* if it is not accumulated or stored prior to reclamation on-site). Under the hazardous waste rules, the actual process of reclaiming wastes is not subject to regulation under Parts 262–265 and 270 and 124 of the hazardous waste regulations.

Only the accumulation, transportation, long term storage, or the management of residues or sludges resulting from the reclamation process are actually subject to regulation. For example, wastes which are continuously reclaimed in a still or solvent cleaning machine on-site without intervening storage and which are reused on-site are not regulated and are not required to be counted in determining generator status.

- Wastes exempt from regulation under §§ 264.1 or 265.1, provided they are also not subject to the substantive standards in 40 CFR Parts 262 and 263. For example, wastes treated in elementary neutralization units, wastewater treatment units or totally enclosed treatment facilities as these units are defined in §260.10 are exempt from regulation under Parts 264 and 265.
- Wastes exempt from certain regulations under § 261.4(c). For example, wastes stored in a product or raw material storage tank are not subject to regulation under Parts 262–265, 270, 271, and 124, or to the RCRA 3010 notification requirements, and hence, are not counted.

[2] Waste discharged to a public sewer system is exempted from RCRA to avoid duplicative regulation since such wastes are regulated under the Clean Water Act. While disposal of hazardous wastes in this manner is not a violation of RCRA, the general pretreatment standards under the Clean Water Act contained in 40 CFR 403.5 prohibit the introduction of wastes into POTWs that would interfere with the operation of the treatment plant or subsequent POTW sludge management.

Therefore, generators are required to count for purposes of determining generator status any waste that is subject to the substantive regulations. Wastes are only counted once, however. A number of commenters claimed that although EPA discussed this in the preamble to the proposed rules, this point was not made clear in the actual regulatory language. The Agency agrees, and thus has added § 261.5(d)(3) to make it clear that a generator need not count the hazardous waste generated and then reclaimed and reused at the site of generation if the hazardous waste has already been included in the monthly totals. The Agency also is modifying § 261.5(d)(2) to make it clear that you only count the residue from treatment where the original hazardous waste was not counted.

The following examples may help to illustrate the regulatory scheme:

(Example 1) Manufacturer A uses solvent in a degreasing process yielding 500 kg of spent solvent in a month. If the solvent is to be reclaimed (*e.g.*, distilled) on-site and is not sorted or accumulated prior to reclamation, it will qualify as a solid (and hazardous) waste but it will not be counted in the generator's monthly totals. The 90 kg of still bottoms from the distillation process are also hazardous waste and must be counted since they were not included in the monthly total. Consequently, 'A' will not be a generator of 100–1000 kg during the month in question.

If the solvent is stored or accumulated prior to distillation, the 500 kg of the spent solvent will qualify as a hazardous waste and will be counted in 'A's hazardous waste totals for the month in which it was generated. The still bottoms will also qualify as hazardous waste, but will not be counted because the spent solvents have already been counted once. The regenerated solvent, on the other hand, will not be a solid or hazardous waste. It will remain unregulated, just like the virgin material.

(Example 2) Manufacturer A generates 120 kg of hazardous spent solvent in one month which he distills without intervening storage. The regenerated solvent is then reused. Neither the spent solvent nor the regenerated solvent is counted and "A" is not a 100–1000 kg/mo generator. Alternatively, "A" distills the spent solvent, but stores it for less than 180 days before reclamation, and reuses the regenerated solvent until spent again, and then distills it once again. The spent solvent would be counted because it was stored before reclamation, but it would only be counted once. "A" is now a 100–1000 kg/mo generator. If the spent solvent were stored for more than 180 days before reclamation, "A" would need a storage permit.

(Example 3) "A" generates 500 kg of hazardous spent solvent in one month and stores it in an earthen basin which is an impoundment, not a tank. The spent solvent is then discharged to a POTW. "A" must count the total quantity of spent solvent, as the impoundment is not a wastewater treatment unit by definition (§ 260.10), and hence, "A" is a 100–1000 kg/mo generator.

(Example 4) An automotive services center generates spent lead-acid batteries, which it sends to a battery breaker. The service center does not count the spent batteries in its monthly total because they are exempt from regulation until they reach the battery breaker. (See § 266.80(a).)

b. Generators of Acutely Hazardous Waste: Section 3001(d)(7) of HSWA states that the requirements applicable to generators of acute hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) are not affected by the HSWA amendments.[3] Thus, today's regulatory amendments will not alter those requirements applicable to generators of acutely hazardous wastes and these generators will remain subject to the exclusion limits and requirements contained in § 261.5(e). The same counting rules as those described above are applicable.

c. Generators of Non-acutely Hazardous Waste in Quantities of Less than 100 kg/mo: Section 3001 of HSWA gives EPA authority to promulgate regulations for generators of less than 100 kg of hazardous waste per month if the Administrator determines that such standards are necessary to protect human health and the environment. The Agency is not required to promulgate such regulations and it did not propose to further extend coverage of the hazardous waste program to this class of hazardous waste generator in the August 1, 1985 proposal.

In the Proposal, the Agency stated that it had no data to indicate that additional regulation of generators of less than 100 kg/mo of non-acutely hazardous waste would provide any significant additional level of environmental protection. Generators of less than 100 kg/mo of hazardous waste account for only .07 percent of the total quantity of hazardous waste generated nationally. A review of damage cases also indicated that very few incidents involved quantities below 100 kg. Consequently, none of the regulations promulgated today, with one exception, alter the existing § 261.5 provisions applicable to generators of less than 100 kg/mo. As discussed under the on-site accumulation provisions later in this preamble, the Agency has decided to modify § 261.5(g) to subject generators of less than 100 kg/mo who exceed the accumulation limit of 1000 kg to the modified standards for generators of 100–1000 kg/mo rather than to full regulation.

d. Determination of Generator Status: A number of commenters asked for clarification of the requirements that would apply to generators that do not generate hazardous waste at a uniform rate. Such "episodic generators" may generate, for example, less than 100 kg of hazardous waste one month, quantities of 100–1000 kg other months, or may periodically exceed 1000 kg in a single month.

Several commenters requested clarification of what standards would apply to these episodic generators under different circumstances. Various circumstances for which clarification was requested were raised; for example:

(1) A generator that exceeds the 100 kg/mo exclusion level periodically as a result of special operations such as tank cleaning;

(2) A generator that usually generates between 100 and 1000 kg/mo, but exceeds 1000 kg in one month;

(3) A generator that exceeds 1000 kg/mo several times and accumulates all waste in a single tank;

(4) A generator that periodically exceeds 1000 kg/mo and separates the "under 1000 kg/mo" waste from the "over 1000 kg/mo" waste.

The Agency has always taken the position that a generator may be subjected to different standards at different times, depending upon his generation rate in a given calendar month (See, *e.g.*, 45 *FR* 76620, November 19, 1980). Thus, a generator of less than 100 kg in one calendar month would be deemed a conditionally exempt generator in that month, subject only to the requirements of § 261.5; however, if in the next calendar month, he generates more than 100 kg but less than 1000 kg of any regulated hazardous waste, he is subject to all of the standards being promulgated today, as his generator status has changed. Furthermore, if he generates more than 1000 kg in any calendar month, he is deemed to be a large quantity generator, subject to all applicable standards. Thus, any non-exempts waste that is generated during a calendar month in which the 1000 kg/mo cutoff is exceeded is subject to full regulation until it is removed from the

[3] At this time, only one acute hazardous waste, dioxin, is listed outside of § 261.33(e).

generator's site. If such fully regulated waste is mixed or combined with waste exempt or excluded from regulation or waste that is subject to reduced regulation under today's final rule, then all of the waste is subject to full regulation until the total mixture is removed from the generator's site. If, on the other hand, the generator stores separately that waste generated during a month in which less than 1000 kg (but more than 100 kg) of hazardous waste is generated, from waste generated during a month in which more than 1000 kg is generated, the former is subject to today's reduced requirements, while the latter is subject to full regulation.

Therefore, generators who expect to periodically exceed the 1000 kg/mo cutoff for the reduced requirements being promulgated today should be prepared to ship their waste off-site if they wish to avoid being subject to full regulation.

Several commenters have suggested alternative schemes for determining applicable standards, all of which the Agency must reject. One commenter suggested that generators would determine their generator status on the basis of a "moving average" over a 12 month period. If, for example, a generator exceeded 1000 kg/mo for several months but averaged between 100 and 1000 kg over the course of the year, he would be subject to the reduced standards being promulgated today for 100–1000 kg/mo generators. The major problem with this approach is that generators would not be able to determine what standards they were subject to until as much as a year after they should have been complying with a specific set of requirements. For example, a generator who generates over 1000 kg the first month but who expects his moving average to fall below 1000 kg after 12 months could avoid preparing a contingency plan or complying with the other requirements of Part 262 applicable to large generators. This would also present enforcement problems, since it would be unclear which standards apply at any given point. Thus, the Agency believes that such an approach would not significantly reduce the implementation difficulties it was designed to address.

The second approach suggested was establishment of a uniform time and quantity cutoff for all generators, applying the same standards to the same quantities, regardless of monthly generation rates. Under this approach, all generators would be allowed to utilize the 180- and 270-day storage periods, provided the 6000 kg "cap" was not exceeded for all accumulated hazardous wastes so that the reduced standards of Part 262 for 100–1000 kg/mo generators would be extended to all generators who do not exceed 6000 kg on-site.

While this approach would be simpler to administer, it would be inconsistent with the approach that Congress has directed the Agency to take in developing standards for generators who produce different quantities of waste. While the Agency is authorized to consider such factors as small business impacts and management capabilities for 100–1000 kg/mo generators, it is not explicitly authorized to do so for larger generators. The Agency may not ignore in this rulemaking the fact that the statute has established generation rate as a factor in determining whether business impacts may be considered. Thus, as discussed further in Unit III.C.4., below, the Agency may not extend to all generators the same time and quantity limitations applicable to 100–1000 kg/mo generators.

C. Part 262 Generator Responsibilities

EPA is today finalizing amendments to Section 261.5 that will subject hazardous waste generators of 100–1000 kg/mo to the Part 262 generator standards and simplify a number of those requirements. This section of the preamble discusses the proposed amendments to Part 262 to relieve 100–1000 kg/mo generators of some of the administrative burden of complying with the hazardous waste regulatory program, the comments received on each proposal and the Agency's decision with respect to each of the proposed amendments.

The specific Part 262 requirements that EPA is amending for application to 100–1000 kg/mo generators are as follows:

- § 262.20 (General Manifest Requirements) is amended to exempt generators of 100–1000 kg/mo from all manifest requirements if their hazardous waste is reclaimed under certain contractual agreements provided the generator complies with specific recordkeeping requirements set forth in this section. Some modifications to this amendment are being made in response to comments.
- § 262.34 (Accumulation Time) is amended to extend the period of on-site storage allowed for 100–1000 kg/mo generators without the need to obtain interim status or a RCRA permit from 90 days to 180 (or 270) days for quantities not to exceed 6000 kg. In addition, § 262.34 is amended to specify the requirements that would apply to such on-site storage by these generators.
- A new § 262.44 to Subpart D of Part 262 is added to exempt generators of 100–1000 kg/mo from the requirements to file and maintain records of biennial and exception reports. This exemption does not apply to records pertaining to hazardous waste determinations under § 262.40(d) and the extension of retention periods under § 262.40(c).

1. Notification and Identification Number Requirements—§ 262.12

In the August 1 proposal, EPA proposed that generators of 100–1000 kg/mo be subject to § 262.12, which provides that generators not excluded under § 262.10 or the provisions of § 261.5: (1) Must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without receiving an EPA Identification Number; (2) must obtain an EPA identification number (and may do so by completing and submitting EPA form 8700–12); and (3) must not offer their hazardous waste to transporters or to treatment, storage, and disposal facilities that have not received an EPA identification number.

The majority of commenters on the requirement to obtain and use an EPA identification number supported the Agency's proposal not to exempt 100-1000 kg/mo generators from this provision. EPA believes that a centralized data base of firms subject to regulation under RCRA is essential for effective compliance monitoring and enforcement, as well as for characterizing the regulated community to provide information to Congress and to make resource projections. Use of a unique identifying number is necessary to effectively manage any large data base. Several commenters added that requiring identification numbers for all generators who are subject to substantial regulation minimizes confusion in the regulated community.

Commenters who opposed the requirement cited the Agency's cost estimate of $40.00 per generator to obtain a U.S. EPA Identification Number, the complexity of the application form, and the lack of a specific statutory requirement for Identification Numbers. However, the Agency does not believe that the requirement to obtain a U.S. EPA Identification Number is overly burdensome to these generators, given the important function which this requirement fulfills.

Some commenters who opposed the requirement cited the complexity of the EPA Form 8700–12, "Notification of Hazardous Waste Activity." The Agency does not believe that the form is overly complex. EPA Regional Offices

have already received over 28,000 applications for U.S. EPA ID numbers from generators of less than 1000 kg/mo. In some cases, these applications were prompted by requirements from transporters and facilities that handle waste from these generators. In other cases, States require identification numbers for generators of less than 1000 kg/mo. While the Agency is unaware of any instances of 100–1000 kg/mo generators being unable to complete the form, EPA has initiated a major education program through trade associations, States, and grants to local governments and others, which would widely disseminate information that will help generators comply with today's rule. The Agency has also prepared a supplemental instruction sheet to provide additional information to generators of less than 1000 kg/mo who apply for U.S. EPA Identification Numbers. These instructions will contain the EPA waste codes for wastes commonly produced by these generators. This information will allow many generators to complete the application without additional information or research. In addition, generators may call the RCRA/Superfund Hotline or the Small Business Hotline for information and assistance. These numbers are provided at the beginning of today's notice.

Some commenters suggested establishing a telephone system for obtaining identification numbers. EPA considered this kind of system in the proposal and concluded that the lack of a signed record from the waste handler would allow a high potential for confusion and misrepresentation. The Agency still believes this to be true and no commenter was able to suggest a mechanism for avoiding this.

One commenter suggested that EPA modify the application form to require generators to indicate whether they generate less than 100 kg/mo, 100–1000 kg/mo, or more than 1000 kg/mo. EPA recently modified the form to require generators to indicate whether they generate more than 1000 kg/mo or less than 1000 kg/mo of hazardous wastes.

The Agency does not believe that there is any justification for exempting "infrequent generators" from the Identification Number requirement, as suggested by one commenter. EPA believes that all 100–1000 kg/mo generators should be known to the Agency, however infrequently they fit into the category, to allot follow-up if any problems arise. Also, use of an EPA Identification Number when wastes are shipped off-site helps enforcement authorities to keep track of waste shipments.

The Agency believes that the EPA Identification Number requirement, as proposed, is the best system for ensuring that the Agency has adequate information about these new members of the regulated community. Consequently, EPA is not modifying § 262.12 for generators of 100–1000 kg/mo.

2. The Hazardous Waste Manifest System—Part 262, Subpart B

This Unit discusses the proposed modifications to the hazardous waste manifest system for 100–1000 kg/mo generators for wastes shipped off-site. The issues raised in the comments on the Proposal include the "single" versus "multiple" copy or "round-trip" manifest, the proposed exemption from manifesting for wastes shipped under certain reclamation agreements, and the applicability of the manifest waste minimization certification provisions of the HSWA.

a. Number of Copies and Use of the Manifest: The Proposal for generators of 100–1000 kg/mo of hazardous waste contained several modifications to the Uniform Hazardous Waste Manifest system. The proposed rules would have exempted 100–1000 kg/mo generators from the following requirements: 1) to compete a multiple copy manifest form (§ 262.22), 2) to retain a copy for the generators' records (§ 262.23(a)(3)), and 3) provide multiple copies of the manifest to the waste transporter (§ 262.23(b)). The effect of these proposed modifications to the manifest system would have been to exempt these generators from the "roundtrip" or "tracking" function of the manifest system (*i.e.*, establishment of a paper trail for enforcement purposes) while continuing to require that a single copy of a fully completed manifest accompany the waste shipment as a means to provide notice to subsequent handlers that the waste is hazardous. No modifications were proposed to the requirements to fully complete the manifest form, and to use established systems for obtaining forms from the appropriate State, except for a proposed elimination of the manifest document number from the required information.

These modifications to the manifest system were intended to minimize impacts on small business while still meeting the underlying goal of HSWA to protect human health and the environment. By reducing some of the paperwork requirements associated with the full manifest system, EPA believed that both of those goals could be served. In particular, EPA believed that the requirement for these generators to obtain an EPA identification number, complete a single copy of the manifest for all off-site shipments and for facilities to keep these manifests in its files created a significant legal obligation that the waste would be managed at approved hazardous waste management facilities, as required under the HSWA. The Agency believed that this legal obligation would not be significantly enhanced by requiring the use, distribution, and retention of multiple copies of the manifest form.

In requesting public comment on the issue of the "single copy" manifest system, EPA pointed out that it was not fully convinced that the relief being offered was significant enough to offset the potential confusion which the single copy system might cause, or to offset the loss of the "tracking" function of the manifest as an enforcement mechanism. EPA received extensive negative comment on the proposed amendments which have convinced the Agency that the multiple copy manifest system should be adopted in the final rules.

Many commenters asserted that exempting 100–1000 kg/mo generators from the "round-trip" hazardous waste manifest system (*i.e.* return of a signed copy by the designated facility to the generator as proof that the shipment arrived) would not significantly reduce administrative burden. Most commenters who represented both small and large businesses, State agencies and firms in the waste management industry believed that the information requested on the manifest was not particularly difficult to provide, and they did not object to the proposed requirements to provide essentially full manifest information. Many commenters argued that requiring full manifest information was appropriate for all generators, and that the preparation of multiple copies of the manifest presented no incremental burden over a single copy system since manifests are generally obtained in carbon sets, requiring no real additional effort. These commenters also pointed out that retention of a copy for the generator's files poses a minimal burden due to the limited number of shipments most 100–1000 kg/mo will need to make under the extended accumulation periods being promulgated today for these generators (See Unit III.C.4.). Given the limited number of shipments most generators will need to make to treatment or disposal facilities in a year (*i.e.* 2–4), commenters asserted that filing a manifest copy and replacing it with a copy signed and returned by the designated facility was simply not

burdensome. Furthermore, virtually all commenters, many of whom represented small business, also indicated that retention of a copy of the manifest containing signatures of the transporter and facility would be done in any case, and was essential to demonstrate that a business had met its legal responsibilities in cases where the waste is mishandled by subsequent handlers.

Another major concern of many commenters with respect to the single copy manifest system was the confusion that would result from having two different manifest systems in place for 100–1000 kg/mo generators and for generators of over 1000 kg. While some commenters representing small businesses believed that the single copy manifest system was workable and provided a real reduction in administrative burden, virtually all other members of the waste management and regulated community argued for a uniform manifest system. Many commenters representing larger corporations and firms with multiple facilities argued that a single uniform system would be the least confusing and least burdensome system. In addition, many commenters believed that different State and Federal requirements would make it extremely burdensome for many small businesses to determine which manifest system applied to them. States, waste haulers, and facilities would also have the added burden of trying to verify the generator status of those utilizing a single copy form and because of the difficulty in administering a dual system, they would simply require that all generators comply with the full system.

One commenter also argued that the Agency's proposed single copy manifest was inconsistent with Congressional intent since the hammer provisions of Section 3001(d)(8), which included a requirement for return of a signed manifest by the facility to the generator, were intended by Congress to serve as the minimum regulatory standards. However, the Agency can find no evidence in either the statute or the legislative history that would lead the Agency to this conclusion. The plain language of the hammer provision states ". . . nothing in this section shall be construed to be determinative of those standards appropriate for small quantity generators", and Section 3001(d)(6) explicitly sets out the "minimum" standards that must be included in the regulations. In addition, the legislative history of Section 3001(d) indicates that the provisions of subsection (d)(6) were to be regarded as statutory minimums rather than the hammer provisions of subsection (d)(8). See S. Rep. No. 284, 98th Cong., 1st Sess. 11–12 (1983); H.R. Rep. No. 1133, 98th Cong. 2nd Sess. 101, 103–104 (1984). Thus, the statute and legislative history provide extensive evidence that Congress gave EPA broad authority to establish whatever standards it deemed appropriate for these generators, and to vary the hazardous waste standards to minimize burden, consistent with protection of human health and the environment.

A number of commenters raised concerns with respect to the ineffectiveness of the single copy manifest system in ensuring that waste shipments are properly tracked from generator to transporter to facility. Under the proposed manifest system, a generator would be required to complete a single copy of the manifest and to give it to the transporter who in turn would be required to sign it and turn it over to the designated facility upon delivery of the waste shipment. The Agency felt that this chain created a substantial legal obligation that the waste would be managed at a Subtitle C facility. However, a number of commenters asserted that such a system would serve only to encourage unscrupulous transporters to either alter manifest information or simply dump the waste illegally, since the generator or others do not have any record of his accepting the waste shipment. A number of States were concerned that the absence of multiple copies of the manifest in the records of the generator, transporter, and facility would completely eliminate the ability of EPA or the States to enforce the requirement that the waste be managed at Subtitle C facilities. Further, these commenters felt that, whether or not the Agency takes an aggressive enforcement posture with respect to 100–1000 kg/mo generators, the mere existence of the multiple signed copies of a manifest serve as an essential incentive to properly manage the waste.

The Agency finds persuasive the arguments presented by commenters that requiring only the single copy manifest does not offer significant regulatory relief. The Agency has also concluded, based on public comment, that the single copy system may be insufficient to meet the statutory mandate to promulgate rules for 100–1000 kg/mo generators which are sufficient to protect human health and the environment.

The difference in burden between a single copy of the manifest and a multiple copy of the manifest, both containing essentially full information, appears to be negligible, so there is no real reduction in burden from the single copy system. Retention of a manifest copy by the generator is also minimally burdensome and is in the generator's best interest. The absence of a round-trip or multiple copy manifest could encourage, rather than protect against, mismanagement of these wastes. Most importantly, requiring the generator to retain a copy for his records and provide multiple copies of the manifest to the transporter provides an essential incentive for all parties to fulfill their responsibilities under RCRA. Thus, the Agency has decided not to adopt the single-copy manifest system, as proposed.

Consequently, generators of 100–1000 kg/mo will be subject to all of the requirements of Subpart B of Part 262 with respect to the Uniform Hazardous Waste Manifest except for certain waste reclamation shipments as provided in Section 262.20, discussed below. In addition, these generators will be subject to the recordkeeping provisions of Subpart D of Part 262 with respect to manifest copies but will not be subject to the associated exception and biennial reporting requirements, as discussed in Unit III.C.3, below.

b. Manifest Exemption for Certain Reclamation Shipments: In the Proposal, EPA proposed to exempt generators of 100–1000 kg/mo from all of the manifest requirements of Part 262, Subpart B, provided the waste was reclaimed under certain specific conditions, including:

1. The generator would be required to have a written agreement with a recycling facility to collect and reclaim a specified waste and to deliver regenerated material back to the generator at a specified frequency;

2. The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator must be owned and operated by the reclaimer of the waste;

3. Either the generator or the reclaimer must retain title to the material at all times; and

4. The generator and transporter/reclaimer must comply with specific recordkeeping requirements.

Specific regulatory requirements which would have to be met in lieu of the manifest requirements were proposed as follows:

1. A copy of the reclamation agreement is kept in the files of both the reclaimer and the generator for a period of at least three years;

2. The reclaimer/transporter records (for example, on a log or shipping document) the following information (which would be required of

transporters in a proposed amendment to § 263.20):

- The name, address and EPA identification number of the generator;
- The quantity of waste accepted;
- All DOT required shipping information;
- The date the waste is accepted by the transporter;

3. The above record accompanies the waste as it is shipped from generator to recycling facility; and

4. The reclaimer/transporter keeps these records for at least three years.

In proposing this exemption, EPA indicated that such agreements satisfied the Agency's concerns that subsequent handlers of the waste would have sufficient notification and knowledge of the hazardous nature of the wastes being handled and that the wastes would be tracked properly from the generator to the reclaimer and would not be mismanaged. In addition, the Agency believed that such an exemption would encourage beneficial recycling activities and would avoid discouraging current operations of this nature by not imposing paperwork obligations that have no corresponding environmental benefit. The Agency requested comment on the proposed manifest exemption and sought comment on other situations that might warrant reduced manifest requirements.

While some commenters opposed the proposed manifest exemption as providing an opportunity for "sham recycling", most commenters suggested that the exemption be expanded to cover all recycling situations or to cover a broader scope of activity than that proposed. Some commenters felt that the narrow nature of the exemption would afford some segments of the recycling industry an unfair competitive advantage. One commenter suggested that the exemption apply to reclamation agreements with firms that collect wastes for recycling but do not reclaim the wastes at their own facility, but rather, ship them via a licensed hazardous waste hauler to a separately owned and operated reclamation facility. This commenter argued that the same degree of protection would be afforded under these circumstances as under the proposed system since the waste would still be transported and reclaimed at licensed or permitted facilities. Other commenters argued that the exemption should also apply to legitimate recycling situations where ownership of the material may in fact change hands, such as cases where reclaimed material is not returned to the original generator but is instead sold to a third party. One commenter argued that the mere existence of a contract provides sufficient notice to subsequent handlers of the nature of the waste and that adequate economic incentives exist in any recycling situation to ensure proper management.

The proposed restrictions on applicability of the manifest exemption were intended to serve the same functions that the manifest system does. The most important of these, the "tracking" function of the manifest, must be replaced with adequate contractual relationships and commercial incentives if the exemption is to meet the test of protecting human health and the environment while reducing administrative burden.

The Agency has considered various ways in which to expand the applicability of the exemption, including those suggested by commenters, and has concluded that unless the following proposed restrictions are retained, the exemption would allow unscrupulous persons to easily avoid the hazardous waste management system:

First, the Agency believes that the requirement that the generator and reclaimer have a written agreement for collection and reclamation of a specified waste and for redelivery of regenerated material at a specified frequency is essential. Such an arrangement (usually called a "tolling" arrangement) provides tracking and accounting of waste in place of the manifest system in waste disposal situations. A simple reclamation contract without return of regenerated material to the generator would provide no tracking of the waste, since the generator would have no incentive to check on subsequent waste handling after he turns it over to the transporter or reclaimer. In addition, allowing the exemption in any contractual situation would make no distinction between recycling activities and off-site waste disposal activities, where normally there are also contractual obligations. Requiring return of regenerated material as part of the contractual relationship places the proper incentive on the reclaimer to actually reclaim material for delivery to the generator (otherwise he would be in breach of the contract) and on the generator to scrutinize the practices of the reclaimer. Unlike off-site waste disposal, the generator would have some vested economic interest in ensuring proper management of the waste.

Second, the Agency believes that the vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator must be owned and operated by the reclaimer. This requirement precludes third parties not bound by the reclamation agreement (*i.e.*, independent transporters) from entering the closed loop created by the tolling arrangement. This is necessary to ensure that the waste is not mismanaged. Even if a generator were to ship his waste via a licensed hazardous waste hauler, he would have no assurance that the waste would actually be delivered to the reclamation facility with which he has contracted. In such a third-party transporter situation, where the transporter has no vested interest in proper handling and management of the waste, the Agency would deem it necessary to impose additional significant recordkeeping requirements on all handlers of the waste, and possibly impose additional requirements on the generator. This would defeat the purpose of the manifest exemption, and may even impose greater burden than the manifest itself.

Third, the proposed recordkeeping requirements are an essential ingredient to providing the "paper trail" no longer provided by the manifest system.

While the Agency originally considered the retention of ownership requirement to be another essential element due the vested interest it created (*i.e.*, continuing legal responsibility for the material), a second look at this requirement, in light of comments received, has convinced EPA that it is unnecessary. The requirements of tolling and that the reclaimer and transporter be the same entity appear to adequately address the same concerns underlying the ownership requirement. While the vested interest in proper management of the waste may be theoretically increased if ownership is retained by the reclaimer or generator, it does not appear to add significantly to the economic interest created by the tolling arrangement. In addition, the concern that third parties would break the chain between generator and reclaimer is addressed by the requirement that the reclaimer and transporter be one entity. Moreover, the retention of ownership requirement may result in needless restriction on the type of commercial arrangements allowed between generators and reclaimers (*e.g.*, where a reclaimer buys the waste from the generator and sells regenerated material back to the generator or to other parties). Therefore, the Agency is deleting the ownership requirement from the final rule.

A number of commenters suggested that the Agency be more explicit in the regulation with respect to the periods of retention of the contractual agreements and the transportation logs since the proposed rule did not specify when the

3-year recordkeeping period was to begin. Consequently, the Agency is modifying the regulatory language of this amendment to specify that a copy of the reclamation agreement must be kept in the generator and reclaimer/transporter's files for 3 years after the expiration of the agreement. A copy of the collection log or shipping paper for each shipment must be kept in the transporter's files for a period of 3 years after the date of the shipment.

Several commenters also requested clarification on the applicability of the proposed exemption to waste mixtures where most, but not all, of the constituents were reclaimed. In the specific example cited, the Agency was asked to clarify whether spent cartridge filters used in dry cleaning operations would qualify for the exemption, even though only a portion of the waste constituents are actually reclaimed. The Agency believes such waste mixtures should also qualify for the manifest exemption, provided that the other conditions of the exemption are met. There is no basis for distinguishing between, for example, bulk spent solvents that have impurities removed by a reclaimer, which impurities must be subsequently managed as hazardous waste, and waste constituents in a mixture that may not be reclaimed and must be disposed of as a hazardous waste by the reclaimer. In both cases, the manifest exemption for shipments to the reclaimer would not affect the responsibility of the reclaimer to properly manage the residues from the reclamation process.

Another commenter requested clarification on whether the requirement that reclaimed material be returned to the generator limited the exemption to those situations where the generator received back the *same* waste sent for reclamation. The requirement that the generator receive regenerated material back from the reclaimer was intended to ensure that the generator maintain a vested interest in ensuring that the reclamation facility was in fact engaged in bona fide recycling. However, the Agency recognizes that most reclamation is conducted through commingling of relatively small quantities of recyclable materials from a number of generators. The manifest exemption only requires that the generator receive regenerated material back from the reclaimer, not that it be the identical material as was shipped to the reclaimer. The only requirement for receiving regenerated material back is that it be of the same *type* or *product specification* as the material originally shipped for reclamation. While the Agency recognizes that this requirement will limit the exemption to situations where the generator purchases reclaimed solvent from one source, we do not agree with those commenters who believe this provides an unfair competitive advantage to firms with reclamation facilities. While the manifest exemption may reduce the paperwork burden for some firms who have waste materials collected on a frequent basis, the Agency does not believe that it provides such a reduction in burden that companies qualifying for the exemption would be able to reduce costs significantly.

Other commenters asserted that the proposed exemption would be appropriate for generators of more than 1000 kg/mo who recycle their wastes under the same circumstances. While the Agency recognizes that some of the regulatory amendments being promulgated today for generators of 100–1000 kg/mo could be considered for larger generators, to do so would require extensive review of the existing hazardous waste management system and case-by-case determinations as to the appropriateness of specific requirements. Furthermore, the elements that the Agency must consider in adopting rules for small quantity generators, including the economic impacts of full regulation on small businesses, are not necessarily relevant to the rules applicable to larger quantity generators. Therefore, the Agency is promulgating the manifest exemption today only for 100–1000 kg/mo generators.

c. Waste Minimization: Under section 3002(b) of HSWA, all generators must certify on the manifest required under subsection (a)(5) that they have in place a program to reduce the volume or quantity and toxicity of the waste they generate to a degree determined by the generator to be economically practicable. Generators must also certify that their current method of management is the most practicable method available to minimize present and future threat to human health and the environment.

On July 15, 1985, EPA published a rule codifying a number of interim HSWA requirements (50 FR 28702). A revised Uniform Hazardous Waste Manifest Form (EPA Form 8700–22) was included in the Appendix to Part 262, and contained a revised certification statement incorporating the waste minimization provision. In the Codification Rule, EPA explained that the waste minimization provision did not apply to small quantity generators generating less than the quantities of acutely hazardous waste specified in § 261.5 or to generators of less than 1000 kg of other hazardous waste, unless the generator accumulated quantities which exceeded 1000 kg, and thus became subject to Part 262. The waste minimization requirements were not applicable to these generators because section 3002(b) refers to "the manifest required by [section 3002] subsection (a)(5)" and the interim manifest provisions are imposed by section 3001(d), not 3002(a)(5). However, because section 3001(d) of RCRA requires EPA to establish standards for 100–1000 kg/mo generators under sections 3002, 3003, and 3004, the waste minimization certification requirements would apply to 100–1000 kg/mo generators upon promulgation of such standards. Since EPA did not propose to exempt 100–1000 kg/mo generators from the waste minimization certification requirements of section 3002(b) when it proposed rules for 100–1000 kg/mo generators on August 1, 1985, these generators would be required to certify compliance with the waste minimization provision when the standards under today's rule become effective.

EPA believes that requiring 100–1000 kg/mo generators to comply with the waste minimization certification provision imposes little or no additional administrative or technical burden and could, in fact, have real environmental benefit. However, since the Agency did not provide the public with an opportunity to comment on the appropriateness of this provision for 100–1000 kg/mo generators, EPA is publishing a separate notice elsewhere in today's **Federal Register** which explicitly requests comment on the potential burden which this requirement could impose on generators of 100–1000 kg/mo. The specific reasons for proposing to apply the waste minimization certification provision to these generators are described in detail in that notice. As noted in the other **Federal Register** notice, EPA will accept public comment on this provision for 30 days. If, after consideration of the comments, EPA determines that no exemption from the waste minimization certification requirement is warranted at this time, 100–1000 kg/mo generators will need to comply with the requirement by operation of law as of the date that the other Part 262 requirements take effect (*i.e.*, six months from today).

3. Recordkeeping and Reporting—Part 262, Subpart D

In the proposed rules for generators of 100–1000 kg/mo, EPA attempted to

significantly reduce the recordkeeping and reporting burden on these generators, consistent with the statutory goals of protecting human health and the environment while reducing impacts on small business to the extent feasible. Specific proposed modifications to the recordkeeping and reporting requirements of Subpart D of Part 262 included:

- A proposed exemption from the recordkeeping requirements of § 262.40(a) for manifest retention and § 262.40(b) dealing with retention of Biennial and Exception Reports;
- A proposed exemption from the reporting requirements of § 262.41 (Biennial Reports) and § 262.42 (Exception Reports).

This section of the preamble addresses the comments received on these proposed modifications to recordkeeping and reporting requirements and the Agency's final decision in each of these areas.

a. Recordkeeping—§ 262.40: As noted in Unit III.C.2. of today's preamble, EPA received extensive comment on the proposed single copy manifest system which proposed to eliminate the need for retention of manifest copies as well as requirements for the use of a multiple copy manifest when shipping waste off-site. A large number of commenters were generally supportive of efforts to reduce recordkeeping requirements to the maximum extent feasible, and many felt that no recordkeeping requirements whatsoever should be imposed on 100–1000 kg/mo generators. However, many of these same commenters, when discussing the proposed single copy manifest, pointed out that most generators would opt to retain a copy of the manifest for their own records, in order to have a record of their waste management shipments, regardless of whether it was required by EPA. While some of these commenters did not want the retention of manifest copies to be required, they nevertheless felt such recordkeeping to be prudent. Other commenters believed that retention of manifest copies should be required, and that such a requirement does not impose an unreasonable burden since, as noted above, virtually all generators would retain a copy for their records in any case. These commenters also asserted that the existence of a copy of the manifest in the generator's records, containing the signature of the transporter and ultimately the signature of the designated facility when the manifest copy was returned, was essential.

The Agency agrees with these commenters that retention of manifest copies should be required. Existence of such records may be the only defense a generator would have in enforcement actions or other litigation if the single manifest were to be changed by the transporter or if the waste is mismanaged. The existence of these records would allow a generator to demonstrate to enforcement personnel, should a problem in transporting or subsequent handling arise, that the generator had done his best to ensure proper management by fulfilling his generator responsibilities. While such proof would not eliminate any liabilities the firm may otherwise have under RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), it could reduce the danger of the generator being considered the primary responsible party in a Superfund action. Also, as one commenter pointed out, given the large number of States, transporters and treatment, storage, and disposal facilities that would insist upon use of the full manifest system, it would not be appropriate for EPA to, in effect, encourage generators to deliver their only copy of the manifest to a transporter.

EPA agrees with those commenters that believe that retention of a copy of a manifest, signed by the designated facility and the transporter, does not pose an unreasonable burden for 100–1000 kg/mo generators, who will most likely be shipping only 2–4 shipments per year. This is particularly true in light of the generally universal agreement on the need for generators to retain a copy for their own protection. EPA also believes that retention of manifest copies provides the necessary incentive for all wastes handlers to execute their responsibilities in the manner required by state and Federal waste management requirements. Therefore, the Agency is not exempting 100–1000 kg/mo generators from the requirement to retain a copy of each manifest in their files for a period of three years from the date of shipment or until a signed copy of the manifest is returned by the designated facility and is substituted for the original manifest for a period of three years.

b. Exception Reports—§ 262.42: As discussed in the proposal, EPA proposed to exempt 100–1000 kg/mo generators from the requirement to file an exception report with EPA if the generator did not receive a signed copy of the manifest back from the designated facility within forty-five days of acceptance of the waste shipment by a hazardous waste transporter (§ 262.42). The proposed exemption from this requirement was based simply on the lack of manifest copies under the proposed single copy manifest system. Under the proposed rule, a copy of the manifest was not required to be returned to the generator by the facility, so that there would have been no basis for a generator to make a determination as to whether or not his shipment actually arrived at the designated facility, and thus no basis for an exception report.

In deciding to return to a full manifest system for 100–1000 kg/mo generators, the Agency deemed it appropriate to evaluate whether also requiring exception reporting would impose an unnecessary administrative burden on these generators in light of the environmental benefit that would be gained. First, the Agency considered the responsibilities that would be imposed on the generators, which would include establishment of an internal tracking system, through filing or by computer, to allow the generator to determine whether a return copy of the manifest is overdue. In addition, the generator must contact the transporter and/or permitted facility to determine the status or location of the waste and manifest, and if unsuccessful, must file a report with a copy of the manifest and a cover letter describing his efforts to locate the waste and the results of his efforts. Several commenters objected to imposition of these requirements and argued that this is the very type of paperwork requirement that Congress intended EPA to scrutinize before applying to small businesses.

Second, the Agency considered the extent to which such reporting is necessary to protect health and the environment. Many commenters contended that the exception reports were essential to alert EPA and the States to lost shipments, and the Agency agrees that the exception report requirement is an important link in the full manifest scheme.[4] However, the Agency has received very few exception reports since the requirement was adopted, leading it to believe that the tracking function of the multiple-copy manifest system is also working as a self-policing mechanism, ensuring that

[4] One commenter cited legislative history as support for its argument that the modified exception reporting requirement of section 3001(d)(8) must be included in the regulations because Congress deemed it to be a minimum requirement. The legislative history of this provision indicates, however, that this was considered to be a minimum requirement only in the event that EPA did not promulgate final regulations by March 31, 1986, and that EPA is authorized to vary the manifesting and reporting requirements as long as the notice requirement is met. See S. Rep. No. 284, 98th Cong., 1st Sess. 11–12 (1983); H.R. Rep. No. 1133, 98th Cong. 2nd Sess. 103 (1984).

wastes reach their proper destination. In addition, the smaller relative risks associated with the smaller quantities of waste generated by 100–1000 kg/mo generators do not necessitate the same degree of double-checking needed for large quantity generator shipments.

In balancing the utility of the exception reporting requirements with the need to minimize the administrative and paperwork burden on small businesses, the Agency has concluded that its decision to require the multiple copy manifest system for 100–1000 kg/mo generators will provide sufficient assurance that waste shipments reach their proper destination, and that the incremental environmental benefits that may be gained by imposing the exception reporting requirement on these generators are outweighed by the associated administrative burdens. The capabilities of small businesses to develop and maintain internal tracking and follow-up systems are limited, and could prove to be very burdensome, especially where such follow-up reporting is seldom necessary. Consequently, while the Agency is today requiring generators of 100–1000 kg/mo to use a multi-part manifest form and requiring designated facilities to return a signed copy to the generator, the Agency has decided not to require generators of 100–1000 kg/mo to comply with the exception reporting provisions of Part 262. However, this exemption should not be construed as relieving the generators of the responsibility of assuring that their wastes are managed at Subtitle C facilities. This obligation, along with CERCLA liability should the waste ultimately be mismanaged, remains. Therefore, while EPA is today exempting generators of 100–1000 kg/mo from the *requirement* to file an exception report under § 262.42, it is specifically *encouraging* generators to perform the necessary follow-up to ensure that their waste shipments reach the designated facility. Should a shipment turn out to be truly lost, it will be in the generator's interest to send a copy of the manifest along with a brief explanatory note to EPA or the authorized State Agency in order to reduce the likelihood that the generator would be held solely responsible in an enforcement or Superfund action.

c. Biennial Reports—§ 262.41: Section 262.41 requires a generator who ships waste off-site to submit a biennial (*i.e.*, every other year) report to the Regional Administrator by March 1 of each even numbered year setting out the quantities of wastes generated during the previous odd numbered calendar year and the disposition of the wastes generated.

EPA proposed to exempt generators of 100–1000 kg/mo from the requirement to complete, file, and retain copies of a biennial report. The Agency's rationale for this exemption was based on four points. First, the extent of error in State summary reports used to compile nationwide waste generated by all small quantity generators. As a result, the value of the data from reports that would be filed by 100–1000 kg/mo generators would not signficantly add to the value of the reports and the burden imposed would far outweigh the benefits to be gained. Second, the Agency explained that the large number of reports it would receive would far outweigh the agency's administrative ability to make use of the reports. Third, under the proposed single copy manifest system, generators would not have had the manifest copies that serve as the basis for preparation of biennial reports. Finally, the Agency explained that information on wastes generated by 100–1000 kg/mo generators would still be available from reports required to be filed by treatment, storage, and disposal facilities.

Several States submitted comments which generally favored retention of the biennial report requirement for 100–1000 kg/mo generators. Although generators would have available to them the manifest information needed to prepare biennial reports under today's final rule imposing the multiple copy manifest, the remaining reasons for proposing this exemption remain valid. In addition, EPA received extensive comment supporting the proposed exemption from biennial reporting requirements as an appropriate means of reducing administrative burden without sacrificing protection of human health and the environment. The Agency agrees that this exemption is appropriate.

One State specifically suggested that EPA require biennial reporting from all generators who generate more than 6000 kg or 12,000 kg in a calendar year and specifically requested clarification of the application of biennial report requirements to "episodic generators" (*i.e.*, generators that produce quantities of hazardous waste that place them in different generator categories from month to month). The Agency does not believe any benefit would be gained by establishing a new generator category based upon a yearly generation rate. Doing so would only add further confusion to an already complex regulatory scheme, and would be inconsistent with the month-to-month approach already established by statute and regulation. Also, episodic generators must comply with the biennial report requirements for those months in which they are "large quantity generators"; that is, they must submit reports on their hazardous waste activities for those months in which their generator activities have changed and as long as the fully regulated waste remains on-site.

Thus, the Agency is today finalizing the proposed exemption from the biennial report requirements of § 262.41 for generators of 100–1000 kg/mo, including an exemption from the provisions of this section requiring a description of efforts taken during the reporting year to minimize waste generation.

4. On-site Accumulation—§ 262.34

As discussed in Unit I.B.I. of today's preamble, generators of 100-1000 kg/mo are no longer conditionally excluded in Section 261.5 from the bulk of the hazardous waste regulatory program. Instead, these generators, like other regulated hazardous waste generators, are subject to the requirements of Parts 262–266, 270, and 124, to the extent those requirements apply. for generators of 100–1000 kg/mo, however, these requirements have been modified in certain instances to reflect their small business nature as well as specific statutory directives.

Section 262.34 contains the requirements for generators that accumulate hazardous waste on-site. Under § 262.34(a), a generator may accumulate hazardous waste on-site in tanks or containers in any quantity for up to 90 days without the need to have interim status or obtain a storage permit under RCRA (or comply with Parts 264 or 265) provided the generator complies with the limited requirements of § 262.34. These requirements specify that: (i) the date upon which the period of accumulation begins is clearly marked on the tank or container; (ii) the tank or container is labeled with the words "Hazardous Waste"; (iii) the generator complies with Subparts C and D of 40 CFR Part 265 (Preparedness and Prevention and Contingency Plan and Emergency Procedures, respectively); and iv) the generator complies with Subpart I of 40 CFR Part 265 if the waste is placed in containers or with Subpart J of 40 CFR Part 265 if the waste is placed in tanks, and he complies with the personnel training requirements of § 265.16.

The proposed rules for generators of 100–1000 kg/mo would have added a number of modifications to the § 262.34 provisions, for 100–1000 kg/mo generators. This section of the preamble

discusses those proposed amendments and the issues raised by commenters to the proposed rules.

a. Time and Quantity Limitations: Section 3001(d)(6) directs EPA, in developing regulations for 100–1000 kg/mo generators, to allow storage of hazardous waste on-site without the need for interim status or a RCRA permit for up to 180 days. In addition, EPA is directed to allow these generators to store up to 6000 kg of hazardous waste for a period of 270 days without the need for interim status or a permit if the generator must ship or haul his waste greater than 200 miles. While no specific quantity cutoff was established for 180 day accumulation in section 3001(d) a de facto limitation of 6000 kg exists. (This is due to the fact that a 100–1000 kg/mo generator could produce no more than 6000 kg in a 180 day period without exceeding 1000 kg/mo at least once during that period, and thus become fully regulated under Part 262 instead of under the modified standards being proposed today for 100–1000 kg/mo generators.) EPA is today amending § 262.34 to allow for such on-side accumulation in tanks and containers by 100–1000 kg/mo generators for up to 180 days (or 270 days for long-distance transport) without the need to obtain interim status or a RCRA permit, in accordance with Section 3001(d)(6) of the HSWA, provided the requirements of § 262.34 are met.

A significant number of commenters suggested variations on the proposed time and quantity limitations for on-site accumulation. A number of States supported the application of the existing 90 day accumulation period to these generators in order to maintain consistency and reduce confusion. Still other commenters argued that the time limit for accumulation for 100–1000 kg/mo generators should be extended to a full year in order to allow economical shipments, provided the 6000 kg cutoff was not exceeded. Some commenters even favored unlimited accumulation time and quantity for these generators.

Because the time and quantity limitations are established in RCRA section 3001(d)(6), the Agency believes that it carries a heavy burden in varying these limitations. Except for emergency circumstances, as discussed below, the Agency does not believe that this burden has been met.

While the 6000 kg cap arguably applies only to the 270-day storage period, the Agency believes that the better interpretation is that the 6000 kg cap applies to both storage periods. As noted above, a maximum of 6000 kg of hazardous waste could be accumulated during a 180-day period if the generator never generated more than 1000 kg in any given calender month. Consequently, any quantity in excess of 6000 kg would mean that the generator was subject to full regulation at least one month during the 6-month period. Therefore, it is logical to apply the accumulation "cap" of 6000 kg to both storage for 180 as well as 270 days. In addition, as explained in the August 1 proposal, the total quantity of 6000 kg remains the same whether or not the waste is accumulated on-site for 180 or 270 days and the Agency could see no substantive difference in potential risk. Finally, EPA believed that the high cost of transportation would dictate that the waste be managed at the closest facility, regardless of the presence or absence of regulatory criteria.

One State commenter felt that the lack of specific criteria for allowing 270-day accumulation could have the effect of encouraging continued reliance on land disposal as there will be decreasing numbers of viable land disposal facilities in the future, and the remaining facilities will increasingly be located more than 200 miles away from the generator. This commenter suggested that EPA allow accumulation for only 180 days for wastes that are destined for disposal but allow accumulation for 270 days for wastes which will be treated or recycled. EPA does not believe that it has authority to make such a distinction since Congress has already established the condition that must be met for accumulation for 270 days: where the waste must be shipped over 200 miles. If the closest facility is a disposal facility located greater than 200 miles from the generator, to allow this generator only 180 days would directly conflict with the plain language of the statute.

Another commenter expressed concern over the enforcement of 180- or 270-day accumulation periods in the absence of any specific criteria. This commenter felt that an inspector would have no way of ascertaining whether wastes which have been stored longer than 180 days but less than 270 days are destined for management at a disposal facility or a treatment or recycling facility that is located further than 200 miles away. This commenter was particularly concerned that the lack of multiple copies of the manifest would eliminate the ability of the inspector to at least make a judgment based on the generator's previous waste shipments.

The Agency has decided not to establish specific criteria for determining if a generator may accumulate hazardous wastes on-site for 180 or 270 days. EPA believes that such criteria would not serve any useful purpose. Under today's final rule, however, generators would retain copies of manifests which could be used to ascertain the location of the facility which the generator has utilized for previous shipments. Therefore, manifest copies (or reclamation agreements) will be available as a means to check the actual location of the destination facility. In addition, the Agency was concerned that establishing criteria for demonstrating that the closest facility was greater than 200 miles from the generation site would be unnecessarily confusing and could have the perverse effect of causing waste to go to less desirable management practices (*e.g.*, where a disposal facility is located within 200 miles while a recycling facility is located over 200 miles from the generator, the generator could be forced to utilize the less desirable disposal facility). The absence of specific criteria will not pose an unreasonable obstacle to enforcement of the accumulation provisions. Thus, EPA is finalizing § 262.34(e) as proposed.

It should be noted that generators that have multiple waste streams which are managed at different facilities may actually be subject to different accumulation time limitations for the different waste streams. A generator may accumulate some wastes for 180 days if they will be managed at a facility under 200 miles away and other wastes for 270 days provided the generator never accumulates a total quantity of hazardous waste on site that exceeds 6000 kg and provided the generator complies with all applicable accumulation provisions.

Today's rules also apply the existing provisions of § 262.34(b) requiring compliance with Parts 264, 265, and 270 to 100–1000 kg/mo generators that exceed the time limitations in proposed § 262.34(d) and (e). Under the existing rules, and under the rules promulgated today, generators that exceed a time or quantity limitation must comply with the interim status requirements and obtain a storage permit. These requirements, as they would apply to 100–1000 kg/mo generators, are contained in new § 262.34(f).

An additional component of the proposed § 262.34(f) amendments would have allowed an additional 30-day accumulation period for generators of 100–1000 kg/mo at the discretion of the Regional Administrator where he determines that such an extension is warranted due to temporary, unforeseen, and uncontrollable circumstances. This amendment was based on an identical provision currently applicable to large quantity

generators. While most commenters on this amendment were supportive of the emergency extension provision, one commenter argued that the storage periods specified in the statute were clearly the maximum periods allowed. The Agency believes that Congress never intended for the Agency to promulgate rules so inflexible that they could not take into account, and accommodate, *legitimate* emergency circumstances. In addition, the Agency assumes that the emergency extension provision is consistent with Congressional intent since it did not explicitly preclude such an extension when it adopted section 3001(d)(6). Therefore, the Agency is promulgating this provision as proposed.

Several commenters requested the Agency to clarify the applicability of the "satellite provision" of 40 CFR 262.34. This provision allows generators to accumulate up to 55 gallons of non-acutely hazardous waste in "satellite" areas where the waste is generated in industrial processes without complying with the 90-day accumulation standards. See 49 FR 49568 (Dec. 20, 1984). Satellite areas are those places (under the control of the operator of the process generating the waste) where wastes are generated in the industrial process and must initially accumulate prior to removal to a central area. Within three days of accumulating over 55 gallons, the generator is required to comply with all applicable RCRA requirements for further management of any waste in excess of 55 gallons. When the satellite rule was promulgated, generators of less than 1000 kg/mo of non-acutely hazardous waste (or less than 1 kg/mo of acutely hazardous waste) were not subject to any of the requirements of the satellite accumulation rule. See 49 *FR* 49568–49570. This is because these generators were exempt from most of the hazardous waste management regulations, including Part 262. However, under today's rule, only generators of less than 100 kg/mo will remain exempt from the regulations. Therefore, 100–1000 kg/mo generators may accumulate up to 55 gallons of non-acutely hazardous waste in satellite areas without meeting the storage requirements being promulgated today, so long as the requirements of § 262.34(c) are met. Of course, as soon as the 55 gallon limit has been exceeded in any satellite area, any excess waste is subject to all applicable RCRA requirements within 3 days. This means that the 180/270 day on-site accumulation provision for 100–1000 kg/mo generators applies to any excess waste three days after the 55 gallon limit has been exceeded.

Two commenters who operate off-shore drilling facilities requested clarification on the applicability of this provision to off-shore facilities and central collection points located on-shore. These commenters cited their desire to avoid manifesting or using transporters with EPA Identification numbers in shipping wastes from off-shore facilities to on-shore collection areas.

The satellite provision was intended to provide for extended accumulation of waste in specific areas of generation to allow for more economical transporting of waste within one site. The applicability of this provision does not address the extent to which a generator must comply with Parts 262 and 263 when it is shipping wastes off-site. EPA does not deem off-shore facilities and on-shore collection facilities to be "on-site", or the same site, as defined by 40 CFR 260.10. To the extent that each facility has various points of waste generation, the satellite provision would apply; however, as in any off-site hazardous waste shipment, the requirements of Parts 262 and 263 must be met when wastes generated at each off-shore facility are transported to an on-shore collection or storage facility.

b. Standards Applicable to On-site Accumulation: EPA proposed to modify certain of the requirements for on-site accumulation by 100–1000 kg/mo generators in order to simplify the requirements for contingency plans and emergency procedures, and personnel training (contained in Part 265, Subpart D, and § 265.16). The specific amendments to § 262.34 would be contained in new paragraphs (d), (e), and (f), specifying the particular requirements applicable to on-site accumulation by generators of 100–1000 kg/mo. No modifications were proposed to the standards for storage in containers and tanks (Part 265, Subparts I and J) or to the requirements for preparedness and prevention contained in Subpart C of Part 265. EPA indicated that it believed these standards were appropriate and necessary and not unduly burdensome. Several commenters have objected to the apparent inconsistency between application of the existing accumulation provisions of § 261.5 and § 262.34 and the proposed standards under Section 3001(d) of the HSWA. Under the existing rules for conditionally exempt small quantity generators under § 261.5 and the accumulation provisions of § 262.34, generators who either generate quantities above specific cutoffs *or who accumulate quantities above those cutoffs over any period of time* become subject to additional requirements. Thus, if the proposed rules were to be finalized, generators of less than 100 kg/mo who accumulated over 1000 kg/mo would be subject to full regulation under Part 262, including a 90 day accumulation time limit followed by permitting requirements for longer on-site storage. Also, if more than 1 kg of acutely hazardous waste were accumulated, full Part 262 standards would apply, including a 90 day accumulation time limit followed by permitting requirements for longer on-site storage. Conversely, generators of 100–1000 kg/mo would be allowed to accumulate up to 6000 kg for up to 180 or 270 days and be subject to the specially reduced standards being promulgated today rather than full Part 262 regulation.

A number of commenters pointed out that generators who fall into different generator categories could be subject to different standards for essentially the same quantities of the same wastes. For example, a generator of just over 1000 kg/mo would be subject to full regulation as would a generator of just under 1000 kg/mo who happens to accumulate above 1000 kg. These regulations include full contingency planning and personnel training (as well as exception and biennial reporting). At the same time, a generator of between 100 and 100 kg per month may accumulate up to 6000 kg and be subject to the special standards being promulgated today, including reduced contingency planning and personnel training requirements and exemptions from exception and biennial reporting. Thus, 6000 kg of hazardous waste could be subject to lesser standards than quantities closer to 1000 kg/mo. Substantial confusion may also result in determining which storage standards apply, when, and for how long. The confusion is particularly troubling for so called "episodic generators" that may move from one generator category to another from month to month. (See Unit III.B.2.e.)

A number of commenters suggested a variety of alternatives schemes for eliminating the inequity and the confusion, including applying the reduced storage standards proposed for 100–1000 kg/mo generators to all quantities of waste accumulated up to 6000 kg., regardless of the source of the waste. These commenters believed that such a scheme would greatly simplify compliance and enforcement since quantity of waste would be the only

criteria needed in determining what storage standards should apply.

The Agency agrees that, in theory, an approach that uniformly applies the same requirements to the same quantities of waste has some merit. However, as discussed above, Congress has directed EPA to consider varying the standards for 100–1000 kg/mo generators only, and to consider their small business nature in determining which standards are appropriate for on-site accumulation. EPA is directed to relieve these generators of unnecessary burden, to the extent feasible, and consistent with protection of human health and the environment. Given that Congress has not extended such economic considerations to large generators, EPA is not authorized to vary applicable storage standards, if they are necessary to protect human health and the environment. EPA has already determined that the existing storage standards applicable to generators of more than 1000 kg/mo are necessary to reduce risks sufficiently. Therefore, EPA is retaining the existing standards for these generators.

With regard to generators of less than 100 kg/mo, EPA has more flexibility because they fall within the "small business" category that Congress was concerned about. The Agency decided in the proposed rules not to modify the accumulation provision for generators of less than 100 kg/mo because such a generator would need to accumulate waste for at least 10 months before exceeding 1000 kg. However, it appears to be inconsistent with Congressional intent that small businesses producing less than 100 kg/mo should be subject to more stringent accumulation standards than 100–1000 kg/mo generators for quantities between 1000 kg and 6000 kg. Therefore, EPA is today finalizing an amendment to § 261.5 that will subject generators of less than 100 kg/mo to the same provisions of § 262.34(d) as are applicable to generators of 100–1000 kg/mo, when they accumulate waste in quantities greater than 1000 kg but less than 6000 kg.

i. Standards for Preparedness and Prevention—Part 265, Subpart C: Under § 262.34(a), generators who accumulate hazardous waste on-site must comply with the requirements of Subpart C of Part 265 which contains requirements for facility preparedness and prevention. In the Proposal, EPA indicated its intention to apply all of the existing provisions of this Subpart, without modification.

The requirements for preparedenss and prevention are as follows:

- Section 265.31 requires that facilities be maintained and operated to minimize the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to the environment;
- Section 265.32 specifies that facilities must be equipped with certain kinds of equipment (*i.e.*, an internal communications or alarm system, a telephone or other device capable of summoning emergency assistance, and appropriate fire control equipment including fire extinguishers and water at adequate volume and pressure to supply fire control system) *unless* none of the wastes handled at the facility require a particular kind of equipment;
- Section 265.33 requires that this equipment be tested and maintained, as necessary, to assure its proper functioning;
- Section 265.34 requires that all persons involved in hazardous waste handling operations have immediate access to either internal or external alarm or communications equipment, unless such a device is not required under § 265.32;
- Section 265.35 requires the owner or operator of the facility to maintain sufficient aisle space to allow the unobstructed movement of personnel and equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes; and
- Section 265.37 requires the owner or operator to attempt to make certain arrangements with police, fire departments, State emergency response teams, and hospitals, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations. Further, if State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal.

The Agency did not propose any amendments to Subpart C because they are appropriate and necessary and not unduly burdensome. The requirements all involve common sense principles for preparedness and prevention which hazardous waste handlers can and should address in order to ensure safe handling of hazardous wastes. Also, since the requirements are structured such that specific equipment and procedures are required only on an "as needed" basis, the existing regulation provides complete flexibility for hazardous waste generators to tailor their preparedness and prevention activities to the specific kinds of wastes handled at the facility.

Most commenters believed that these requirements provided sufficient flexibility for 100–1000 kg/mo generators to tailor their preparedness activities to their specific waste management activities and needs. While EPA requested comment on the possibility of imposing more specific but less numerous requirements in order to alleviate potential uncertainty over which procedures are appropriate for particular types of wastes, the Agency has decided that the broad principles embodied in Subpart C are preferable to the specific suggestions made by commenters. For example, one commenter felt that the requirement to make arrangements with state and local authorities, as needed, would confuse many generators and suggested that EPA substitute a simpler requirement that a generator simply request a visit from the fire department. EPA believes, however, that such a specific requirement would not provide sufficient preparedness in some cases, while in others it may be overly burdensome, as where no ignitable or flammable wastes are managed at that site.

A number commenters were concerned that the requirement to document refusals to make appropriate arrangements by state and local authorities and health care facilities would prove to be extremely burdensome to small businesses, particularly since refusals are seldom likely to be made in writing. EPA did not intend to convey a need for generators to obtain written refusals from every entity that declined to visit the facility. For purposes of this requirement, EPA will consider a signed and dated letter from the generator to the state or local entity which attempts to make such arrangements to be sufficient documentation of an attempt to make the appropriate arrangements.

One commenter believed that the requirement to make arrangements with appropriate state and local emergency service facilities was unnecessary where generators maintain their own fire, security, and emergency health care personnel at some of their larger facilities and that such facilities should be allowed to fulfill this requirement without making outside arrangements. While the Agency did not intend to preclude the use of on-site emergency personnel to provide preparedness in the case of emergencies, EPA does not agree that such arrangements alone will always be sufficent to comply with the requirements of Subpart C where the nature of the waste management operations at that facility could result in emergencies also requiring the involvement of State and local emergency services.

This commenter was also concerned that EPA's broad definition of "facility"

could require that preparedness and prevention measures be maintained throughout every portion of the generator's property instead of just those areas where waste is accumulated. EPA has never intended its broad definition of "facility" (see 50 FR 28712) to be used in application of the preparedness and prevention regulations; rather, the definition of "facility" in § 260.10 is used. Applying this narrower definition makes clear that the preparedness and prevention regulations only require the generator to take those precautions and maintain that equipment necessary to ensure that they are adequately prepared to respond to emergencies relating to the hazardous waste operations of the facility. If special equipment or precautions are not needed for this purpose in areas of a facility where hazardous wastes are not managed, then a generator is not expected to maintain them in those areas. At the same time, however, other precautions, such as adequate aisle space, may be needed in areas outside of the immediate waste accumulation area in order to ensure adequate access to emergency equipment in the event of a fire, explosion, or release of hazardous waste or hazardous waste constituents.

For the reasons discussed above, the Agency does not believe that modifications to Subpart C of Part 265 are appropriate for generators of 100–1000 kg/mo and is, therefore, applying the existing Subpart C requirements to these generators.

ii. Standards for Contingency Plans and Emergency Procedures—Part 265, Subpart D, and Personnel Training Requirements: Under § 262.34(a), generators who accumulate waste on-site must comply with certain requirements in Part 265, Subpart D, pertaining to contingency plans and emergency procedures and personnel training requirements. These requirements are contained in § 265.16. The § 265.16 requirements are intended to ensure that personnel are adequately prepared to manage hazardous waste and to respond to any emergencies that are likely to arise. EPA considered applying these same requirements to 100–1000 kg/mo generators since, for the most part, the requirements embody common sense principles that are necessary and appropriate for facilities managing hazardous waste. However, these requirements appeared to be unnecessarily burdensome in some cases (*e.g.* requiring formal classroom training and written, detailed contingency plans) and costly and could have unnecessarily severe impacts on many small businesses. The Agency therefore proposed a simpler set of requirements for generators of 100–1000 kg/mo to reduce the administrative burden on small businesses while still protecting human health and the environment.

EPA proposed and requested public comment on the following requirements for 100–1000 kg/mo generators that would be contained in a new § 262.34(d):

- At all times, an "emergency coordinator" (E.C.), (*i.e.*, someone familiar with these requirements), must be on-site (or on call). The coordinator may also designate someone to act in his place.
- The generator must post certain information next to the telephone, including: the name and telephone number of the E.C.; location of fire extinguishers and spill control material; and the phone number of the fire department;
- The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures;
- The generator (or the E.C.) would have to respond to any emergencies that arise. In the case where an emergency was serious enough to warrant a visit by the fire department or when the generator (or E.C.) has knowledge of a spill of hazardous waste that could reach surface water or otherwise threaten human health or the environment, the generator would have to notify the National Response Center and file a report with the EPA Regional Administrator as provided by proposed § 262.34(c)(3)(E).

EPA believed these requirements to be adequate to protect public health and the environment from fires, leaks, spills, or other releases from generators of 100–1000 kg/mo who are accumulating waste on-site prior to shipment off-site.

While many commenters supported the reduced contingency plan, emergency procedures, and personnel training requirements as proposed, a number of commenters did not agree with the proposed modifications. Several commenters believed that relaxing the standards for on-site accumulation for 100–1000 kg/mo generators would not be appropriate given the increased quantities of waste which can be accumulated (*i.e.*, 6000 kg) and the generally less sophisticated waste management expertise of smaller firms. Some commenters suggested various approaches including requiring full Subpart D compliance for all quantities accumulated above specific limits, such as 1000 kg or 3000 kg. Other commenters argued that the reduced standards were appropriate not only for generators of 100–1000 kg/mo, but also to larger generators and suggested that the reduced standards apply to all accumulated quantities between 1000 kg and 6000 kg.

Since the Agency recognized in the proposed rules that applying standards to 100–1000 kg/mo generators accumulating waste on-site in quantities up to 6000 kg was of some concern, it was careful to modify the standards only where administrative requirements not essential to the substantive functioning of the standards were involved. Thus, the standards, as modified, are sufficient to protect human health and the environment from release of wastes accumulated by 100–1000 kg/mo generators.

EPA does not believe it is appropriate to apply the reduced standards to wastes accumulated by generators of more than 1000 kg/mo. As previously discussed, EPA's authority to consider areas in which to reduce burdens extends to small quantity generators. Also, as discussed in Unit III.A. above, the relative risks posed by wastes accumulated by large quantity generators are greater. Thus, generators of greater than 1000 kg/mo must comply with the requirements of Subpart D of Part 265 if wastes are accumulated on-site prior to shipment off-site.

A number of commenters also suggested several modifications to the proposed standards. Some commenters were concerned that the requirement that each business designate an emergency coordinator to be on call at all times would impose an undue burden because this would require that the emergency coordinator be trained in emergency response procedures. One commenter believed that the term "emergency coordinator" would be confusing since it implies that the individual must have a high degree of training in risk assessment and abatement.

The intent of this requirement was simply to ensure that each generation facility had at least one person available at all times who could be contacted and would know what steps to take in the event that an emergency should arise. EPA envisioned that for most small businesses, the owner or manager already fulfills this requirement by being available 24 hours a day in case an emergency, such as a fire or burglary, occurs at that facility. EPA does not intend that generators must hire and train a new employee for this task. Viewed in this light, this requirement is reasonable and not unduly burdensome. In addition, there is no reason why small businesses would confuse the

term "emergency coordinator" with the more formal On-Scene Coordinators at Superfund clean-up sites.

With regard to the proposed personnel training requirement that a generator ensure that all employees be made thoroughly familiar with waste handling and emergency procedures, several commenters were in favor of more stringent personnel training requirements. One commenter noted that personnel training is necessary to manage tanks properly and to prevent tank contamination and recommended that the Agency adopt more stringent personnel training requirements if more than 15 drums or 7,500 pounds (approximately 3400 kg) are accumulated on-site. Another commenter objected to allowing 100–1000 kg/mo generators, who typically have fewer resources and less expertise than large quantity generators, to accumulate 6000 kg on-site with reduced personnel training standards, and suggested that personnel training plans be required whenever more than 3000 kg are accumulated on-site. This commenter suggested that criteria such as the nature of the waste and the history of spills and releases from the generator be established to allow EPA or State agencies to require a generator of 100–1000 kg/mo to establish and implement a personel training plan.

In the absence of any justification provided by commenters, the Agency does not believe that establishing an intermediate limit on accumulation, after which more formal personnel training requirements apply, would result in any significant increase in protection to human health and the environment. While EPA agrees that risks involved increases as waste is accumulated, it believes that the requirements adopted are adequate to protect against the risks from fires, leaks, spills, or other releases. The proposed requirements embody the same principles contained in the existing personnel training requirements, but rely less on the preparation of written plans in order to reduce the burdens on 100–1000 kg/mo generators.

One commenter suggested that if a 100–1000 kg/mo generator at any time is required to prepare a personnel training plan because he generated more than 1000 kg in any one month, he should be required to maintain the personnel training plan for at least the following six months even though he produces no more than 1000 kg/mo during that period. The commenter suggested that this requirement would impose little burden because the plan would already be in existence and would only need to be implemented. The Agency is not adopting this suggestion. No rationale was offered by this or other commenters regarding any additional protection that this approach would provide. In addition, the Agency disagrees with the conclusion that little burden would be imposed in maintaining a plan. For example, the generator would be required to update job titles, job descriptions, job qualifications, names of employees in each position, and standards for the introductory and continuing training needed for persons in each position. Furthermore, even if not required by regulations to maintain and follow their plans, many of the generators of 100–1000 kg/mo who were previously generators of more than 1000 kg/mo will nevertheless continue to use their plans as the basis for their personnel training program.

Another commenter in favor of more stringent personnel training requirements argued that the approach proposed by EPA is too broad and unenforceable, and that the Agency should require employees to sign a document stating the "what, when, and were of employee training." The Agency believes that such an approach would add considerable burden to the generator without providing any subtantial additional degree of protection, particularly since the "what, when, and where" are not explicitly prescribed under either the current rules or today's amendments.

Two commenters argued that 100–1000 kg/mo generators should be exempt from all personnel training requirements on the basis that personnel training would be too costly and burdensome for most small businesses and because less than 1000 kg/mo would be "too small to endanger the environment or public health". The Agency does not agree that 100–1000 kg/mo generators should be exempt from all personnel training requirements. While the Agency agrees that the risk to human health and the environment posed by 100–1000 kg/mo generators is less than the risk posed by large quantity generators, some risk is still present. The Agency has, therefore, proposed less stringent rules for 100–1000 kg/mo generators, which will mitigate this risk while minimizing the regulatory burden upon these generators.

A number of commenters suggested that the Agency limit the scope of the training requirement since it is inappropriate to require that all employees of a generator receive personnel training, regardless of their job responsibilities. According to these commenters, some firms, particularly large companies, may have clerical and office staff as well as some part-time and temporary personnel "who will never be involved or even remotely associated with the firm's handling of hazardous waste", and requiring these employees to be thoroughly familiar with hazardous waste management techniques would be a poor use of the firm's resources. One commenter suggested that this requirement be applied only to those employees who handle hazardous waste as part of their job.

The Agency agrees that it would not make sense to require training in topics not germane to an employee's areas of responsibility since this would add considerable burden to some firms without corresponding environmental or health benefits. Thus, the Agency has amended the regulations to clarify this issue. The rule promulgated today states that generators "must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their job responsibilities during normal facility operations and emergencies," just as for large quantity generators subject to § 265.16, implicit in the regulations is the requirement that the type and amount of training necessary for each employee stems from his specific responsibilities. Employees who handle hazardous wastes as part of their normal job responsibilities or are likely to handle wastes in an emergency situation must be thoroughly familiar with proper waste handling and emergency procedures. Employees who work in or adjacent to areas where hazardous wastes are generated, handled, or stored but do not handle hazardous wastes, must still be trained to be thoroughly familiar with basic emergency procedures. Part-time or temporary employees must also receive appropriate training.

iii. Standards for Accumulation in Containers—Part 265, Subpart I: Section 262.34 requires that in order to accumulate hazardous waste on-site without a permit, the generator must meet certain requirements. If the waste is stored in containers, the generator must comply with Subpart I of Part 265 (§§ 265.170 thru 265.177) which contains the following general requirements applicable to the management of hazardous waste storage containers:

- They must be kept in good condition and any leaking containers replaced (§ 265.171);
- The containers must be compatible with the hazardous waste stored in them (§ 265.172);

• Containers holding hazardous waste must always be closed during storage (except when necessary to add or remove wastes) and must not be handled in a way that would cause them to rupture or leak (§ 265.173);

• Containers must be inspected at least weekly to check for leaks and any signs of corrosion (§ 265.174);

• Containers holding ignitable or reactive wastes must be placed at least 50 feet from the facility's property line § 265.176); and

• Incompatible wastes must not be placed in the same container so as to cause fires, leaks, or other discharge of hazardous waste or hazardous waste constituents (§§ 265.177 and 265.17(b)).

In addition, § 262.34(a)(2) requires that the date upon which each period of storage begins is clearly marked on each container and § 262.34(a)(3) requires that each container be marked with the words "Hazardous Waste".

Since these requirements embody common sense "good housekeeping" requirements necessary to avoid releases into the environment, EPA proposed no modifications to these standards for 100–1000 kg/mo generators. Comments received generally indicate that these requirements were not unduly burdensome and would be appropriate for 100–1000 kg/mo generators. The one major concern raised by a number of commenters, however, is the requirement that a buffer zone of at least 50' from the property boundary be maintained for reactive or ignitable wastes. Since many smaller generators are located in urban areas, it is not uncommon for these generators to be located on lots that would not permit the maintenance of a 50-foot buffer zone.

EPA agrees with commenters that this requirement would put many small businesses in a situation in which it would be impossible to comply. Since the Agency has already proposed to modify the buffer zone requirement to increase flexibility in such situations (49 FR 43290, June 5, 1984), it would make sense for the Agency to exempt 100–1000 kg/mo generators from the 50-foot buffer zone requirement until the Agency promulgates final storage standards. Whether the Agency ultimately decides to apply the proposed standards to these generators or to propose a more tailored set of standards, it would be inconsistent with the directives contained in HSWA Section 3001(d) to consider impacts on small business to include, in the interim, the existing buffer zone requirement. Therefore, as an interim measure, the Agency is exempting 100–1000 kg/mo generators from the § 265.176 requirement that containers holding ignitable or reactive wastes must be placed at least 50 feet from the property boundary. Of course, 100–1000 kg/mo generators should endeavor to store ignitable or reactive wastes as far from the property boundary as is practicable.

With the exception of the modified buffer zone requirement, EPA is incorporating by reference the requirements of Subpart I of Part 265 into § 262.34(d).

iv. Standards for On-site Accumulation in Tanks—Part 265, Subpart J: As in Subpart I, Subpart J contains general standards that must be followed by generators storing hazardous waste in tanks under § 262.34:

• Wastes must not be placed in tanks if they could cause ruptures, leaks, corrosion, or otherwise cause the tank to fail (§ 265.192(b));

• Uncovered tanks must be operated with at least 60 centimeters (2 feet) of freeboard or a secondary containment dike or trench to prevent overfilling spillage (§ 265.192(c));

• Where waste is continuously fed into a tank, the tank must be equipped with a waste feed cutoff or bypass system to stop the inflow to the tank (§ 265.192(d));

• At least once each operating day, a generator must inspect, where present, discharge control equipment (*e.g.*, waste feed cut-off systems and drainage systems), data gathered from monitoring equipment (*e.g.*, pressure and temperature gauges), and the level of waste in the tank to assure compliance with the above freeboard requirements (§ 265.194 (a)(1), (a)(2), and (a)(3));

• At least weekly, a generator must further inspect the construction materials of the tank and the area immediately surrounding the tank to detect corrosion or obvious signs of leakage (§ 265.194 (a)(4) and (a)(5));

• Special requirements apply to ignitable or reactive waste, and incompatible waste that are more or less analogous to those in Subpart I, The major difference is in the requirements for ignitable or reactive waste which, when stored in a covered tank, must be in compliance with buffer zone requirements contained in Tables 2–1 through 2–6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code." These requirements are based on the hazardous characteristics of all combustible and flammable liquids and, as such, are applicable to any type and size of tank. While the Agency is modifying the buffer zone requirements for containers, as discussed in the previous section, the Agency did not receive any comments indicating that compliance with the NFPA code with respect to tanks would be impossible for small quantity generators. Therefore, the existing buffer zone requirements for tanks will apply to generators of 100–1000 kg/mo.

The requirements of Subpart J are meant not only to protect human health and the environment, but are in the generator's best interest by reducing the likelihood of damages or injuries caused by leaks and spills. The Agency did not propose to modify these standards for 100–1000 kg/mo generators, and no commenters raised any objections to application of the existing Subpart J requirements to 100–1000 kg/mo generators. Thus, the Agency has no reason to believe that the existing tank requirements present a problem for these generators, and is including them in this rule.

As discussed in detail in the Proposal, the Agency is developing new management standards for tank storage that may require secondary containment for accumulation tanks. These proposed amendments to Subpart J (50 FR 26444, June 26, 1985) could impose additional costs if applied to generators of 100–1000 kg/mo who accumulate hazardous waste in tanks. In the Proposal, the Agency requested and received public comment on a variety of options related to the proposed tank amendments. However, the Agency has not yet completed its evaluation of this issue and has not issued any final amendments to Subpart J. Accordingly, the Agency is today applying to generators of 100–1000 kg/mo only those Subpart J requirements currently required under § 262.34. Application of any modified tank standards to generators of 100–1000 gk/mo will be evaluated in the final tank rule after consideration of all comments received on both the August 1 Proposal and the tank proposal of June 26, 1985.

The requirements of existing Subpart J of Part 265 are, therefore, incorporated by reference in § 262.34(d), and are applicable to generators of 100–1000 kg/mo.

5. International Shipments

On March 13, 1986, EPA proposed regulations under § 3017 of HSWA regarding exports of hazardous waste (See 51 FR 8744). The proposed regulations would prohibit export of hazardous waste unless certain requirements are met. These requiremens include advance written notification to EPA of any plans to export hazardous waste, prior written consent to such plan by the receiving country, attachment of a copy of the consent to the manifest accompanying

each waste shipment, and conformance of the shipment to such consent. EPA also proposed a manifest pursuant to 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in a foreign country as the facility to which the waste will be sent. Under 40 CFR 261.5 and today's final rule all generators, including those generating less than 100 kg/mo, would qualify as exporters under the export proposal. Although the Agency is not aware of any exports by generators of less than 1000 kg/mo, and hence, did not propose to change the applicability of the export requirements to these generators, the Agency has requested comment from generators of less than 1000 kg/mo on whether the Agency should partially or totally exempt them from the proposed export requirements. Thus, generators affected by today's final rule should be aware that they may be subject to additional regulatory requirements in exporting hazardous waste, and that they have the opportunity to submit comments regarding the applicability of those requirements to the public docket established for the export proposal.

D. Transportation Issues

The existing standards for transporters of hazardous waste are contained in 40 CFR Part 263, and are applicable to any form of hazardous waste transportation that requires the use of a hazardous waste manifest (§ 263.10(a)). These standards pertain to compliance with the manifest system, recordkeeping, and actions to be taken in response to spills or discharges of hazardous waste. Taken in conjunction with U.S. Department of Transportation (DOT) requirements under the Hazardous Materials Transportation Act (HMTA) regarding labeling, marking, packaging and placarding (incorporated in 40 CFR Part 262, Subpart C), such standards are deemed by the Agency to be those necessary to protect human health and the environment during the transportation of hazardous waste.

In directing EPA to develop standards for generators of 100–1000 kg/mo, Section 3001(d)(7) of RCRA, as amended, specifically states that "nothing in this subsection shall be construed to affect or impair the validity of regulations pursuant to the Hazardous Materials Transportation Act." Consequently, EPA did not propose any substantive amendments to applicable DOT requirements or to Part 263. However, several minor amendments are necessary to bring the transporter standards into conformance with today's final standards for 100–1000 kg/mo generators.

In addition, commenters on the proposed rules raised a number of transportation-related issues. The Agency is finalizing proposed § 263.20(h) to specify certain recordkeeping requirements for transporters (who are also reclaimers) accepting unmanifested hazardous waste from generators utilizing the § 262.20(e) exemption for wastes reclaimed under contractual agreements. While one commenter argued that these recordkeeping requirements were too burdensome, the Agency does not agree. The manifest exemption is an entirely voluntary arrangement that substantially reduces the paperwork for both generators and transporters. The transporter need not maintain the prescribed records if he chooses instead to comply with the manifest system. A number of commenters were concerned about the lack of established transportation networks for the collection and transportation of less than full truckloads of hazardous waste. Three commenters stated that EPA should take steps to encourage such networks, and suggested various alternatives. Two commenters suggested that EPA encourage the establishment of collection centers for waste from 100–1000 kg/mo generators by extending the current 10-day period for transportation to 21 days and accelerating the issuance of storage permits for facilities which serve as collection and transfer stations for small quantity generator waste. One of these commenters specifically suggested that development of a class permit concept for these facilities might be a viable solution.

EPA agrees that the development of networks and centralized collection centers will help to increase compliance with these regulations. However, commenters have not adequately demonstrated a need for longer transportation time than the 10 days currently provided. Nor does EPA believe that the establishment of an expedited permit process for these facilities is feasible. Both of these issues are discussed in greater detail in the following section on facility standards. It should be noted here, however, that such networks can be established at any time within the confines of the applicable regulations.

Some commenters expressed concern about EPA's discussion in the proposed rules of self-transportation of hazardous wastes, stating that all of the standards for hazardous waste transportation should be imposed on such generators. In the proposal, EPA explained that self-transportation of hazardous waste by generators was not precluded by the regulations, provided the generator obtained a U.S. EPA ID number and complied with the provisions of Part 263 and the applicable portions of Department of Transportation regulations. EPA did not intend to create the impression that self-transportation could be conducted without compliance with the full Part 263 standards for hazardous waste transportation.

Other commenters supported the concept of licensing transporters to assume the responsibilities of the generator with respect to manifesting. As EPA explained in the Proposal, transporters may currently assume most of the generators' manifesting responsibilities except for signing the certification statement. One commenter believed that the transporter of a hazardous waste shipment should assume liability for the waste if that transporter completed the manifest and removed the waste from the generator's establishment. EPA may not alter the liabilities established by statutes such as CERCLA, which applies the concept of joint and several liability to all handlers of a hazardous substance. In addition, EPA believes that removing RCRA liability from generators would remove an important incentive for them to ensure that their wastes are properly transported and managed. EPA, therefore, is taking no action that would alter a generator's liability under current regulations and statutes.

Two States requested an amendment to § 262.20(e) to allow generators of 100–1000 kg/mo to transport waste to a temporary collection site of a hazardous waste clean-up program or Amnesty Day without the need to complete a manifest. They stated that the requirement to complete a manifest may discourage some establishments from participating. Under most "Amnesty Day" programs of which the Agency is aware, homeowners are encouraged to bring their unwanted household hazardous wastes to a central collection point where they are sorted, packaged, and subsequently transported to an approved hazardous waste management facility. In some cases, small quantity generators have been allowed to discard their wastes through similar programs.

Section 261.4(b)(1) exempts household waste from all of the hazardous waste requirements of RCRA. Thus, no manifesting is required for transport of wastes that are exempt from regulation under § 261.5. However, because quantities of hazardous wastes from generators of 100–1000 kg/mo could pose a substantial risk if improperly

managed, the Agency has decided to impose manifest requirements on these generators, except in the case of certain reclamation agreements. The existence of a State-approved collection center does not, on its own, provide assurance that the waste would be transported or handled properly prior to or during transportation to such a facility, or indeed, that the shipment would ever reach such a facility. Consequently, development of some recordkeeping and transportation requirements would be needed which would offset any potential savings of such an exemption.

E. Part 264/265 Facility Standard Issues

The requirements for facilities that treat, store, or dispose of hazardous waste are contained in Parts 264 and 265 of the hazardous waste regulations. The Part 265 standards are applicable to facilities under interim status, a condition which allows a facility to continue operating until it receives a full RCRA permit. (See HSWA section 3005(e)). The Part 264 standards establish the minimum standards to be incorporated into a full RCRA permit by EPA or a State with an EPA authorized hazardous waste program.

Section 261.5(b) previously exempted generators of 100–1000 kg/mo of hazardous waste from the facility requirements of Parts 264 and 265 that cover the on-site treatment, storage, or disposal of hazardous waste, provided the facility is at least approved by a State to manage municipal or industrial (non-hazardous) solid waste and no more than 1000 kg of hazardous waste were accumulated at any time. Under the rules promulgated today, this exemption will continue to apply only to generators of less than 100 kg/mo of hazardous waste. Generators of 100–1000 kg/mo of hazardous waste will be subject to full regulation under Parts 264 and 265 if they accumulate hazardous waste on-site for greater than 180 (or 270) days, exceed the 6000 kg accumulation limit, engage in waste treatment in other than tanks, or manage their waste in surface impoundments, waste piles, landfills, or land treatment facilities. In addition, those State-approved municipal or industrial waste facilities that manage wastes only from generators of 100–1000 kg/mo will also no longer be exempted from the Part 264 and 265 permit requirements. In the proposed rule, the Agency requested comments concerning the application of the uniform Part 264 and 265 requirements to generators of 100–1000 kg/mo and to the treatment, storage, and disposal facilities that accept waste from the generators.

1. Activities Requiring Permits

Under today's final rules, 100–1000 kg/mo generators will be required to obtain a permit if they treat or dispose of hazardous waste on-site (except for treatment in tanks or containers during the 180/270 day accumulation period in conformance with Subparts J or I of Part 265, respectively) or accumulate hazardous waste on-site in tanks or containers for more than 180 (or 270) days.

A number of commenters agreed with the need to manage wastes from generators of 100–1000 kg/mo at fully permitted facilities. They argued that no special exemptions or requirements should be applied to the management of waste from these generators because the characteristics of the waste, not the source of the waste, poses the threat to human health and the environment.

Two commenters opposed the requirement for generators of 100–1000 kg/mo who accumulate waste on-site for longer than 180 (or 270) days to obtain RCRA permit, and argued that the accumulation time limit before permitting is required should be extended. One of the commenters also maintained that determining the maximum quantity of hazardous waste that may be accumulated at a non-permitted facility should be based on the degree of hazard posed by the waste and the generator's capacity to transport the waste off-site. The EPA disagrees with both of these positions. As noted in Unit III.C.4.a. of today's preamble, the HSWA of 1984 clearly limit Agency discretion in this matter. The Agency carries a heavy burden in extending the time limits established under section 3001(d)(6), and except for emergency circumstances, the Agency does not believe there to be sufficient justification for extending the limits Congress has established.

Another commenter opposed any permitting requirement due to the economic burden that would be placed on a small number of generators. While some generators of 100–1000 kg/mo may be burdened financially by the requirements promulgated today, Congress has already judged that outside of the accumulation limits allowed for in Section 3001(d)(6), disposal of wastes from these generators at permitted facilities is necessary to protect human health and the environment. In addition, since the rules allow generators to manage their hazardous wastes off-site, they are able to avoid the cost of acquiring a RCRA permit, if they so choose.

Several commenters suggested exemptions from the RCRA permitting requirements or reduced permit requirements for on-site waste treatment. Some commenters stated that there is a need to encourage on-site treatment to reduce the amount of wastes sent off-site and that the permitting requirements may hamper the ability of generators to treat wastes at their facilities.

The Agency disagrees that on-site treatment should be encouraged by exempting those generators of 100–1000 kg/mo from the RCRA permitting requirements. To the extent that these generators are conducting the same treatment/storage or treatment/disposal as other permitted facilities, their on-site treatment activities pose a potential risk to human health and the environment. Therefore, reduced or eliminated permitting requirements would be inappropriate.

Of course, no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of § 262.34 and Subparts J or I of Part 265. Nothing in § 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision. Under the existing Subtitle C system, EPA has established standards for tanks and containers which apply to both the storage and treatment of hazardous waste. These requirements are designed to ensure that the integrity of the tank or container is not breached. Thus, the same standards apply to a tank or a container, regardless of whether treatment or storage is occurring. Since the same standards apply to treatment in tanks as applies to storage in tanks, and since EPA allows for limited on-site storage without the need for a permit or interim status (90 days for over 1000 kg/mo generators and 180/270 days for 100–1000 kg/mo generators), the Agency believes that treatment in accumulation tanks or containers is permissible under the existing rules, provided the tanks or containers are operated strictly in compliance with all applicable standards. Therefore, generators of 100–1000 kg/mo are not required to obtain interim status and a RCRA permit if the only on-site management which they perform is treatment in an accumulation tank or container that is exempt from permitting during periods of accumulation (180 or 270 days).

Two commenters suggested that a mechanism should be created to tailor RCRA permits to the circumstances of individual facilities. For example, one commenter specifically asked for a simplified and streamlined permit for the incineration of spent paint spray

booth filters. The Agency accepts the need to consider individual circumstances when drafting RCRA permits. However, in order to protect human health and the environment, the Agency must impose certain minimum permit requirements for each waste management facility. Additional provisions may be incorporated into a permit to account for unique circumstances at individual facilities (see § 270.32). At the present time, the Agency has decided not to take any action regarding the tailoring of regulatory requirements for permitting specific types of waste management activities for generators of 100–1000 kg/mo. At a future date, the Agency may consider altering the regulatory requirements for specific waste types or handling practices that pose a low potential for harm to human health and the environment.

Two commenters discussed the need for establishing regional collection centers for the temporary storage of wastes from generators of 100–1000 kg/mo before being sent to treatment, storage, or disposal facilities. One of these commenters suggested that the collection centers may also offer waste identification and packaging services and could be sponsored by State or local governments. Both commenters contended that regional collection centers will be needed because most waste shipments from generators of 100–1000 kg/mo will be too small to justify the expense of direct transportation to TSDFs in less than truckload quantities. The commenters further stated that these collection centers should not be required to meet the full RCRA permit requirements for storage facilities.

While the rules promulgated today may increase the cost of waste transportation services for many generators of 100–1000 kg/mo, generators of 100–1000 kg/mo are allowed to accumulate hazardous waste at their facilities for 180 (or 270) days, thereby reducing the need for frequent shipment off-site and off-site collection centers. Nevertheless, if regional collection and storage facilities are established, these centers will probably accumulate significant volumes of various types of hazardous waste. The storage of large amounts of hazardous waste, regardless of its point of origin, poses the potential for harm to human health and the environment. Therefore, the Agency believes that the requirements for storage and disposal facilities as described in Parts 264 and 265 must also apply to regional collection facilities. Furthermore, wastes shipped from a generator of more than 100 kg/mo to a collection center must be properly identified, manifested, packaged, labeled, marked, placarded, and transported in accordance with Parts 262 and 263 and applicable regulations promulgated under the Hazardous Materials Transportation Act.

One commenter proposed that generators of 100–1000 kg/mo be exempted from the full corrective action for continuing releases provisions of RCRA section 3004(u), which apply to all solid waste management units at a Subtitle C facility seeking or issued a permit. EPA disagrees with the suggestion. Section 3004(u) applies to releases to all media; however, the Agency believes that action is required only where necessary to protect human health and the environment. Section 3004(u) requires that all permits issued to Subtitle C facilities after November 1984 shall include schedules of compliance and financial assurance for completing any necessary corrective actions for releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which such waste was placed in such unit. The clear statutory directive precludes a reading of the statute that limits an owner's or operator's responsibilities to waste placed in units during his or her tenure or for releases from solid waste management units that are not "regulated units."

The corrective action requirements will apply only to the few generators of 100 to 1000 kg/mo who choose to seek permits. Thus, the potential burden of corrective action must be accepted by those who choose to manage their hazardous waste on-site. Should such a generator become subject to the corrective action provisions, the Agency is considering the advisability of taking into account the firm's ability to pay when establishing a compliance schedule and thereby reduce the burden to generators of 100–1000 kg/mo. Nonetheless, the goal of these rules is to reduce the risk to human health and the environment from uncontrolled releases of hazardous waste. The risks associated with such releases depend on the nature of each individual release, not on the quantity of hazardous waste generated by the facility. There is no rational basis for distinguishing between generators of 100 to 1000 kg/mo and larger quantity generators when determining whether a release, once it occurs, poses an imminent threat to human health and the environment and needs to be cleaned up.

2. Applicability of Permitting Requirements to Recycled Wastes

Several commenters addressed the issue of recycled wastes. One commenter stated that generators of 100–1000 kg/mo who recycle the generated products should not be required to meet full Parts 264 and 265 facility standards. The commenter argued that since recyclable wastes are frequently handled as if they were original products, they should not be subject to regulation. This approach has already been considered by the Agency and rejected (See 50 FR 614, 617 (January 4, 1985). At the time, EPA indicated that wastes often have little independent economic value, but are recycled to avoid disposal costs. Unless the wastes are extremely valuable (as in the case of precious metal-containing wastes), there is little incentive to avoid leaks and spills. EPA sees no reason to reconsider the issue at this time.

Two other commenters sought clarification concerning whether the proposed rule requires on-site waste recycling operations to be permitted under Parts 264 and 265. While the actual recycling operation is generally not subject to permitting, the rule does, indeed, require (or will require) permitting for certain recycling activities and for storage associated with recycling activities. Generators of 100–1000 kg/mo of recyclable materials must obtain a permit or interim status if all of the following conditions are met:

(1) The material is a solid waste. Whether or not a material qualifies as a solid waste depends upon both what the material is and how it is being recycled. See §§ 261.2 and 261.4(a).

(2) The solid waste is a hazardous waste. Generally, the waste must be listed or exhibit one of four characteristics. See §§ 261.3 and 261.4(b).

(3) The hazardous waste is not exempt from regulation under § 261.6. Exempted materials include industrial ethyl alcohol that is reclaimed and scrap metal.

(4) The non-exempt hazardous waste is stored on-site for more than 180 days (or 270 days if it is to be transported at least 200 miles). See § 262.34(d).

If the solvent is stored in anticipation of reclamation for more than 180 days, however, the generator must obtain a permit or interim status. See § 262.34(f). In addition, use constituting disposal and burning for energy recovery would also be recycling activities requiring a permit.

3. Permit By Rule

Two commenters argued that generators of 100–1000 kg/mo should be allowed to obtain a RCRA "permit by rule" (under § 270.62) and by-pass the Parts 264 and 265 permitting process. Permits by rule have been granted by EPA to facilities already regulated and permitted under other Federal laws, provided that the facilities are in compliance with their permits and other specified requirements. For example, ocean disposal barges or vessels are granted permits by rule under RCRA § 270.60(a) for ocean dumping because those activities are already permitted under the authority of the Marine Protection, Research, and Sanctuaries Act, as amended U.S.C. 1420 *et seq.*

The commenters are requesting EPA to apply permits by rule in such a manner that could effectively exempt generators of 100–1000 kg/mo from Federal requirements. They have suggested that the proposed rule requiring full Part 264 and 265 standards for generators of 100–1000 kg/mo would be too burdensome. One commenter noted that a permit by rule would allow for relief from full RCRA requirements and thus allow for continued waste treatment/minimization activities on-site. The second commenter explained that 100–1000 kg/mo generators are already regulated under State and local environmental programs. This commenter suggested that permits by rule should be issued for generators of 100–1000 kg/mo who are in compliance with "adequate State and local environmental programs and permits."

EPA does not believe that it is appropriate to effectively exempt these generators from Parts 264 and 265. First of all, Congress explicitly directed EPA to require that wastes from these generators be managed at Subtitle C facilities. Second, EPA believes that compliance with the permitting process is essential to provide protection of human health and the environment. EPA disagrees that State and local regulatory programs for generators of 100–1000 kg/mo are sufficient to maintain proper protection of human health and the environment, since most State programs do not now require that such waste be managed at Subtitle C facilities. Of course, States with authorized RCRA programs may adopt equivalent (or broader or more stringent) requirements and administer State programs for these generators.

4. Modifications to Part A Permit Applications

One commenter questioned whether requiring revisions to Part A and Part B permits for facilities handling waste from generators of 100–1000 kg/mo will be too time-consuming and may delay the implementation of the proposed rule.

EPA is aware that the rule promulgated today will require changes in the Part A applications for off-site facilities that manage wastes from 100–1000 kg/mo generators. As explained in the preamble to the proposed rule, off-site interim status facilities managing wastes from both fully regulated large quantity generators and generators of 100–1000 kg/mo may be required to modify their Part A permit applications under § 270.72 to account for wastes from 100–1000 kg/mo generators if those wastes are currently being managed as exempt pursuant to § 261.5 and are not currently identified on the Part A application. Thus, facilities that receive wastes from generators of 100–1000 kg/mo only, which previously were not required to fill out Part A forms under § 270.41 are now required to do so. Similarly, facilities that receive wastes from generators of 100–1000 kg as well as large quantity generators, must modify their permits to reflect the wastes received from 100–1000 kg/mo generators.

The Agency does not believe that the proposed changes requiring facilities receiving wastes from generators of 100–1000 kg/mo to add new information to Part A applications or requiring facilities to begin filing Part A applications will be overly time-consuming.

One commenter sought to clarify that facilities that only handle hazardous waste from generators who generate no more than 100 kg/mo will still operate under a blanket exemption from Part 264 and Part 265.

Under the Hazardous and Solid Waste Amendments of 1984, generators of less than 100 kg/mo and those treatment, storage, or disposal facilities that serve those generators will continue to operate under the conditional exemption from Part 264 and Part 265 that is contained in in Section 261.5.

IV. Delayed Effective Dates

EPA proposed that the effective date of the regulatory requirements for 100-1000 kg/mo generators be six months from the date of promulgation of the rules. It was also proposed that the effective date of the Parts 264 and 265 facility standards for generators that manage waste on-site be delayed an additional six months, to become effective one year from the date of promulgation.

Of the four comments received on this issue, one opposed any delay in effective dates beyond March 31, 1986, on grounds that it is one of the hammer provisions and would not be in the best interest of enforcement. Another commenter suggested a one year delay for all of the requirements. The Agency does not agree with either commenter. First, the plain language of section 3001(d)(9) states that the last sentence of section 3010(b), which allows for a less than six month effective date under certain circumstances, shall not apply to standards issued under section 3001(d). Thus, the language of the statute appears to preclude an effective date of less than six months. Although it is arguable that the statute and its legislative history indicate some intent that the regulations become effective immediately,[5] the Agency believes that a better reading of the statute requires a delay in the effective date of the rules for at least six months.

Second, the Agency believes that a six month effective date for the generator requirements is essential from a policy perspective in order to allow these small businesses to become familiar with the hazardous waste regulations, obtain an EPA Identification number, and find hazardous waste transporters and Subtitle C management facilities. Finally, EPA has determined that the six month effective date is consistent with the statutory directive to promulgate rules for these generators that attempt to minimize the burden on small business. Thus, EPA believes that allowing six months for these generators to comply with most of the provisions of the newly applicable hazardous waste management system is a reasonable response to the directives of section 3001(d). As discussed below, the Agency does not believe, however, that a full year is needed for compliance with rules other than those relating to on-site waste management.

With regard to the additional six month delay for compliance with on-site management standards, one commenter supported the proposal while another opposed it as legally unjustifiable and not protective of public health. This commenter asserted that the effective

[5] While the Agency does not believe that the hammer provisions in section 3001(d)(8) dictate the content of the final rules, it is arguable that a March 31, 1986 effective date was intended. The fact that Congress required final rules to be promulgated by March 31, 1986, under section 3001(d)(8), in conjunction with a statement in the Conference Report that the section 3010(b) six month delay in effective dates does not apply to 3001(d)(1) regulations (see H.R. Rep. No. 1133, 98th Cong. 2d Sess. 101 (1984)) raises some question regarding the applicability of the six month delay of section 3010(b). Since the plain meaning of the statutory language in section 3001(d)(9) is so clear, however, the Agency does not believe that the legislative history should prevail.

dates for on-site and off-site activities should be the same.

EPA disagrees that the effective dates for compliance must be the same for on-site and off-site management activities. The same concerns regarding undue burdens that would be imposed by an immediate effective date for the full set of regulations led the Agency to conclude that a reasonable period of time was necessary for on-site compliance with Parts 264 and 265.

Generators of 100–1000 kg/mo who engage in on-site management activities will generally have to change their waste management practices in more dramatic ways than those generators who simply ship their wastes for management off-site. Most will modify their current practices in one of the following ways: (1) By adopting on-site management practices exempt from Parts 264 and 265, (2) by shifting to off-site management practices, or (3) by adjusting any non-exempt on-site practices so they comply with the full Parts 264 and 265 facility standards. The delayed effective date will permit these generators to effect the necessary changes in a safe and effective manner. Under the final rule, 100–1000 kg/mo generators will have an additional six months to qualify for interim status and come into compliance with the Part 265 interim status facility standards if they manage their wastes on-site, as opposed to off-site. The interim status facility standards include a number of requirements that call for substantial time and investment, especially the requirement for implementation of a ground-water monitoring program. The installation, operation and maintenance of the monitoring system to determine impact on ground-water quality includes installation of wells, which will require some time to be constructed. In the meantime, there will be some protection to health and the environment by the need for approval by States for these generators to manage municipal or industrial (non-hazardous) solid waste.

Generators who manage their waste off-site will not need this additional time to comply with today's rule. In many cases, their current waste management practices will be allowed under this rule. Even if they must arrange for new off-site management, six months should be sufficient time for this transition.

Therefore, the Agency is retaining the proposed effective dates.

V. Impact on Authorized States

A. Applicability in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their own hazardous waste programs pursuant to Subtitle C (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013 and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any hazardous waste management facilities which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames, however; the new Federal requirements did not take effect in an authorized State until the requirements were adopted as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

Today's final rule is promulgated pursuant to section 3001(d) of RCRA, a provision added by HSWA. Therefore, it is being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final status for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement the standards in authorized States until they revise their programs to adopt these rules and the revisions are approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State adoption of these regulations under section 3006(b) are described in 40 CFR 271.21 (49 *FR* 21678, May 22, 1984). The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within one year from the date of today's promulgation of EPA's regulations if only regulatory changes are all that are necessary, or within two years if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce them as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to States in their efforts to implement their programs rather than take separate action under Federal authority.

States that submit official applications for final authorization less than 12 months after today's promulgation of EPA's regulations could be approved without including standards equivalent to those promulgated. Once authorized, however, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

VI. CERCLA Impacts

Today's final rule does not change existing CERCLA requirements relating to releases of reportable quantities of CERCLA hazardous substances. Whenever a hazardous waste or waste stream is listed under section 3001 of RCRA, it automatically becomes a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Section 103 of CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Reponse Center (NRC) (at (800)

424-8802 or (202) 426-2675) of the release. (See 50 FR 13456-13522, April 4, 1985).

The term "hazardous substance" includes all substances designated in § 302.4(a) of the April 4, 1985 final rule (50 FR 13474), as well as unlisted hazardous wastes exhibiting the RCRA characteristics of ignitability, corrosivity, reactivity, and extraction procedure toxicity. (See § 302.4(b) of the April 4, 1985 final rule.)

All persons who release a reportable quantity of a CERCLA hazardous substance into the environment, including small quantity generators, are subject to notification provisions of section 103 of CERCLA (see 40 CFR 302.6(a) and (b)). However, as stated in CERCLA section 103(f)(1), no notification shall be required under CERCLA sections 103(a) and (b) for any release of a hazardous substance which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center (NRC).

VII. Executive Order 12291—Regulatory Impact

Executive Order 12291 (46 *FR* 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and if so, that a Regulatory Impact Analysis be conducted.

The Administrator has determined that today's final rule is not a major rule, because it has total estimated costs of less than $100 million per year, and has no significant adverse economic effects. These conclusions, are based on an economic analysis of today's proposal. This analysis involved developing cost estimates of both current waste management practices used by 100-1000 kg/mo generators and practices required by today's final rule. Some of these estimates were firm-specific and others were waste stream-specific. These costs were used along with estimates of the changes in waste management practices likely to result from today's final rule to estimate the annual incremental compliance costs to 100-1000 kg/mo generators ($46.9 milllion). These costs were added to the estimated government costs of implementing the regulation of $12 million for a total social cost of $58.9 million.

A. Estimates of Per Firm Costs

1. Part 262 Generator Standards

The estimated incremental compliance costs attributable to Part 262 requirements can be divided into an initial, one-time, cost of $2267 per firm, and an annual recurring cost of $222 per firm. These costs will be incurred by all 100-1000 kg/mo generators that would be subject to the requirements of today's regulation with two exceptions—generators disposing of their wastes by sending them to POTW's and generators that have their waste reclaimed under certain contractural agreements. Generators sending wastes to POTW's will incur no Part 262 related costs as a result of the regulation (unless the waste is accumulated prior to discharge; see 3.a. of this Unit). Generators using reclamation agreements would incur a cost of $1694 initially and no annual costs.

2. Transportation Costs

Under today's rule, generators of 100-1000 kg/mo will be required to either contract with an authorized hazardous waste transporter or haul the hazardous waste to a hazardous waste management facility that has a permit from the Agency or an authorized State, or is in interim status. Incremental transport costs depend on current generator practices, the distance which wastes are transported, the quantity of wastes transported, and the number of times wastes are loaded and transported each year.

In many cases, there will be no incremental transportation costs due to these regulations because current waste management practices involve waste transportation. Where this is not the case, average incremental costs that would be imposed on 100-1000 kg/mo generators for the transportation of their hazardous waste are estimated to be between $838 per year (for generators that ship 600 kg of waste a short distance twice yearly) and $1882 per year (for generators that ship 6000 kg of waste a longer distance twice yearly).

3. Treatment, Storage and Disposal Costs

a. On-Site Accumulation: Under today's final rule, generators of 100-1000 kg/mo would be allowed to store hazardous waste on-site without a permit or interim status for up to 180 days, or for up to 270 days if the waste is to be shipped over 200 miles.

Generators of 100-1000 kg/mo who store hazardous waste on-site, within the 180-day (or 270-day) period specified under the provisions of the storage exemption, will have to comply with Part 265, Subpart C (Preparedness and Prevention), a reduced set of requirements in Subpart D (Contingency Plan and Emergency Procedures), and limited requirements for personnel training (Section 265.16 of Subpart B). The incremental compliance costs for facilities that choose this management option are divided into an initial start-up cost of $1447 and an annual cost of $53.

Generators that store hazardous waste on-site within the 180-day (or 270-day) period may also incur costs related to storage container (Subpart I) and storage tank (Subpart J) requirements. The incremental costs for these requirements depend on a number of factors, including the current practices of the generator, the generator's storage capacity, and the composition of the hazardous waste being stored. The range of incremental costs, as a result, is fairly large. For container storage, initial incremental costs range from practically zero to $1854 and annual costs range from $404 to $447. The corresponding incremental cost estimates for the existing rules for tanks are $155 for initial costs, and $770 for annual costs.

b. Treatment and Disposal: After analyzing the cost of on-site treatment and disposal for 100-1000 kg/mo generators relative to off-site costs, the Agency has determined that in nearly all cases, the least expensive hazardous waste management alternatives available to these generators involve off-site activities. The small quantities of waste generated by these establishments simply do not permit them to operate expensive on-site management facilities on an economically efficient basis. The costs of off-site commercial treatment and disposal upon which this conclusion is based are derived from a composite of various existing sources of data on commercial waste management prices. They range from $150 to $250 per metric ton (for secure landfills) to $200 to $1200 per metric ton (for either treatment or incineration), depending on the characteristics of the wastes.

B. Estimates of Nationwide Incremental Cost Burden on Generators of 100-1000 kg/mo

The aggregate costs for today's rule were developed by comparing the costs of current (baseline) management practices with hazardous waste management practices which are required by the rule. The Agency has determined, based on this analysis, that the annual incremental compliance cost for this proposal would be approximately $46.9 million.

On a per metric ton basis, the average incremental compliance cost over all wastes is about $180. Because of differences in baseline practices, and, hence, the cost of compliance, the incremental costs vary substantially among different wastes. In fact, the baseline method of waste management by these generators is adequate to comply with the regulations in many cases. Others will have to change waste management practices in order to comply. Much of the $46.9 million in compliance cost, is focused on a few types of wastes (spent solvents dry cleaning filtration residues, acids, and

alkalies, and ignitable wastes) that constitute a large proportion of the wastes generated by these generators.

C. Estimates of the Economic Impacts of Today's Final Rule

An analysis of the effects of compliance costs on the sales and profitability of 289 model plants indicates that in over 80 percent of plants the incremental costs are less than 10 percent of profits. A few of the plants, particularly in service industries, show incremental costs of greater than 10 percent of profits. Nearly three quarters of the models most affected by the proposal have annual revenues of less than $500,000. Some of these establishments are low profit or nonprofit by design, such as public or private golf courses, hospitals, and other public institutions.

Only six plants have incremental compliance costs which exceed 1 percent of sales and 25 percent of profits. For each of these model plants, a more detailed evaluation was conducted to determine whether these plants would be likely to close. This analysis indicated that plant closings as a result of this regulation would be unlikely.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), requires the Agency to evaluate the impacts of regulations on small businesses, small organizations and small governmental jurisdictions. The Regulatory Impact Analysis for today's final rule includes such an evaluation. The Administrator has determined that this regulation will not have a significant impact on a substantial number of small firms.

Today's proposed regulations are expected to primarily affect small firms. Therfore, the Regulatory Flexibility Act requirement concerning effects on small businesses is addressed to a large extent by the overall economic analysis performed in conjunction with this rulemaking.

Throughout the development of today's final rule, the Agency's goal has been promulgation of requirements that would be the least burdensome to small businesses and also meet the Congressional mandate of protecting human health and the environment. In our effort to design regulations that would meet this goal, we have worked closely with small business organizations, trade associations, State and local governments, EPA's Small Business Ombudsman in the Office of Small and Disadvantaged Business Utilization, and the Federal Small Business Administration to assess the needs and capabilities of small businesses. EPA believes that this rule is a balanced approach to regulating hazardous waste from these generators while considering their small business nature.

For purposes of this analysis, "small entities" were defined as firms comprised of fewer than 50 employees for all of the sectors except manufacturing (<100 employees). In many cases, these classifications are approximations because the Small Business Administration establishes size standards in terms of sales levels, and the size standards vary within sectors. For example, most small entity size standards for manufacturing industries range between 500 and 1000 employees.

The results of this analysis indicate that less than 10 percent of small entities within the impacted industries will be affected by the regulations. Most small businesses will not be affected by these regulations because they: 1) Do not generate hazardous waste, 2) generate less than 100 kg/mo, or 3) generate over 1000 kg/mo and are already subject to hazardous waste regulations.

Even though only a relatively small percentage of potentially affected small businesses will probably be affected, the more important issue to analyze is whether or not a large number of those which are affected will be severely impacted. Three commonly accepted tests were used to measure whether or not businesses would be severely impacted:

(1) Annual compliance costs will increase the relevant production costs for small entities by more than five percent;

(2) Capital costs of compliance will represent a significant portion of the capital available to small entities,

(3) The costs of the regulation will likely result in closure of small entities.

To analyze the significance of compliance costs on small businesses, data were developed for 25 different types and sizes of model plants representing those most likely to be severely impacted by the proposed regulations. Compliance costs were computed for these model plants based on the economic analysis described in the previous section of this preamble.

In general, these regulations will not cause significant impacts on small firms. None of the model plants established for this analysis show cost increases of more than five percent as a direct result of compliance costs. The regulations require no significant capital outlays and thus should not affect capital requirements or availability. Even the most severely impacted model plants would not close under the assumptions of this exercise and would continue to operate at a profit.

In summary, it appears that the impact on small firms will not cause a significant number of hardships. There will be isolated cases, involving on-site management or transportation over long distances, where compliance costs for some individual firms may be severe. In the case of on-site management, however, the Agency believes that most 100–1000 kg/mo generators will switch to off-site practices rather than face the high costs of obtaining interim status or a permit. Furthermore, approximately 70 percent of these generators are in metropolitan areas, and would thus be able to reduce transportation costs by allowing transporters to consolidate shipments by picking up waste from more than one generator at a time.

IX. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–0028 (Notification) and 2050–0039 (Manifest).

List of Subjects

40 CFR Part 261

Intergovernmental relations, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Intergovernmental relations, Hazardous materials, Labeling, Packaging and containers, Reporting requirements, Waste treatment and disposal.

40 CFR Part 263

Intergovernmental relations, Hazardous materials transportation, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

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

Dated: March 14, 1986.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended, as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.10 is amended by adding a new definition, alphabetically, as follows:

§ 260.10 Definitions.

* * * * *

"Small Quantity Generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

4. Section 261.1 is amended by revising paragraph (a)(1) to read as follows:

§ 261.1 Purpose and scope.

(a) * * *

(1) Subpart A defines the terms "solid waste" and "hazardous waste", identifies those wastes which are excluded from regulation under Parts 262 through 266 and 270 and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

* * * * *

5. Section 261.5, is revised to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of this section.

(c) Hazardous waste that is not subject to regulation or that is subject only to § 262.11, § 262.12, § 262.40(c), and § 262.41 is not included in the quantity determinations of this Part and Parts 262 through 266 and 270 and is not subject to any of the requirements of those Parts. Hazardous waste that is subject to the requirements of § 261.6 (b) and (c) and Subparts C, D, and F of Part 266 is included in the quantity determination of this Part and is subject to the requirements of Parts 262 through 266 and 270.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) Hazardous waste when it is removed from on-site storage; or

(2) Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or

(3) Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA:

(1) A total of one kilogram of acute hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 262.11 of this chapter;

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit;

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 262.11 of this chapter;

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Part 262 applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month as well as the requirements of Parts 263 through 266 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Subpart E of Part 266 of this chapter if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

6. In Section 261.33 the introductory text of paragraph (f) is revised to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof

* * * * *

(f) The commercial chemical products, manfacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T), unless otherwise designated and are subject to the small quantity generator exclusion defined in § 261.5 (a) and (g).

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

7. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3002, 3003, 3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, and 6937).

8. Section 262.20 is amended by adding new paragraph (e) to read as follows:

§ 262.20 General requirements.

* * * * *

(e) The requirements of this Subpart do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

9. Section 262.34 is amended by revising the introductory text to paragraph (a) and by adding new paragraphs (d), (e), and (f).

§ 262.34 Accumulation time.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that:

* * * * *

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) The quantity of waste accumulated on-site never exceeds 6000 kilograms;

(2) The generator complies with the requirements of paragraph (a)(1) except the generator need not comply with § 265.176.

(3) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section and the requirements of Subpart C of Part 265; and

(4) The generator complies with the following requirements:

(i) At all times there must be at least one employee either on the premises or on call (*i.e.*, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d)(3)(iv) of this section. This employee is the emergency coordinator.

(ii) The generator must post the following information next to the telephone:

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:

(1) The name, address, and U.S. EPA Identification Number of the generator;

(2) Date, time, and type of incident (*e.g.*, spill or fire);

(3) Quantity and type of hazardous waste involved in the incident;

(4) Extent of injuries, if any; and

(5) Estimated quantity and disposition of recovered materials, if any.

(e) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of paragraph (d) of this section.

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR

Parts 264 and 265 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

10. In Subpart D of Part 262, add the following new § 262.44:

Subpart D—Recordkeeping and Reporting

* * * * *

§ 262.44 Special Requirements for Generators of between 100 and 1000 kg/mo.

A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the requirements of this subpart, except for the recordkeeping requirements in paragraphs (a), (c), and (d) in § 262.40 and the requirements of § 262.43.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

11. The authority citation for Part 263 continues to read as follows:

Authority: Sections 2002(a), 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. 6912(a), 6922, 6923, 6924, and 6925).

12. In § 263.20, paragraph (h) is added to read as follows:

§ 263.20 The manifest system.

* * * * *

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those of § 263.22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in § 262.20(e);

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

13. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

14. Section 270.1 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(i) Generators who accumulate hazardous waste on-site for less than the time periods provided in 40 CFR 262.34.

* * * * *

15. Section 270.10 is amended by adding paragraph (e)(1)(iii) to read as follows:

§ 270.10 General application requirements.

* * * * *

(e) * * *

(1) * * *

(iii) For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

16. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

17. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of Regulation	Federal Register reference
*	*	*
Mar, 24, 1986.....	Regulations for Generators of 100-1000 kg/mo of Hazardous Waste.	51 FR [insert page number]
*	*	*

[FR Doc. 86-6224 Filed 3-21-86; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SWH-FRL 2969-2(a)]

Hazardous Waste Management System: Standards for Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposal rule and request for comment.

SUMMARY: Elsewhere in today's **Federal Register**, the U.S. Environmental Protection Agency (EPA) is promulgating a final rule for generators of 100–1000 kilograms of hazardous waste in a calendar month (100–1000 kg/mo generators) under Sections 3002, 3003, and 3004 of the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA").

This rule discusses the HSWA requirement that all generators certify on the Uniform Hazardous Waste Manifest that they have a program in place to reduce the volume or quantity and toxicity of the waste they generate to a degree determined by the generator to be economically practicable.

Since EPA did not previously seek public comment on the appropriateness of this requirement for generators of 100–1000 kg/mo, the Agency is today requesting comment on the applicability of the waste minimization certification provision to small quantity generators of 100–1000 kg/mo.

DATE: Comments will be accepted on this proposal until April 23, 1986.

ADDRESSES: Please mail comments on this proposal to the Docket Clerk, Office of Solid Waste, WH-562, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Communications should identify the regulatory docket "Waste Minimization Certification." The RCRA Docket is located in room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, and is available for viewing 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Michaelle D. Wilson, (202) 382-4792, Office of Solid Waste (WH-562B) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline, (800) 424-9346 (in Washington, DC, 382-3000).

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are proposed under the authority of sections 3001(d) and 3002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922.

II. Waste Minimization Certification Requirement

On November 8, 1984, the President signed the Hazardous and Solid Waste Amendments of 1984 (HSWA). Section 3002(b) of HSWA requires that generators certify on the manifest required under [section 3002] subsection (a)(5) that they have in place a program to reduce the volume or quantity and toxicity of the waste they generate to a degree determined by the generator to be economically practicable. Generators must also certify that their current method of management is the most practicable method available to minimize present and future threat to human health and the environment.

Section 3001(d) of HSWA directs EPA to promulgate standards under sections 3002, 3003, and 3004 for waste produced by generators of 100–1000 kilograms of hazardous waste in a calendar month (100–1000 kg/mo generators). Section 3001(d) also specifies certain interim requirements that took effect on August 5, 1985, and that will remain in effect until the effective date of the final rule published elsewhere in today's **Federal Register**.

On July 15, 1985, EPA published a rule which codified these, as well as other, interim HSWA requirements (50 FR 28702). A revised Uniform Hazardous Waste Manifest Form (EPA Form 8700-22) was included in the Appendix to Part 262 containing a revised certification statement incorporating the waste minimization provision. In the Codification Rule, EPA explained that the waste minimization provision did not apply to small quantity generators generating less than 1000 kg/mo of hazardous waste or the quantities of acutely hazardous waste specified in § 261.5(e), unless the generator accumulated waste which exceeded these quantities at any time and thus became subject to Part 262 (50 FR 28733).

The waste minimization certification requirement was not applicable to these small quantity generators because section 3002(b) refers to the manifest required by section 3002, subsection (a)(5), and the interim manifest requirements for 100–1000 kg/mo generators are imposed by section 3001(d), not section 3002(a)(5). However, because section 3001(d) of RCRA requires EPA to establish standards for 100–1000 kg/mo generators under sections 3002, 3003, and 3004, these generators would be subject to the manifest required by section 3002, subsection (a)(5). Thus the waste minimization certification requirements would apply to 100–1000 kg/mo generators upon promulgation of such standards.

EPA proposed standards for 100–1000 kg/mo generators on August 1, 1985 (50 FR 31278). The proposed rules did not address the waste minimization certification requirements of section 3002(b). Since EPA did not propose to exempt 100–1000 kg/mo generators in the August 1, 1985, proposal, and since this provision of section 3002 is self-executing, these generators would be subject to the waste minimization certification requirement on the effective date of the regulations for 100–1000 kg/mo generators promulgated under section 3002 and published elsewhere in today's **Federal Register.**

The Agency believes it appropriate to allow the waste minimization certification requirement to take effect with the rest of the Part 262 standards for 100–1000 kg/mo generators because EPA believes that the requirement imposes negligible burden. The waste minimization provision of section 3002(b) does not require that the generators take any action to change storage or disposal practices or establish a program for waste treatment or disposal. Rather, it only requires that the generator give some thought as to whether the most environmentally protective waste management technique is being practiced, given the generator's individual economic and waste management circumstances. EPA has already pointed out in the codification rule:

> "The amendment does not authorize EPA to interfere with or to intrude into the production process by requiring standards for waste minimization; rather, it specifically provides that the substantive determinations of "economically practicable" and "practicable method currently available" are to be made by the generator in light of his own particular circumstances. Thus, from an enforcement perspective, the Agency will be concerned primarily with compliance with the certification signatory requirement. Each generator subject to the waste minimization requirement should make a good faith effort to minimize the amount and toxicity of waste generated and to select a means of treatment, storage, or disposal most likely to minimize the present and future threat to human health and the environment." [50 FR 28734.]

In addition, the legislative history accompanying the HSWA explicitly states that the certification statement

does not ". . . create civil or criminal consequences [and that] . . . judgments made by the generators are not subject to external regulatory action." S. Rep. No. 284, 98th Cong., 1st. Sess. 67 (1983).

The interim manifest requirements that went into effect on August 5, 1985, already require 100–1000 kg/mo generators to sign the general certification of accuracy statement contained on the manifest. The certification statement consists of two parts: The first deals with the completeness and accuracy of the information contained on the manifest and the second with the waste minimization certification. Only one signature is actually required, regardless of whether the minimization provision applies, and the generator would not be required to keep any additional records as a result of the certification. Moreover, EPA has exempted 100–1000 kg/mo generators from the biennial report requirement, which, in effect, exempts these generators from the section 3002(a)(6) requirement to submit biennial reports on waste minimization. As the Manifest certification requirement merely encourages generators to consider alternative waste management practices that may be more environmentally protective and more economically advantageous from the generator's perspective, the Agency believes that little or no additional administrative or technical burden would be placed on 100–1000 kg/mo generators. In addition, the Agency believes that there is real benefit to be gained from the certification in terms of protection of human health and the environment, since generators may choose to switch their waste management practices after considering alternatives.

Therefore, EPA is today requesting public comment on whether the requirement to certify on the manifest to waste minimization is appropriate or whether it poses a significant and inappropriate burden on 100–1000 kg/mo generators. A 30 day comment period is provided. After consideration of the comments, the Agency will publish a **Federal Register** notice if it determines that an exemption from the waste minimization certification requirement is appropriate for these generators. If EPA determines that no exemption is appropriate, the waste minimization certification requirement will go into effect by operation of law at the time that the requirements contained in the final rule for 100–1000 kg/mo generators found elsewhere in today's **Federal Register** take effect; that is, six months from the date of promulgation.

The Agency is currently preparing a report to Congress on the feasibility and desirability of establishing standards for waste minmization. This report is required under HSWA, and is due by October 1, 1986. Should the Agency decide at some point in the future to propose specific waste minimization standards for hazardous waste generators, the Agency will specifically consider the impact of those proposed regulations on 100–1000 kg/mo generators, as mandated by the HSWA.

III. Regulatory Impact

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. A rule is major if it will: (1) Have an effect on the economy of $100 million or more; (2) significantly increase costs or prices to industry; or (3) diminish the ability of U.S.-based companies to compete in domestic or export markets. The Administrator has determined that this proposal is not a major rule because it would not result in increased costs to 100–1000 kg/mo generators.

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This proposed rule will not impose any information collection requirements.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all proposed rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b) that this proposed rule would not have a significant impact on a substantial number of small entities because it would not result in increased compliance costs for 100–1000 kg/mo generators.

List of Subjects in 40 CFR Part 262

Intergovernmental relations, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Recordkeeping and reporting requirements.

Dated: March 14, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86–6223 Filed 3–21–86; 8:45 am]

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LIST OF PUBLIC LAWS

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H.R. 3851/Pub. L. 99-258

To amend section 901 of the Alaska National Interest Lands Conservation Act. (Mar. 19, 1986; 100 Stat. 42; 1 page) Price: $1.00

H.R. 345/Pub. L. 99-259

To designate March 1986, as "Music in Our Schools Month" (Mar. 19, 1986; 100 Stat. 43; 2 page) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

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[4] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.