4-8-87
Vol. 52 No. 67
Pages 11185-11452

Federal Register

Wednesday
April 8, 1987

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

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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

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Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service—High School Vocational Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising the Schedule B excepted service appointing authority used by agencies to hire high school vocational cooperative education program participants in skilled trades and crafts occupations. These regulations permit appointments under the authority to be made by any agency with prior OPM approval. The change reflects OPM's intent that the authority be available to any agency that wished to set up an appropriate high school vocational cooperative education program. Previously, the language of the authority referred only to positions in the Department of the Navy.

EFFECTIVE DATE: May 8, 1987

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 632-6817

SUPPLEMENTARY INFORMATION: The Schedule B appointing authority was established as a supplementary recruiting source in the skilled trades and craft occupations for which other sources are not always adequate. Appointments are limited to positions in occupational series for which a directly related high school level vocational skills training program can be identified. Students who complete at least 1,040 hours of satisfactory career-related work experience prior to graduation may be noncompetitively converted to career-conditional appointments at grade levels up to and including WG–5 and equivalent under the provisions of Executive Order 12015. However, those conversions may not account for more than 25 percent of an installation's total annual hiring at the WG–5 level and below in the covered occupations.

When the Schedule B authority was established in 1978, only the Department of the Navy sought inclusion under it even though the intent was that any agency could request coverage. In 1981, at the request of the Department of the Air Force, coverage of the authority was expanded to include Air Force. Through oversight, however, that change was never published.

Proposed regulations correcting that omission and providing for use of the Schedule B appointing authority by any agency that has a qualifying program were published for comment on December 2, 1986 (51 FR 43359). No substantive comments were received, but one agency suggested an editorial change to clarify that the 25-percent limit applies to annual hiring not to an installation's total population in a particular occupation. That suggestion has been adopted. Aside from the editorial change, the proposed regulations have been adopted without change. The requirement that OPM approve an agency's use of the authority is retained to ensure that Schedule B appointments are limited to occupations in which structured vocational training programs exist and in which the quantity or quality of candidates available through other sources will not meet the agency's staffing needs. Once OPM approves use of the authority, however, the agency involved may approve programs at specific installations in accordance with criteria set out in the regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it effects only the procedures used to appoint certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, and 8337(h).

2. In § 213.3202, paragraph (e) is revised to read as follows:

§ 213.3202 Entire executive civil service.

(e) Positions in shipyards, air rework facilities, and other major industrial activities that prepare students at the high school level (upon satisfactory completion of a cooperative education program of at least 1,040 hours) for employment in preapprentice positions or in-helper positions at the WG–5 level or below. Agencies may make appointments under this authority only with prior approval of OPM and only under the following conditions:

(1) Employment is limited to skilled trades and crafts occupations having a journeyman level of WG–9 or above;

(2) Not more than 25 percent of appointments to positions in covered occupations will be made annually at any single installation through this conversion authority;

(3) The maximum time during which any student will be employed in the program is 18 months;

(4) Except for the conditions specified in this authority, students will be subject to instructions governing all other high school vocational education students in cooperative education programs; and

(5) Any student who completes a program without a diploma must have an authenticated certificate from the school indicating satisfactory completion of his/her personnel folder.

[FR Doc. 87-7706 Filed 4-7-87; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; Limitations on Food Service Management Companies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a provision of the School Lunch and Child Nutrition Amendments of 1986 which prohibits a school or school food authority participating in the National School Lunch Program from contracting with a food service company to provide a la carte food service unless such company agrees to offer free, reduced price and full price reimbursable meals to all children. This rule prevents a food service company from entering into a contract with a school or school food authority to provide a la carte service without undertaking the responsibility of offering free, reduced price and full price reimbursable meals to all eligible children.

EFFECTIVE DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, Alexandria, Virginia 22302 or phone (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule implements a nondiscretionary provision of Pub. L. 99-500 and 99-591. For this reason, the Administrator has determined pursuant to 5 U.S.C. 553 (b) and (d) that prior notice and public comment are unnecessary and contrary to the public interest and that good cause exists for making this rule effective on publication. In addition, since this rule merely implements cited statutory provisions, it constitutes an interpretative rule for which notice and comment rulemaking and a 30-day period before taking effect are not required by 5 U.S.C. 553.

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983).

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) are included in this final rule. The National School Lunch Program requirements have been approved by OMB for use through June 30, 1987 (OMB No. 0584-0006).

Background

Congress recently enacted amendments to the National School Lunch and Child Nutrition Acts in Pub. L. 99-500 and 99-591. Included in those laws was an amendment which establishes restrictions concerning a la carte food sales in schools and school food authorities participating in the National School Lunch Program. That legislation is addressed later in the preamble. To fully understand the amendments, a brief discussion of the current operations of nonprofit school food services is necessary.

Current Food Service Operations

School food authorities wishing to participate in the National School Lunch Program must agree to maintain a nonprofit school food service. Often, schools will operate an a la carte food service in addition to the service which delivers full course lunches designed to meet the requirements of the National School Lunch Program regulations. These a la carte services typically consist of sales of individual food items, like sandwiches and salads. Some schools or school food authorities have been contracting with food service companies to operate a la carte food services on school premises. These companies have no responsibility for provision of lunches for which cash subsidies are given under the National School Lunch Program.

Congressional Action

Congress recently expressed concern regarding food services companies operating only the *profitable* a la carte meal service. Such practices can reduce participation of nonneedy students in the National School Lunch Program thereby diverting revenue from the nonprofit school food service. Such diversion of resources can have a deleterious effect on the fiscal well-being of the school meal programs.

Section 324 of Pub. L. 99-500 and 99-591 added a new paragraph (e) to section 9 of the National School Lunch Act (42 U.S.C. 1785) which establishes controls on a la carte sales, effective July 1, 1986. Specifically, paragraph (e) states: A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced price and full price reimbursable meals to all eligible children.

Regulatory Change

In order to implement the amendment, this final rule amends § 210.16 to prohibit any school or school food authority from contracting with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and full price reimbursable meals to all children.

The provision applies to food service management companies as currently defined in 7 CFR 210.2: "a commercial enterprise or nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service." Use of this definition clearly excludes food service companies which vend products to the school food authority.

In summary, this final rule states that no school or school food authority may contract with a food service management company to operate an a la carte food service unless the food service management company undertakes the responsibility of managing the National School Lunch Program.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping

requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

2. In § 210.16, introductory paragraph (a) is revised to read as follows:

§ 210.16 Food service management companies.

(a) *General.* Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and full price reimbursable meals to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

Dated: April 1, 1987

S. Anna Kondratas,

Acting Administrator.

[FR Doc. 87–7805 Filed 4–7–87 8:45 am]

BILLING CODE 3410-30-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 103, 104 and 110

[Notice 1987-5]

Contribution and Expenditure Limitations and Prohibitions: Contributions by Persons and Multicandidate Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On January 9, 1987 (52 FR 760), the Commission published the text of revised regulations governing contributions by persons and multicandidate committees. 11 CFR 110.1 and 110.2. These regulations implement the contribution limitations established by the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. 441a(a) (1) and (2). The Commission announces that these rules and the conforming amendments are effective as of April 8, 1987

EFFECTIVE DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376–5690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: 2 U.S.C. 438(d) requires that regulations prescribed by the Commission to implement Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The revisions to 11 CFR 110.1 and 110.2 and the conforming amendments to 11 CFR 100.7 100.8, 102.9, 103.3 and 104.8 were transmitted to Congress on January 6, 1987 Thirty legislative days expired in the Senate on March 19, 1987 and in the House of Representatives on March 12, 1987

Announcement of effective date: 11 CFR 100.7(c), 100.8(c), 102.9, 103.3, 104.8(d), 110.1 and 110.2, as published at 52 FR 760, are effective as of April 8, 1987

Dated: April 3, 1987

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 87–7755 Filed 4–7–87 8:45 am]

BILLING CODE 6715-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–15651; File No. S7–35–84]

Separate Accounts Funding Flexible Premium Variable Life Insurance Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to temporary rule; request for comments.

SUMMARY: The Commission is adopting amendments to temporary rule 6e–3(T) under the Investment Company Act of 1940. The amendments modify and clarify the conditions under which insurance company separate accounts are permitted to offer flexible premium variable life insurance contracts. The Commission concurrently requests public comment on these revisions, but is not, at this time, adopting a permanent rule. The release also addresses several related matters.

EFFECTIVE DATE: The rule amendments will become effective May 8, 1987 Registrants may, however, voluntarily rely on the revised temporary rule immediately April 8, 1987. Comments must be received on or before July 31, 1987

ADDRESSES: All communications on this matter should be sent, in triplicate, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW Washington, DC 20549. Such communications should refer to File No. S7–35–84 and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Special Counsel, (202) 272–2061, Joseph R. Fleming, Attorney, (202) 272–3017 Office of Insurance Products and Legal Compliance, or Karen L. Skidmore, Special Counsel, Office of Investment Company Regulation, (202) 272–3023, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting amendments to temporary rule 6e–3(T) [17 CFR 270.6e–3(T)] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] ("Act"). The rule provides extensive exemptive relief from various provisions of the Act and rules thereunder for insurance company separate accounts [1] offering flexible premium variable life insurance contracts ("flexible life insurance" or "flexible contracts").[2] It is a companion

[1] The term "separate account" is defined in section 2(a)(37) of the Act [15 U.S.C. 80a–2(a)(37)] as "an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company. A substantially identical definition of that term, as it is used in various rules under the Act, is contained in rule 0–1(e)(1) under the Act [17 CFR 270.0–1(e)(1)]. The term "insurance company" is defined inspection 2(a)(17) of the Act [15 U.S.C. 80a–2(a)(17)].

A separate account may be rgistered under the Act either as a unit investment trust ("trust account") or as an open-end management company ("management account"). Typically, a trust account will be funded by an underlying management investment company ("fund" or "underlying fund," referred to as a "two tier" structure) of a series type or by several funds.

[2] The definition of flexible life insurance is contained in paragraph (c)(1) of the rule.

The relief provided by rule 6e–3(T) is also available to the account's investment adviser, principal underwriter, and sponsor or depositor.

rule to rule 6e-2 under the Act [17 CFR 270.6e-2], relating to scheduled premium variable life insurance ("scheduled life insurance" or "scheduled contracts, collectively with flexible life insurance, "variable life insurance" or "variable contracts").

Rule 6e-3(T) was adopted by the Commission on a temporary basis, with a concurrent solicitation of comments, on November 14, 1984.[3] It was based in large part upon a suggested rule contained in a rulemaking petition (the "petition") submitted by the American Council of Life Insurance ("Petitioner" or ACLI"), the life insurance industry's principal trade association.[4] The adopted rule, like the petition, followed the same regulatory approach for flexible life insurance as rule 6e-2 did for scheduled life insurance. Modifications were made only where necessary to accommodate flexible life insurance or to update certain provisions.[5] The Commission did not otherwise reconsider the policy determinations underlying specific provisions of rule 6e-2.

The original comment period for rule 6e-3(T) closed on January 31, 1985, but was subsequently extended to March 29, 1985.[6] The Commission received thirteen letters of comment.[7] The comments ranged from substantive to technical, with requests for clarification in some cases. In response, the Commission is adopting various amendments to the rule. Because the scope and nature of the relief provided by these amendments differ in certain respects from that originally provided by rule 6e-3(T), the Commission has decided to request public comment on the revisions before adopting a permanent rule. However, the fundamental policy decisions underlying rules 6e-2 and 6e-3(T) have not been revisited.

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Discussion

The rule is divided into four paragraphs. Paragraph (a) defines the type of separate account that may use the rule, and paragraph (b) provides relief from specific sections of the Act and rules thereunder. Terms used in the rule are defined in paragraph (c), while paragraph (d) sets forth certain computational methods to be used in applying the rule.

Each provision of the rule that either received significant comments or has been amended is discussed below. Important similarities and differences between the amended rule, the rule as originally adopted, and the petition are also noted.

[3] The reasons for adopting rule 6e-3(T) and the administrative history of the rule are set forth in Investment Company Act Release No. 14234 (Nov. 14, 1984) [48 FR 47208 (Dec. 3, 1984)] ("the adopting release"). Technical amendments to the rule were adopted in Investment Company Act Release No. 14625 (July 10, 1985) [50 FR 28930 (July 17, 1985)].

Investment Company Act Release No. 13632 (Nov. 23, 1983) [48 FR 54043 (Nov. 30, 1983)].

[5] Similar updating and conforming amendments to rule 6e-2 were proposed in Investment Company Act Release No. 14421 (March 15, 1985) [50 FR 11709 (March 25, 1985)].

See Investment Company Act Release No. 14328 (Jan. 17, 1985) [50 FR 3317 (Jan. 24, 1985)]. This extension of the comment period was made at the request of Petitioner, to allow more time for study and preparation of comments.

[7] The comment letters included two extensive comments, one from Petitioner ("ACLI letter"), and the other from a law firm on behalf of a large insurance company. In addition, four more comment letters were received from two original commenters after the comment period closed, each in response to comments made by the other.

A. Paragraph (a)—The Separate Account

Paragraph (a) sets forth the conditions a separate account and certain related persons must meet to avail themselves of the exemptions provided in paragraph (b). One of the conditions is that the assets of the separate account be derived solely from the sale of flexible contracts, scheduled contracts, related dividend accumulations, and advances by the insurance company sponsoring the separate account ("life insurer").[8]

The ACLI letter recommended that the paragraph also permit separate account assets to be derived from the sale of variable annuity contracts, subject to certain conditions.[9] This would, in effect, extend to management accounts the conditional exemptive relief for use of "mixed funding" (variable life insurance and variable annuities in the same funding media) currently available to trust accounts under paragraph (b)(15).[10]

The ACLI letter argued that the reasons mixed funding was not permitted for management accounts at the time rule 6e-3(T) was adopted are no longer relevant. It also argued that, by incorporating in paragraph (a) the same conditions found in paragraph (b)(15), management accounts would be adequately protected against any conflicts that might arise between the interests of variable annuity contractholders and those of flexible life insurance contractholders.

The Commission is not adopting this commenter's suggestion. The decision in rule 6e-3(T) to permit trust accounts with underlying funds to engage in mixed funding was based on a number of applications for exemptive relief under the Act.[11] In contrast, the Commission has not received any applications from management accounts desiring to use mixed funding. Thus, the Commission has not had the benefit of the exemptive process to consider the costs and benefits of mixed funding in the context of management accounts, or whether the conditions in paragraph (b)(15) would be appropriate in that context. Indeed, the ACLI letter acknowledges that permitting management accounts to use mixed funding might present some administrative problems and certain interpretive questions under the Act. Therefore, it would be premature to extend mixed funding relief to management accounts at this time. However, the Commission and its staff will consider applications for this type of exemptive relief, at which time the issues can be more fully explored.

B. Paragraph (b)—The Exemptive Provisions

Paragraph (b) exempts separate accounts that meet the requirements of paragraph (a) from certain specified provisions of the Act with respect to flexible contracts funded by the account.[12] Each subparagraph of paragraph (b) will be discussed in turn, highlighting changes made (or not made) and clarifications in response to comments.

1. Paragraph (b)(1)—Sales Load Definition

This paragraph exempts flexible life insurance separate accounts from the Act's definition of sales load so that the special definition of sales load in paragraph (c)(4) of the rule apply.[13] It also provides exemptions from the sales load definition and other sections of the Act, and rules thereunder, to enable subsequent as well as front-end sales loads to be deducted.

The comments suggested that it would be helpful to clarify whether certain types of subsequent sales loads are permissible. In the adopting release, the Commission stated that paragraph (b)(1) provides exemptive relief to permit a deferred sales load, a sales load deducted periodically from cash value, and any combination of a front-end, deferred, the periodic sales load. The commenters believed that the release was unclear about the permissibility of an asset-based sales load.[14] While an asset-based sales load is not the same as periodic deductions from cash value, both are permitted under the rule as long as the paragraph (b)(13) limitations on amount and sequence are observed. In the case of an asset-based sales load, the deductions from each individual contractholder's cash value must be monitored continuously to ensure compliance with the sales load limitations imposed by the Act and rule 6e-3(T), taking into account the individual's actual payments.[15] In short, any amount of sales load that may be deducted as a front-end load under the Act may also be "accrued" and deducted subsequently.

2. Paragraph (b)(5)—Investment Policies

Paragraph (b)(5) provides an exemption from section 13(a) of the Act [15 U.S.C. 80a-13(a)] to allow the life insurer, in limited circumstances, to disapprove changes in investment policies initiated by contractholders or the board of directors. It requires that the reasons for disapproval be disclosed in the proxy statement for the next meeting of contractholders. Since meetings are typically held annually, the next meeting would occur no more than twelve months from the date of the disapproval.

No comments were received on this provision of the rule. However, a modification has been made to accommodate the possibility that, for example, the underly fund in a two tier structure might not hold annual meetings.[16] In this case, the amended rule requires disclosure of any disapproval to be made in the next routine communication to contractholders, provided the communication occurs within twelve months of the disapproval. This

[8] Paragraph (a)(2).

[9] The term "variable annuity contract" is defined in rule 0-1(e)(1) under the Act to include any accumulation or annuity contract or participation therein participating in a separate account pursuant to which the value of the contract, either prior or subsequent to annuitization, or both, varies according to the income, gains or losses of the separate account.

[10] The ACLI letter also recommended a change in paragraph (a)(3) to line it up with the modifications the letter proposed for paragraph (a)(2). The Commission is not making this change because it decided not to revise paragraph (a)(2). It is, however, making other changes to paragraph (a)(3) to accommodate certain account liabilities not involving life contingencies, such as dividend accumulations.

[11] *See, e.g., Metropolitan Tower Life Insurance Company,* Investment Company Act Release Nos. 13519 (Sept. 21, 1983) [48 FR 44301 (Sept. 28, 1983)] and 13580 (Oct. 18, 1983); *MML Bay State Life Insurance Company* Investment Company Act Release Nos. 13418 (Aug. 2, 1983) [48 FR 36229 (Aug. 9, 1983)] and 13464 (Aug. 26, 1983).

[12] Rule 6e-3(T) provides a series of individual exemptions from the Act. A separate account relying on the rule need only comply with each exemptive provision to the extent that it needs the relief provided.

[13] Section 2(a)(35) of the Act [15 U.S.C. 80a-2(a)(35)] defines sales load as the difference between the price of a security and that part of the proceeds from its sale which is invested or held for investment, less certain listed items. Paragraph (c)(4) of rule 6e-3(T) is discussed in Section C.3., *infra.*

[14] An asset-based sales load is assessed as a specified percentage of total separate account assets allocable to a contractholder on the basis of his cash value, and is deducted on a daily basis with other asset-based charges. In contrast, periodic deductions from cash value for sales load are an administrative feature where the amount of load to be deducted has been fixed in relation to payments, but is simply deducted over time from the individual's cash value.

[15] *See* the discussion of subparagraph (b)(13)(i) in Section B.6.a., *infra.* In addition, the stair step rule would apply to an asset-based sale load. The percentage sales load deducted pursuant to this method may not exceed the sales load percentage previously deducted. *See* note 139 and accompanying text, *infra.*

[16] For example, where an investment company is organized as a Massachusetts business trust, and does not hold annual meetings, proxies are not annually solicited.

communication need not be a proxy solicitation, although if proxies are subsequently solicited, such disclosure may have to be made a second time, if material under the proxy rules.[17] The Commission believes this requirement ensures that contractholders will receive timely notice of any disapproval (within one year of the action), without unduly burdening the investment company, since the disclosure may be in a regular mailing as opposed to a formal proxy solicitation made for that purpose alone.

3. Paragraph (b)(9)—Custodianship of Assets

This paragraph provides an exemption from section 17(f) of the Act [15 U.S.C. 80a-17(f)] to allow securities and similar investments of a management account to be maintained in the custody of the life insurer or of an affiliated life insurer, provided certain conditions designed to ensure the safekeeping of such assets are satisfied. The petition suggested alternative relief from section 17(f) where a management account complied with rule 17f-2 [17 CFR 270.17f-2].[18] The Commission declined to include this alternative relief in rule 6e-3(T), stating that paragraph (b)(9) as written provided comparable and, *in some cases, greater relief than* that of rule 17f-2. However, the Commission specifically requested comment on whether an alternative test would be necessary.

Petitioner subsequently commented that, upon reconsideration, it was not renewing its prior request. Therefore, paragraph (b)(9) remains as proposed in rule 6e-3(T).

Paragraph (b)(9)(iv) of rule 6e-3(T) contains specific authorization for securities to be deposited in any manner permitted by any rule under section 17(f) of the Act.[19] At the time rule 6e-3(T) was adopted, rule 17f-4 [17 CFR 270.17f-4], dealing with custody of securities in securities depositories, was the most recent rule under section 17(f). The adopting release refers to rule 17f-4 as specifically encompassed by the language in paragraph (b)(9)(iv). Since then, rule 17f-5 [17 CFR 270.17f-5], regarding custody of management investment company assets outside the United States, has been adopted. This rule, like rule 17f-4, would be available to management accounts or underlying funds pursuant to paragraph (b)(9)(iv) of amended rule 6e-3(T). That is, subparagraph (b)(9)(iv) of rule 6e-3(T) is to be given the plain meaning of its words; any rules under section 17(f) that are enacted in the future may be relied upon by management accounts or underlying funds, subject to their meeting and rule's requirements.

4. Paragraph (b)(10—Voting Rights

This provision is substantively identical to rule 6e-2(b)(10). It provides an exemption from the voting requirements of section 18(i) of the Act [15 U.S.C. 80a-18(i)], provided contractholders receive one vote for each $100 of cash value.[20] No comments were received on this paragraph or on subparagraph (b)(15)(C)(iii), which generally extends certain voting related exemptions to underlying funds of trust accounts.[21] However, the Commission believes it would be useful to clarify here and in the rule itself, certain issues related to voting.

The stipulation in subparagraph (b)(10)(i)(A) of the rule, that contractholders have one vote for each $100 of cash value funded by the separate account, reflects a policy decision made in rule 6e-2 that management of the affairs of the separate account should be allocated on a basis that reflects a contractholder's economic interest in the separate account. The use of cash value in rule 6e-2 was dictated, in some measure, by the inability to use net asset value as a means to quantify the ownership interests on which voting rights might be based.[22] The Commission also determined that basing voting rights on cash value had an advantage over basing them on variable death benefit or one vote per contract, in that each contractholder's interest would be valued on the same day and each contractholder would receive a vote related to his investment in the separate account. This policy decision was carried over to flexible contracts without debate, as part of the philosophy of parallel regulation for variable life insurance, wherever feasible.

The concept of voting based on cash value is increasingly important because of the proliferation of series funds in the variable life insurance context. For example, if voting in a series fund comprised of typical money market and equity portfolios were based on an equal "per share" vote, where shares represent net asset values of $10 and $1, respectively, money market shareholders in "cross-series" voting matters would have a vote disproportionate to their economic interests. Voting on the basis of cash value removes this inequity.

Issues relating to cash value voting also arise in the context of two tier structures. In particular, these issues concern the need to maintain equivalent regulation of management accounts and trust accounts. In this connection, several modifications have been made in the language of paragraph (b)(15) of the rule to make it clearer that the policies underlying paragraph (b)(10) apply in the two tier structure as well.[23]

That the rule always contemplated the application of paragraph (b)(10) in the two tier format is demonstrated by the administrative history of paragraph (b)(15). Paragraph (b)(15) provides relief similar to that in rule 6e-2(b)(15). That paragraph was added to rule 6e-2 at the adoption stage, when it was suggested by the commenters that several potential sellers of scheduled contracts were considering organizing their separate accounts as trust accounts. These commenters on rule 6e-2 expressed the concern that rule 6e-2, essentially designed for management accounts, might not address certain problems that might be experienced

[17] A similar change was made with respect to the disclosure requirements in paragraph (b)(7)(ii) of the rule regarding an insurer's disapproval of the account's investment adviser or principal underwriter.

[18] Rule 17f-2 is a rule prescribing conditions for the custody of investments by registered management investment companies.

[19] Paragraph (b)(9)(iv) of the rule provides, "The requirement in paragraph (b)(9)(i) of this Rule that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company *shall not apply to securities* deposited with insurance regulatory authorities or *deposited in accordance with any rule under Section 17(f)* (emphasis added).

[20] Section 18(i) generally requires that every share of stock issued by a registered management investment company be voting stock and have equal voting rights with every other share of voting stock.

[21] *See* discussion in Section B.7., *infra.*

[22] The first issuer of a scheduled contract, Equitable Variable Life Insurance Company ("EVLICO"), argued successfully to the Commission in their application for exemptive relief that cash value would provide a fair basis for allocating voting rights. EVLICO pointed out that unlike a typical investment company where all investors purchase shares at net asset value (plus any sales load) and thus have proportionate interests in the fund, scheduled contracts are issued on the basis of insurance underwriting standards so that a dollar in premiums will purchase varying amounts of death benefit depending upon the age and underwriting class of the purchaser. The order of exemption granted to EVLICO was one of the influences on the final version of rule 6e-2. *See* Investment Company Act Release Nos. 8888 (Aug. 13, 1975) [40 FR 37116 (Aug. 25, 1975)] and 8992 (Oct. 16, 1975).

[23] Indeed, without the exemptions provided by subparagraph (b)(10)(ii), actions permitted by subparagraph (b)(15)(iii) (which conditionally permits disapproval by an insurance regulatory authority or the life insurer of certain proposals) might violate section 18(i). Subparagraph (b)(10)(ii) of the rule specifically states that the voting rights required by section 18(i) shall not be deemed to be violated by actions specifically permitted by it or other paragraphs of the rule. These other paragraphs include the limited exemptions from sections 13 and 15 given by paragraph (b)(15).

under the two tier format. In response, exemptions for underlying funds designed to parallel those provided elsewhere for management accounts were written into new paragraph (b)(15).[24] The Commission did not, however, write paragraph (b)(15) to negate the impact of any other paragraph of the rule; the paragraph assumes implementation of the paragraph (b)(10) voting rights.

Parallel treatment of voting rights for contractholders in management accounts and trust accounts is also consistent with the policies of the Act, as expressed in section 48 thereof [15 U.S.C. 80a-47]. The section states, in essence, that no person may do indirectly through another entity what it may not do directly.[25] Thus, it would seem contrary to the intent of the Act to deprive contractholders of the voting rights given by section 18(i) (as modified by paragraph (b)(10) of the rule) merely because an insurer interposes a trust account between them and the underlying fund.

Finally, in applying paragraph (b)(10) in the two tier context, life insurers should take special note of paragraph (b)(10)(i)(B) of the rule. This paragraph tracks a similar paragraph in rule 6e-2, which provides voting rights to life insurers in proportion to "assets of the separate account not otherwise attributable to contractholders."

Thus, the paragraph gives a life insurer voting rights with respect to, *e.g.*, any "seed" money (and accumulations thereon) allocated to the separate account.[26] These voting rights were given to the life insurer, however, with the express caveat that when contracts were sold to the public, the insurer would exercise these rights in proportion to the votes cast by contractholders (a process known as "proportionate voting"). Like the rest of paragraph (b)(10), this proviso applies in both the management account and the two tier structures.[27]

5. Paragraph (b)(12—Pricing and Processing

This paragraph provides relief from sections 22(c) [15 U.S.C. 80a-22(c)], 22(d) [15 U.S.C. 80a-22(d)], 22(e) [15 U.S.C. 80a-22(e)], and 27(c)(1) [15 U.S.C. 80a-27(c)(1)] of the Act, and rule 22c-1 thereunder [17 CFR 270.22c-1], in connection with certain pricing and processing provisions of flexible contracts. Subparagraph (i) of paragraph (b)(12) presently concerns the determination of cash value and death benefits under a flexible contract. Subparagraph (ii) provides an exemption to accommodate certain insurance company administrative procedures.[28] Comments were received on both subparagraphs, and are discussed below.

a. Subparagraph (b)(12)(i)—Cash Value

Subparagraph (b)(12)(i) requires cash value to be "determined" in accordance with rule 22c-1(b), the pricing rule for all investment companies.[29] The ACLI letter requested that the word "determined" in this paragraph be replaced by "determinable." The ACLI letter stated this would codify the industry's understanding that the life insurer need only have the *capability* of computing this value daily and that actual computations and print-outs would only need to be performed when necessary for the operation of the contract and the separate account (*e.g.*, on contract processing days).

Both to remove any ambiguity and to underscore that, absent an exemption, the same pricing standards apply to all investment companies (including separate accounts), the Commission has replaced the word "determined" in rule 6e-3(T) with "computed," as used in rule 22c-1(b) (and in proposed amendments to rule 6e-2).[30] Thus, the net asset value computation for management and trust accounts and underlying funds would have to be made and recorded on the same basis as for any other investment company. However, computation of the daily net asset value of a separate account does not always require computation of a cash value for every contractholder on a daily basis; cash value must only be capable of computation, unless actual computation is necessary for the operation of the contract. Accordingly, the rule has been amended to bring it in line with the industry's understanding in this area.

b. Subparagraph (b)(12)(ii)—Death Benefit

Subparagraph (b)(12)(i), renumbered in part as subparagraph (ii), has been amended to clarify the Commission's pricing policy as it pertains to death benefits. Paragraph (b)(12) was originally drafted to reflect the only two death benefit options known at that time: (1) "Option I," essentially a level death benefit option;[31] and (2) "Option II," under which the death benefit is equal to the face amount plus cash value, thus reflecting every change in cash value.[32] However, flexible life

[24] Historical evidence of the desire to achieve a regulatory parallel further exists in that a general "veto" right for trust accounts applicable to any underlying fund was requested by the commenters, but rejected by the Commission in favor of applying through paragraph (b)(15) the limited veto right provided management accounts in subparagraphs (b)(5)(ii) and (b)(7)(ii)(C).

[25] Section 48 makes it "unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under [the Act]."

[26] Paragraph (b)(10)(i)(B) reads in its entirety, "[t]he life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders under paragraph (b)(10)(i)(A) of this Rule, with fractional votes allocated for amounts less than $100. *Provided*, That after the commencement of sales of flexible contracts, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast be contractholders.

[27] Earlier this year, the staff of the Commission became aware of the fact that some companies organized as trust accounts, in apparent good faith, were voting on a discretionary basis: (1) fund shares held in the general or separate account representing "seed" money and (2) fund shares held in the separate account representing charges imposed by the company against the separate account. The staff sent out letters advising these companies of its position that both rule 6e-2 and rule 6e-3(T) require proportionate voting for all fund shares. All of those companies subsequently responded that they would comply.

[28] To facilitate understanding this paragraph of the rule, it has been divided into three subparagraphs. As amended, subparagraph (i) will contain the requirements for the determination of cash value, and subparagraph (ii) will contain the requirements for the determination of death benefits. Subparagraph (iii) will contain former subparagraph (ii).

[29] The Commission has refined this provision by dropping the text of the pricing rule stated therein and simply referencing rule 22c-1(b). Since the rationale with respect to the pricing of redeemable securities by investment companies is equally applicable to the computation of cash value of variable contracts, the Commission believes, as an administrative matter, it is more efficient to incorporate rule 22c-1 by reference into rule 6e-3(T).

[30] *See* note 5, *supra*.

[31] Subparagraph (b)(12(i)(B)(2) requires death benefit to be determined only on days when it could be affected by the investment experience of the separate account. In a typical Option I contract, the death benefit is equal to the face amount of the contract or, if greater, the cash value multiplied by the "applicable percentage," as set forth in Section 7702 of the Internal Revenue Code of 1986 [I.R.C. § 7702 (1986)] ("Code"). The "applicable percentage" is 250% of cash value for insureds aged 40 and under, decreasing in varying increments each year therafter until age 75, when it levels off at 105% for sixteen years and then grades down to 100% at age 95. Under this type of contract, investment experience (either positive or negative) would not affect the death benefit until the cash value times the "applicable percentage" exceeded the current face amount of death benefit under the contract. Although the "applicable percentage" formulation is required by the tax laws to assure the contract's status as insurance, these contracts nonetheless generally operate and are thought of as level death benefit contracts.

[32] In the case of an "Option II" contract, death benefit would be determined daily since cash value (which generally changes daily with investment performance) would be determined daily and death benefit is a function of cash value. Therefore, it was contemplated at the time rule 6e-3(T) was adopted that "Option II" contracts would meet the daily computation requirement of subparagraph (b)(12)(i)(A).

insurance has continually evolved since the first product designs were introduced. Recently, some contracts with death benefits that fall between straight "Option I" and "Option II" designs have been registered.[33] Therefore, the Commission has revised the language of the death benefit provisions to make it clear that contracts such as these are acceptable under the rule.

Under the revised paragraph, death benefits need only be computed on designated days where the investment experience would, under the terms of the contract, affect the death benefit. Thus, the ability to compute death benefits less frequently than daily is not limited to "Option I" contracts. Of course, the computation dates would have to be specified on an evenhanded basis.[34] In addition, full and prominent disclosure should be made in the prospectus of any death benefit option that was either not fixed or that did not vary daily with cash value to reflect fully the investment performance of the separate account. Full and fair disclosure of the death benefit pricing procedures under the contract would be particularly critical to explain the effect, if any, on death benefit of additional purchase payments made between death benefit valuation dates.

c. Subparagraph (b)(12)(iii)—Variations in Charges

Subparagraph (b)(12)(iii) (formerly, subparagraph (b)(12)(ii)), provides a limited pricing exemption, to the extent "(n)ecessary to comply with [rule 6e-(T)] or with insurance laws and regulations and established administrative procedures of the life insurer

This exemption enables life insurers to process initial purchase payments (in connection with either the issuance of flexible contracts or increases in insurance benefits requiring evidence of insurability) in a manner consistent with life insurance industry practice.[35] Of course, subsequent payments must be priced in accordance with rule 22c-1.

The ACLI letter requested confirmation that subparagraph (b)(12)(iii) permits variations in sales loads and charges that meet the principles of rule 22d-2 [17 CFR 270.22d-2] (formerly rule 22d-3), an exemptive rule under section 22(d) for variable annuity contracts.[36] The Commission concurs in this interpretation. In addition, the Commission notes that recently amended rule 22d-1 [17 270.22d-1], which permits scheduled variations in sales loads, would also be available.[37]

6. *Paragraph (b)(12)—Sales Load and Other Deductions*

This paragraph provides exemptions from section 27 and related provisions in connection with the deduction of sales load and certain fees and charges from the assets of a flexible life insurance separate account. The paragraph is divided into nine sections, most of which are discussed below.

a. Subparagraph (b)(13)(i)—Sales Load Limitation

This subparagraph provides exemptions comparable to those provided by rule 6e-2(b)(13)(i), with some modifications to reflect the flexibility of payments and the ability to adjust insurance coverage under flexible life insurance. For each rule, paragraph (b)(13)(i) provides an exemption from the requirement of section 27 [15 U.S.C. 80a-27] that sales load deducted under any periodic payment plan certificate not exceed 9% of payments "to be made thereon.

With respect to scheduled life insurance, rule 6e-2 regulates sales load on the basis of "payments to be made" for a specified time period of the lesser of 20 years of the anticipated life expectancy of the insured.[38] The design of flexible life insurance, on the other hand, does not contemplate a fixed pattern of payments.[39] Therefore, an analogue to scheduled payments under rule 6e-2 is necessary to provide the base against which to measure compliance with the 9% limitation of section 27 Rule 6e-3(T) adopted the concept of the "guideline annual premium" (sometimes referred to as "GAP") as this anologue.[40]

A "guideline annual premium" is defined generally in the rule as the level annual payment necessary to provide the future benefits under the contract through maturity, based on certain assumptions.[41] These assumptions include the 1980 Commissioners Standard Ordinary Mortality Table ("1980 CSO Table"),[42] a 5% assumed interest rate, and the fees and charges specified in the contract.

Thus, subparagraph (b)(13)(i)(A) of the rule provides relief from the sales load limitations of sections 27(a)(1) [15 U.S.C. 80a-27(a)(1)], 27(h)(1) [15 U.S.C. 80a-27(h)(1)], and 27(h)(4) [15 U.S.C. 80a-27(h)(4)], provided that sales load does not exceed 9% of the sum of GAPs that would be paid during the relevant contract periods.[43] Under this test, a wide latitude in the design of sales load deduction schedules is given so long as the total amount deducted neither exceeds 9% of 20 GAPs (subject to the insured's life expectancy) nor violates the "stair step" provisions, discussed below. In addition, sales load may be deducted from actual payments made in

[33] For example, one contract provided for a death benefit which was affected by separate account investment performance only at the beginning of each contract quarter, *i.e.*, the death benefit was fixed or level for three months at a time. *See* Variable Account A of Monarch Life Insurance Company (File No. 33-457, May 1, 1986) and Variable Account B of Monarch Life Insurance Company (File No. 33-464, Aug. 15, 1986). Another product design that may evolve in the future is a contract providing for only a yearly adjustment to death benefit.

[34] Thus, the revised rule requires death benefits to be computed on a basis that is reasonable, fair, and nondiscriminatory. The adjustments to death benefits could not be set, for example, as daily adjustments in a falling market and annual adjustments in a rising market.

[35] The pricing exemption provided by subparagraph (b)(12)(iii) for flexible contracts is broader than that given by Rule 22c-1(c) for variable annuity contracts. This is because of the greater underwriting and other complexities that exist in the life insurance context.

[36] The exemption requires that the prospectus disclose certain information about the variations, that the variations reflect differences in costs or services, and that the variations do not unfairly discriminate against any person.

[37] *See* Investment Company Act Rel. No. 14390 (Feb. 22, 1985) [50 FR 7909 (Feb. 27, 1985)].

[38] Because variable contracts are of an indeterminable length, unlike traditional periodic payment plans, an artificial test is necessary to permit demonstration by the life insurer of prospective compliance with the 9% limitation.

[39] *See* the definition of a flexible premium variable life insurance contract, contained in paragraph (c)(1) of the rule.

[40] Paragraph (b)(13) of the the rule, in subparagraph (i)(B), also allows sales loads to be taken without the use of GAP. Under this provision, sales load may be taken in any manner permitted by the rule, but in an amount no greater than 9% of payments actually made.

[41] Paragraph (c)(8) of the rule. *See* discussion in Section C.4 *infra*.

[42] A mortality table is a statistical table from which an estimate of a person's life expectancy can be made. The 1958 CSO Mortality Table, developed jointly by The Society of Actuaries and the National Association of Insurance Commissioners ("NAIC"), prescribes the minimum basis upon which certain insurance related calculations must be made. The NAIC recently promulgated new mortality tables embodying updated and less conservative mortality assumptions—the 1980 CSO Table—which generally will be mandatory for all life insurance contracts by 1989. *See* discussion in Section C.4., *infra*.

[43] "Contract period" is defined generally in paragraph (c)(5) of the rule as the period from a contract issue or anniversary date to the earlier of the next following anniversary date or the contract's termination date. *See* discussion in Section C.4., *infra*. The relevant contract periods are equal to the lesser of 20 years or the anticipated life expectancy of the insured, based on the 1980 CSO Table.

excess of 20 GAPs, provided that the "stair step" provisions are observed.

The use of the guideline annual premium approach prompted a critical and lengthy comment letter from one commenter.[44] The commenter argued strenuously that use of guideline annual premiums produces too high an estimate of the actual premiums likely to be paid and that, therefore rule 6e–3(T) potentially permits overall sales loads far in excess of 9% of payments.[45] The commenter proposed instead that sales load be regulated on the basis of "target premiums," which would be established by life insurers for each contractholder. The commenter argued that because "target premiums" illustrate a payment schedule intended to provide the level of insurance benefits and investment performance selected by the particular contractholder, they provide a more reasonable "surrogate" for actual payments than guideline annual premiums. In addition, the commenter contended that with respect to subsequent sales loads, the rule departs even further from the concept that sales loads should be geared to actual payments. This, the commenter claimed, is because the rule allows continuing sales load deductions, even after the contractholder has ceased making the planned payments.[46]

To illustrate its point, the commenter cited as an example a contract with the following schedule of sales load, to be deducted from the assets in the separate account: 50% of the GAP at issue; 10% of the GAP at the beginning of year two, three, and four; and 6.5% of the GAP on each subsequent anniversary—a sales load schedule that is prospectively in compliance with rule 6e–3(T)(b)(13)(i)(A). The example further supposes that the contractholder (age 50) pays five annual GAPs, each in the amount of $2,000, and makes no other payments. Under the assumptions of an average 10% annual net investment return and cost of insurance deductions less than those permitted by the 1980 CSO Table, the commenter stated that the contract would remain in force for 15 years or more even if no further payments are made. The commenter concluded that the insurer would deduct $1000 in the first year (50% of GAP), $200 in years two through four (10% of GAP), and $130 in years 5 through 20 (6.5% of GAP), for a total of $3680 or 36.8% of the total payments made (5 GAPs or $10,000).

The example is a useful one because it illustrates a misunderstanding about the use of the GAP assumption. Under rule 6e–3(T), sales load may be deducted in any manner as long as it never exceeds what could have been deducted as a front-end load.[47] The assumption of 20 GAPs allows a life insurer to demonstrate prospectively that its sales load schedule will meet the 9% of total GAPs limitation. However, this is *not* the same as "pretending" that GAPs have been paid at the time sales load is deducted. In the above example, the life insurer's last deduction should have been 6.5% of the fifth GAP received; the life insurer was not entitled to continue taking 6.5% of an "imaginary" payment, *i.e.*, a payment not actually made in years 6 through 20.[48]

On a related point, the Commission wishes to emphasize that paragraph (b)(13) of rule 6e–3(T) adopts a "cumulative" or "aggregate" approach to sales loads, *i.e.*, it measures sales loads with reference to the amount of payments rather than the particular year in which they are received. Accordingly, in the example discussed above, if the fourth $2,000 GAP had been paid in three yearly installments, the insurer would have been entitled to deduct 10% of each installment until the full fourth GAP had been made (payments thereafter being subject to a 6.5% load). The insurer would not be limited to a 6.5% load on installments of the fourth GAP paid beyond the fourth year. It would not, however, have been entitled to take the full 10% of the fourth GAP or $200, out of the first installment of the fourth GAP *i.e.*, the first $667 to be paid.

These clarifications of the applicability of the guideline annual premium concept may ameliorate some of the concerns raised by the commenter. In addition, using guideline annual premiums, rather than "target premiums," provides the advantages of a single set of assumptions for all flexible contracts. Therefore, different contractholders and different issuers will be regulated on the same basis with respect to sales load.[49] It also permits a wider variety of sales load designs than would be possible using "target premiums."

b. Subparagraph (b)(13)(ii)—"Stair Step" Relief

This subparagraph grants exemptions from the requirements of sections 27(a)(3) [15 U.S.C. 80a–27(a)(3)] and 27(h)(3) [15 U.S.C. 80a–27(h)(3)], provided that the proportionate amount of any sales load deducted from any payment does not exceed the proportionate amount deducted from any prior payment—commonly known as "stair step" requirements.[50] However, this provision provides an exception to the stair step requirements similar to that in rule 6e–2 for, among other things increases caused by the grading of cash surrender values into reserves.

The adopting release, solicited comment about the appropriateness of this exception for flexible life insurance.[51] The ACLI letter commented

[44] This, in turn, provoked an exchange of letters. *See* note 7, *supra*.

[45] The commenter also noted that subparagraph (b)(13)(i) omitted a requirement contained in the petition that an insurer could not deduct 9% of 20 GAPs if in any year premiums were paid in the amount of the guideline single premium ("GSP"); in that case, the petition would have limited the sales load to 9% of the GSP. This comment will be addressed generally in connection with the discussion of single premium contracts. *See* discussion in Section C.1.a., *infra*, regarding the fixing of premium payments for the first two years.

[46] "Subsequent sales loads" refers to sales loads that are deducted other than from payments (which is referred to as a "front-end sales load"). Examples of this would be: (1) a deferred sales load upon full or partial redemption; (2) a periodic deduction directly from a contract's cash value; (3) an asset-based sales load; or (4) a combination of any of the above. *See* discussion in Section B.1., *supra*.

[47] Paragraph (d)(1) of the rule effectively permits subsequent sales loads "if during each contract period through [maturity], the amount of sales load deducted is not more than the amount of sales load that could be deducted under a flexible contract identical to the actual contract except that sales load is deducted only from payments

[48] Of course, the insurer in the example could have taken sales load more rapidly; *e.g.*, 50% of payments up to each of the first three GAPs and 30% of payments up to the fourth GAP. Thus, if 4 GAPs of $2000 each were paid in year 1, the insurer could deduct $3600 as sales load ([50%×$6000)+(30%×$2000)). However, this would be subject to the refund and conversion rights of subparagraph (b)(13)(v), discussed *infra* in Section B.6.e., and to full disclosure of the load structure and its consequences. In addition, *see* the discussion in Section C.1.a., *infra*, regarding sales load where more than 4 GAPs are required in the first two years.

[49] Some commenters asserted that "target premiums" vary from contractholder to contractholder and thus would be an administratively difficult alternative.

[50] Paragraph (d)(1)(ii) provides comparable relief from the stair step requirements for other than front-end loads. *See* discussion in Section D.1.b., *infra*.

One example of a subtle stair step violation involves a combination front end and deferred sales load structure where no "front-end" deduction is made from the initial payment, but one is made from subsequent payments. This would violate stair step requirements because the amount of any front-end load actually taken on payments after the first would necessarily be proportionately greater than that (*i.e.*, none) on the initial payment.

[51] *See* the adopting release at note 46. Generally speaking, the "grading of cash surrender values into reserves" exception contained in Rule 6e–2 allows certain upward variations in sales load from one year to the next for scheduled contracts providing tabular cash values adjusted for investment earnings. For example, in the early years of a scheduled contract, state insurance law typically requires larger contract reserves than legal minimums for cash values. Some insurance companies, therefore, gradually increase cash

Continued

that by defining sales load in paragraph (c)(4) with respect to "cash value" rather than "cash surrender value, the possibility of producing increases in proportionate sales loads by the typical grading down of deferred sales loads to 0% over several years (which could be viewed as the grading of cash surrender values into reserves) has been eliminated and the exception may be properly deleted from this paragraph. The Commission agrees.

The ACLI letter also recommended that another exception to the "stair step" requirement be provided for reductions in proportionate sales loads deducted from amounts transferred from other insurance programs. The letter noted that insurers are permitted to reduce or eliminate front-end sales loads on initial "rollover" amounts transferred into the separate account from other programs, subject to the non-discrimination, fairness, and other standards prescribed by former subparagraph (b)(12)(ii) (now subparagraph (b)(12)(iii)). The letter then pointed out that although such reductions would benefit contract-owners, they could cause sales loads charged against subsequent payments under the regular load structure for the contract to violate the "stair step" requirements. The Commission believes that the requested exemption is justified, and paragraph (b)(13)(ii) has been amended accordingly.

c. Subparagraph (b)(13)(iii)—Deductions of Fees and Charges and Custodianship of Assets

(1) *Administrative expenses.* This subparagraph provides relief from sections 27(c)(2) [15 U.S.C. 80a-27(c)(2)], 26(a)(1) [15 U.S.C. 80a-26(a)(1)], and 26(a)(2) [15 U.S.C. 80a-26(a)(2)] to permit certain fees and charges to be deducted from separate account assets and to permit various custodianship activities regarding those assets. The ACLI letter recommended that the provision in subparagraph (b)(13)(iii)(A) for the payment of a fee to the life insurer for "administrative services," be modified to clarify that the exemption is not limited to account maintenance expenses. Another commenter supported this recommendation. Specifically, commenters sought clarification that deductions for administrative expenses incurred in connection with establishing separate account administrative systems and first-year contract issuance and underwriting are permissible.

The Commission concurs with the commenters that the exemption includes these types of expenses, and has modified the subparagraph accordingly. This amendment does not, however, reflect any change in policy with respect to variable life insurance administrative expenses; the fees allowed are those for the expenses normally associated with the traditional start-up (including setting up new computer systems) and underwriting processes. These would include, for example, the costs of processing applications, conducting medical examinations, determining insurability and the insured's risk class, and establishing records relating to the contract. The amended exemption is not a way to recover any distribution expenses or sales load. Moreover, the Commission continues to retain jurisdiction regarding the determination of "reasonable amounts" of fees for administrative services.[52]

(2) *Income taxes.* Subparagraph (iii)(E) of paragraph (b)(13) permits certain deductions from the assets of a separate account. The ACLI letter suggested that the scope of the subparagraph be expanded to include a deduction for any possible future income or other taxes incurred by the life insurer and properly chargeable against separate account assets. Presently, no such taxes are assessed.

The Commission has granted exemptive relief similar to that requested by the ACLI letter.[53] However, the relief involved only income taxes and was based on certain representations designed to eliminate any possibility of hidden benefits (such as hidden "float") for the life insurer.[54] Subject to these representations, the assessment of an amount for income taxes was found to be consistent with the purposes of sections 26(a)(2) and 27(c)(2) of the Act.

The Commission is adopting the language suggested in the ACLI letter. While the "or other taxes" language is more expensive than an exemption merely for income taxes, there is no sound policy basis to limit the types of taxes that may be deducted. The amount deducted should be no greater than the actual amount of the liability, and should not be deducted far in advance of the time such taxes are due. The life insurer may, however, take potential tax liability into account in determining lapse. That is, if flexible contract's cash surrender value, reduced (for purpose of this calculation only) by the contractholder's potential tax liability, is insufficient to support the contract charges, an additional payment may be required to avoid entering the grace period.

(3) *Premium taxes.* Subparagraph (iii)(E) of paragraph (b)(13) permits, among other charges, the deduction of premium taxes imposed by a governmental entity. The ACLI, in commenting on the proposed conforming amendments to rule 6e-2,[55] noted that in permitting the deduction of premium taxes, rule 6e-3(T)(b)(13)(iii)(E) refers to "the deduction of premium taxes." The parallel provision in rule 6e-2 refers to "the deduction of an amount approximately equal to premium taxes. The ACLI letter suggested that rule 6e-3(T), like rule 6e-2, specify that the permissible deduction need only approximate the average premium taxes the insurer must pay, a standard industry practice.

While agreeing that rule 6e-2 currently contemplates an averaging of premium taxes, the Commission would like to request comment on the necessity of, and justification for, continuing this practice. The effect of averaging on individual contractholders is not inconsequential when one considers that the range of actual tax liability is from 0% to 4% of payments, and that single premium variable life insurance has become increasingly popular. Single premium contracts are accompanied by a large single payment, typically $10,000 to $25,000. A 2½% premium tax assessment, chosen as an "average" state tax, on a $25,000 payment could

values above legal minimums until they equal reserves in the later years (a process referred to by the ACLI as "equalization"). Consequently, in the year *after* the equalization, the amount of the increase in a contract's cash value is proportionately less than the preceding year, resulting in an increase in sales load as determined under paragraph (c)(4) of Rule 6e-2 (assuming all other charges remain level or unchanged).

[52] Section 26(a)(2)(C) provides: "No principal underwriter for or depositor of a registered unit investment trust shall sell . . . any security of which such trust is the issuer . . . unless the trust indenture . . . provides . . . that no payment . . . shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment . . . of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian itself. *See also* subsections (5) and (6) of section 27(a).

[53] *See, e.g., Nationwide Life Insurance Company,* Investment Company Act Rel. Nos. 15002 (March 19, 1986) [51 FR 10291 (March 25, 1986)] and 15057 (April 16, 1986).

[54] The representations were that (1) any income tax charge would not recover any more than the amount of tax liability actually incurred, with no interest element; (2) any such charge would comply with state insurance laws; (3) the charge would be fully disclosed in the prospectus; (4) it would only be deducted from the separate account as taxes became due; and (5) taxes would not be deducted and accumulated in the life insurer's general account prior to the time they were due.

[55] *See* note 5, *supra.*

result in a loss to a contractholder of $625 plus all earnings thereon for the life of the contract—even though his particular state did not impose such a tax.

Hidden "float" profits, may also become a concern in the premium tax area. This would arise where the tax is deducted from the contractholder's account on day one, but the life insurer continues to derive a benefit from the use of all contractholders' funds until remitted to the governmental entity—perhaps for a period as long as one year. However, the Commission acknowledges in this regard that, while it was never intended that "float" be used to benefit the life insurer, the exemption for deduction of premium taxes contains no prohibitions with respect to this possibility; nor does the adopting release speak to the issue. Therefore, comment is requested on how and when deductions for premium taxes are actually made. In addition, comment is requested on the costs and benefits to life insurers and contractholders of requiring life insurers to deduct for premium taxes on a basis more closely related to the contractholder's individual "liability" and their time of assessment by the governmental entity.[56]

(4) *Mortality, expense, and guaranteed death benefit risk charges.* Subparagraph (b)(13)(iii)(F) permits charges for mortality, expense, and guaranteed death benefit risks ("risk charges") to be deducted from account assets, provided that certain conditions are met.[57] These conditions are designed to address the Commission's concern that proceeds from risk charges may be used to finance distribution expenses or other expenses not related to insurance risks; at the time rule 6e-3(T) was adopted, the condtions were comparable to those proposed in rule 26a-3 [17 CFR 270.26a-3], a rule to permit variable annuity separate accounts to deduct risk charges.[58]

The Commission recently proposed amendments to subparagraph (b)(13)(iii)(F) of rule 6e-3(T) to conform the terms of exemptive relief found in this subparagraph to those of the exemptions in rule 26A-3, as reproposed.[59] The amendments to this subparagraph were proposed to ensure that consistent standards apply to substantially similar activities among different separate account registrants.[60]

d. Subparagraph (b)(13)(iv)—Redeemability and Contract Lapses

Subparagraph (b)(13)(iv) provides exemptive relief from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) of the Act, and Rule 22c-1 thereunder, to the extent that the insurance nature of flexible contracts prevents them from being redeemable for a pro rata share of the separate account's assets. Issues arising under this subparagraph concern both contract lapses and redemption generally. The commenters were particularly concerned with whether it would be permissible under the rule to deduct contingent deferred administrative charges and fees upon partial surrenders.

(1) *Contract lapses.* Unlike a scheduled contract, a flexible contract enters the grace period only when its cash surrender value is insufficient to pay charges due.[61] If this deficiency remains, the contract will lapse at the end of the grace period. In light of the small cash surrender value, the rule permits a life insurer to apply this amount to purchase a nonforfeiture option specified by the life insurer. The ability of the life insurer to do so, however, is subject to the condition that, among other things, any excess sales load paid must first be applied to keep the contract in force.

The ACLI letter requested confirmation in the release that the condition of the subparagraph applies only where sales load would be refundable had the contract instead been surrendered. Thus, the ACLI letter submitted that the condition would not apply where the contract (1) is excess loaded, but lapses after the first 24 months [62] or (2) lapses within this period, but no sales load need be refunded if surrendered instead (*i.e.*, there is no excess loading). The Commission concurs in this interpretation.[63]

The ACLI letter also requested an interpretation of whether the condition requires application of refundable sales load at the beginning of the grace period or only at the end of the period. The ACLI would prefer that the rule permit the application of sales load at the end of the grace period where that design is administratively preferable. The ACLI argued that because the contract provides full death benefits throughout the grace period, notwithstanding the deficiency in cash value, applying the excess sales load at the end protects the contractholder's interests, while avoiding unnecessary administrative processing by the life insurer.[64] This would also be consistent, the letter maintains, with the practice permitted by Rule 6e-2.[65]

The Commission is tentatively rejecting the ACLI's request because application of the excess load at the end of the period, rather than at the beginning, might lead to a smaller amount available for the purchase of a nonforfeiture option. This is because applying the excess load at the beginning would delay the point at which the remaining cash value is under by the insurer in the manner permitted by the rule. However, if the ACLI's administrative processing concern can be addressed without negative effect on contractowners,[66] their suggestion might be acceptable. Comment is requested on this matter.

The ACLI letter also suggested allowing the life insurer, at its discretion, to apply all refundable excess sales load to enhance the nonforfeiture benefits, rather than to perpetuate the contract. The reason given for the suggested change is that for some companies, the former will be "administratively less difficult." The letter offered no further analysis of the costs and benefits to contractholders of allowing the life insurer to make this

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[56] Strictly speaking, it is usually the life insurer that incurs the liability.

[57] This provision, similar to rule 6e-2, also requires that the amount of the risk charge be disclosed in the prospectus and be at least one half of the maximum charge permitted under the contract. Comment was requested on this provision but none was received. Therefore, no changes to this requirement have been made.

[58] Investment Company Act Release No. 14190 (October 11, 1984) [49 FR 40879 (October 18, 1984)].

[59] Investment Company Act Release No. 15586 (February 26, 1987) [52 FR 7166 (March 9, 1987)].

[60] The comment letters on rule 26a-3 raised the same issues with respect to the deduction of risk charges and the conditions for relief as those raised by the commenters in the context of rule 6e-3(T)(b)(13)(iii)(F), the parallel provisions for flexible contracts.

[61] A scheduled contract enters its grace period when the contractholder fails to make a scheduled payment.

[62] Refund rights exist only for the first 24 months after issuance of a contract. *See* subparagraph (b)(13)(v)(A) discussed in Section B.6.e.(1), *infra*.

[63] This is not a change in position. The adopting release stated that it would be inequitable to permit the life insurer to keep any excess sales loading "which it otherwise would have been obligated to refund had the contractholder surrendered (rather than lapsed). Adopting release at note 54.

[64] The ACLI letter offers the example of a payment made during the grace period to continue the contract: the life insurer would have the administrative burden of "recapturing" from premiums any previously credited excess sales load.

[65] Rule 6e-2(b)(13)(v)(A) permits cash value and excess sales loading (which would otherwise be refundable) to be applied to purchase a nonforfeiture benefit for a lapsing contractholder. These benefits are normally purchased at the end of the grace period.

[66] *See* note 64, *supra*.

choice; consequently, the information provided is insufficient to justify this change.

The final comment on subparagraph (b)(13)(iv)(B) made by the ACLI letter concerned its use of the term "cash surrender value. The letter contended that this use of the term erroneously implies that it is the amount contractually available to pay the contract charges. The letter noted that the term, in fact, may be construed to include amounts not so available, such as refundable excess sales load and amounts serving as security for an outstanding loan. Accordingly, the letter suggested that the term be replaced with the phrase "amounts available under the contract. The Commission agrees and has revised the rule to reflect this modified language.

(2) *Contingent deferred administrative expenses.* Subparagraph (b)(13)(iv)(C) grants exemptions from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) of the Act, and rule 22c-1 thereunder, to permit sales loads to be assessed upon redemption. The ACLI letter proposed that the exemptions be extended to certain deferred administrative charges. The letter pointed out, among other things, that these charges (like all administrative charges) would be subject to the cost-based standard of subparagraph (b)(13)(iii). Two other commenters supported this proposal, noting that it would eliminate the need for individual exemptive applications.

Typically, an administrative charge deducted upon redemption may be assessed as a flat amount (on a contract or payment basis) or as a specified amount per $1000 of face amount of death benefit. In either case, the charge is for the usual administrative expenses, discussed above (contract maintenance, underwriting, etc.).[67] In addition, this charge may be a "contingent deferred" administrative charge. In that case, it is deducted only upon surrender or lapse of the contract, within a prescribed period of time, and then on a decreasing basis.[68]

The Commission has granted a number of exemptive orders to permit an administrative charge to be deducted on a contingent deferred basis.[69] Applicants argued that assessing administrative charges in this manner, rather than as a deduction from premiums or cash value, provides advantages to contractholders. Examples of the advantages include increased earnings potential, resulting from a larger cash value, and lower cost of insurance charges, due to a lower net amount at risk.

Applicants also made certain representations designed to protect investors. Each one represented that the deferral administrative charge was cost-based, and no higher than it would have been if it were designated as a charge against purchase payments or as a periodic charge. In particular, applicants have represented that the charge was not increased to take into account the time value of money (the investment cost of the life insurer of deferring the charge) or the fact that not all contractholders would incur the charge. These representations were deemed important because they preserved the advantages to contractholders of deferring charges.[70]

The Commission is codifying the relief given in the applications by amending subparagraph (b)(13)(iv)(C) to include administrative charges. The representations discussed above would continue to govern, and this paragraph would remain "subject to other provisions of this rule, *e.g.*, the "at cost" standard of subparagraph (b)(13)(iii).

(3) *Fees on partial surrenders.* The ACLI letter suggested that a new paragraph be added to the rule, providing exemptive relief from section 10(d)(4) of the Act [15 U.S.C. 80a-10(d)(4)] to permit the deduction of fees on partial surrenders in excess of the "statutory 2 percent limit. [71] These fees would cover the costs of processing the surrender, and should be distinguished from the deferred administrative charges discussed above. The letter argued that the surrender fees, like other charges under flexible contracts, are independently limited to cost under rule 6e-3(T). In this connection, it argued that the actual cost of processing small redemptions will, in fact, exceed 2 percent of the amount requested. Further, the letter contended that under the present rule, insurance companies may be forced either to establish high minimum partial surrender amounts or to allow small requests and recover the excess costs from other sources.

The Commission has determined it would be inappropriate to add such a new paragraph. The issue is redeemability, not compliance with section 10(d). The Act's redemption requirements are designed to ensure that investors are able to receive, upon demand, the full approximate value of their underlying investments.[72] In addition, the redemption requirement of section 27(c)(1) was intended to eliminate "withdrawal fees" and other deductions which might be charged to recover additional sales expenses that would have been collected but for the fact that the contract was discontinued.[73] These provisions would

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[67] *See* discussion of subparagraph (b)(13)(iii) in Section B.6.c., *supra.*

[68] For example, a contingent administrative charge might be $5.00 for each $1000 of face amount on surrenders or lapses on or before the contract's fifth anniversary, with charges of $4, $3, $2, and $1 per $1000 of face amount assessed in contract years 6, 7, 8, and 9, respectively.

[69] *See, e.g., Aetna Life Insurance and Annuity Company,* Investment Company Act Release Nos. 15113 (May 23, 1986) [51 FR 20565 (June 5, 1986)] and 15157 (June 19, 1986); *Commercial Life Insurance Company,* Investment Company Act Release Nos. 15111 (May 21, 1986) [51 FR 19435 (May 29, 1986)]—and 15150 (June 17, 1986).

[70] For example, if the time value of money or some other computation of the "economic value" of the deferred charge were factored into that charge, the benefit of increased earnings resulting from the larger cash value would be largely illusory. Similarly, the public is not served by a cash surrender value that reflects a deduction for administrative expenses made possible only by the shifting of those costs other contractholders.

[71] Section 10(d) permits registered investment companies, subject to certain conditions, to have a board of directors all the members of which, except one, are "interested persons" of the company within the meaning of section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)]. One of these conditions, subsection (d)(4), is that no premium over net asset value upon purchase or discount from such value upon redemption, in the aggregate, exceed two percent.

[72] The right of redemption was discussed in a memorandum that David Schenker, a Commission representative, introduced in the record during the legislative hearings on the Act. This memorandum stated, in part:

"Undoubtedly, the most important single attribute which induces purchases of the securities of open-end companies by the public is the so-called "redemption feature" of such securities—that is, the assurance that the shareholder may tender his shares to the company and receive at once, or in a very short time, the approximate cash asset value of such shares as of the time of tender.

Hearings Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3rd Sess. on S. 3580, p. 985 (1940).

The Commission would also note that it may well be materially misleading to market a product as "liquid" or "easy to redeem, if redemption is then "penalized" by high redemption charges.

[73] S.E.C. Investment Trusts and Investment Companies, Supplement on Companies Sponsoring Installment Investment Plans (1939), at p. 37. *See also, Pacific Scholarship Trust Sponsored by Pacific Scholarship Fund* (Investment Company Act Release No. 8065, October 31, 1973, at p. 5), in which the Commission stated:

[T]he redeemability requirement [of section 27(c)(1) of the Act] is stated clearly and unequivocally; its intent to prevent forfeitures is obvious. Moreover, the redeemability feature would appear to be the keystone of the Act's provisions regulating in detail the amount and timing of sales charges on periodic payment plans. (Footnote omitted.) The substantial protection investors enjoy from the detailed regulation of these charges would be easily outflanked if penalties could be imposed for the premature termination of periodic payment plans.

be undermined by granting the commenter's request.

This is not to say that no fees may ever be assessed to cover redemption costs. The staff has informally taken the position that a company may impose a redemption fee of up to of 2 percent (subject to the "at-cost" standard) without such a deduction raising redeemability issues.[74] The redemption fee contemplated would be imposed by the investment company to cover legitimate expenses that may be incurred to make the payment in cash to a redeeming shareholder, *i.e.*, brokerage costs and odd-lot premiums, transfer taxes, administration fees, custodian fees, and registrar or transfer-agent fees. While the 2 percent ceiling may not cover the cost of effecting redemptions where the amount redeemed is small, it strikes an appropriate balance between recouping legitimate investment-related expenses and addressing the redeemability concerns of the Act.

e. Subparagraph (b)(13)(v)—Surrender and Refund of Excess Sales Load Rights and Conversion Rights

This paragraph, like rule 6e-2(b)(13)(v), provides an exemption from the requirements of section 27(d) of the Act. The section requires that the holder of a periodic payment plan certificate must have the right to surrender the certificate within the first 18 months after issuance and receive the value of his account plus any amount paid for sales loading which exceeds 15% of payments made. The exemption permits a life insurer to keep a greater amount of sales load, subject to the contractholder being given the surrender and refund rights [(b)(13)(v)(A)] discussed below and the conversion rights [(b)(13)(v)(B)] discussed in the next section of the release.

(1) *Surrender and refund rights.* Paragraph (b)(13)(v)(A) of the rule currently provides that the contractholder must be given the right to surrender the contract within the first 24 months and receive its cash surrender value plus a refund of any "excess" paid for sales loading. This provision defines the "excess" as that amount of sales load which exceeds the sum of (1) the lesser of 30% of the guideline annual premium or 30% of actual payments made during the first contract period plus (2) the lesser of 10% of the guideline annual premium or 10% of actual payments made during the second contract period plus (3) 9% of payments made during either the first or the second contract period in excess of the guideline annual premium in each period.

The ACLI letter recommended that the "aggregate" approach to sales load (*i.e.*, regulating sales load with reference to the amount rather than the timing of payments) be incorporated with respect to the refund right.[75] Accordingly, the letter stated that the refund right should be structured in terms of the level of payments up to the first guideline annual premium, between the first and second guideline annual premiums, and in excess of two guidelines annual premiums during the first 24 months. This would be instead of having the refund right depend on the timing of payments between the first and second year.[76] Several other commenters supported this position.

The Commission agrees with the comment and has revised the rule. Timing will continue to be important, however, in defining the duration of the surrender, refund and conversion rights; the two-year period will continue to govern. Finally, prospectus disclosure should make this approach clear so that, for example, a contractholder who is considering paying an amount in excess of two guideline annual premiums within the first two years will understand how his refund rights will operate.

The Commission also received lengthy comments by several commenters, including the ACLI, on the amount of sales load subject to refund rights. Most commenters essentially reiterated the position taken in the original petition. The petition's formula would permit the life insurer to retain sales load at higher rates where the contractholder chose to pay less than the guideline annual premium during the first two contract years.[77]

One comment letter suggested a very different refund requirement: life insurers should be permitted to retain a 50% sales load on first year payments up to the first "target" premium,[78] and a 10% sales load on second through fourth year payments up to an additional three target premiums. There would also be a "true-up" requirement at the end of the fourth year that would require the life insurer to refund the excess of sales load actually charged over what the sales load would have been had actual payments been correctly estimated. After the "true-up" a level sales load would be required to reduce the overall sales load average to 9% of 20 target premiums. This "true-up" proposal was criticized by other commenters, however, as forcing life insurers either to schedule payments or to face a four year refund exposure risk. They also argued that it would expose the life insurer to manipulation by contractholders and would narrow possible sales load designs.

All of these commenters asserted that the level of refund relief was "critical" to the financial feasibility of flexible life insurance. In this regard, the commenters pointed to the need to subsidize out of surplus the high distribution expenses in the first two years. They argued that most companies will structure their sales load to avoid a refund requirement and that, therefore, the refund provisions will effectively limit first and second year sales loads.

In adopting and amending rule 6e-3(T), the Commission has stated repeatedly that it does not generally wish to reconsider the policy determinations underlying specific provisions of rule 6e-2. This is both because rule 6e-2 has provided workable standards and because that rule was the result of extensive and lengthy hearings,[79] public comment, and Commission deliberation.[80] The

[74] *See* John P. Reilly & Associates (pub. avail. July 12, 1979).

[75] *See* discussion in Sections B.6.a. and B.6.b., *supra*.

[76] To illustrate, suppose GAP under a contract is $1,000 and sales load is 50% of payments up to the first GAP, and 50% of payments up to the second GAP. Suppose further that a contractowner pays $500 in year 1 and $500 in year 2. Under the rule, as currently drafted, the insurer would have to refund $300; that is, $100 [(50%–30%) × $500] for year one, plus $200 [(50%–10%) x $500] for year two. Under the revised approach, it need only refund $200 ((50%–30%) × $1,000).

[77] The petition defined excess sales loading as the amount in excess of the lesser of 30% of the guideline annual premium or 50% of actual payments in the first year and amounts of 10% and 17%, respectively, in the second year. The ACLI letter accepted the temporary rule's 10% figure for the second year and only renewed its request for the higher figures found in the petition for the first year, *i.e.*, 30%/*50%*, versus the 30%/30% in the temporary rule.

[78] *See* discussion in Section B.6.a., *supra*.

[79] The public hearings on variable life insurance began on April 10, 1972, and concluded on June 7, 1972. During the hearings, more than 2300 pages of testimony (supplemented by hundreds of pages of exhibits and other data) were received. *See* Report of the SEC Division of Investment Management Regulation on Variable Life Insurance and the Petition for the Issuance and Amendment of Exemptive Rules, January 30, 1973, reprinted in Mutual Funds Guide (CCH) Special Report (Feb. 5, 1973).

[80] Notice of Intention to Propose a Rule, Investment Company Act Release No. 8691 (Feb. 27, 1975) [40 FR 27644 (July 1, 1975)]; EVLICO, *supra* at note 22; Notice of Proposal to Adopt Rule 6e-2, Investment Company Act Release No. 9104 (December 30, 1975) [41 FR 2256 (Jan. 15, 1976)]; and Adoption of Rule 6e-2, Investment Company Act Release No. 9482 (October 18, 1976) [41 FR 47023 (Oct. 27, 1976)].

Commission remains disinclined to duplicate the previous effort or to distrub the findings made.

The commenters' arguments with respect to the amount of sales load subject to refund rights differ little from those made in the prior proceedings. In reviewing the basis for the "compromise" position taken with respect to scheduled life insurance, it is clear that attention *was* focused on the high initial distribution expenses.[81] Also important, however, were the high early lapse rates. The release adopting rule 6e–2 stated:

> The Commission's original proposal represented an attempt to strike a delicate balance. The insurance industry has argued persuasively that the cost of selling and issuing variable life insurance contracts would be greater than initial selling costs incurred in connection with mutual funds *and* that those costs are incurred primarily in the first year of the contract. Thus, it seems appropriate to permit the insurance company to retain a large amount of sales load . However, experience indicates that high numbers of purchasers will allow their contracts to lapse in the early years For this reason, the Commission balanced the increased amount of sales load which the life insurance company could retain by extending the period for refund
>
> The Commission determined not to adopt the other proposed modifications of the refund requirements of rule 6e–2 primarily because each of these would not only substantially reduce the amount of refund to be received by a contractholder but would also increase the amount of sales load allowed to be retained by the insurer [82]

Given the "delicate balance" that spawned the refund exemption and the apparent lack of changed circumstances regarding the flexible life insurance product, the Commission does not believe a full scale reexamination of this issue is warranted. Therefore, the Commission has determined not to make the changes suggested by the industry commenters.

The Commission, however, has modified this paragraph slightly in recognition of the way in which the refund provision currently operates when more than two guideline annual premium payments are made. As originally adopted, the literal wording of the rule might have permitted the insurer to determine refundable sales load on payments in excess of two guidelines without reference to each individual payment. An insurer could reduce the amount of sales load that would otherwise be refundable for the first two guideline payments whenever the load on payments in excess of the first two guidelines was less than 9%. For example, under a literal reading of the rule, an insurer could have escaped from the rule's refund requirements in an unforseen manner by structuring a contract's sales loading as follows: 35% of payments up to the first guideline, 11% of payments up to the second guideline, and 3% of payments thereafter. Thus, under this example, an insurer would be required to refund a portion of the sales load, but only if the contractowner restricted his payments during the first two contract years to an amount less than three guideline payments. This potential regulatory anomaly has been eliminated in order to produce a more equitable application of the refund requirements. Comment is requested on this change.

(2) *Conversion rights.* As a condition for exemption relief from section 27(d) of the Act, and as an alternative to the surrender and refund rights discussed above, rule 6e–3(T)(b)(13)(v)(B) requires that the contractholder be given the right to convert his contract into a fixed benefit life insurance policy during the first two contract periods, *i.e.*, the first 24 months. The rule requires that the new policy must provide for either the same death benefit or the same net amount at risk to the life insurer as the flexible contract at the time of conversion. It must also provide for premiums based on the same issue age and risk classification of the insured as the flexible contract, subject to an equitable adjustment.

The ACLI and two other commenters recommended that the rule be amended to require only that the fixed benefit contract received upon conversion provide the same net amount at risk as the flexible contract. They argued that allowing the contractholder to choose that option or the same death benefit, as the rule now, provides, gives rise to significant adverse selection problems that are unacceptable to the industry. The ACLI letter cites the example of a flexible contractholder with a death benefit "Option I" contract having a $100,000 death benefit and a $25,000 cash value. This contractholder may be able to convert to a fixed premium contract providing a $100,000 death benefit with only a $2,000 tabular cash value at the time of conversion. The additional $23,000 would therefore be unnecessary under the new contract and may be returned to the contractholder. The letter states that in this example the contractholder has obtained a significant increase in insurance protection—the net amount at risk has changed from $75,000 to $98,000—without evidence of insurability. Thus, the ACLI letter contended that the life insurer would be vulnerable to considerable "antiselection.

While this is an appealing argument, it appears to the Commission that, as a practical matter, the danger of "antiselection" risk is more theoretical that real. In the first place, the conversion right applies only where the contract is excess loaded and the contractholder chooses not to surrender. Further, for a material "antiselection" risk to occur, the contractholder must have made very large payments, and must have suddenly contracted a terminal illness, all within the first 24 months (otherwise, he would have no "motive" to "antiselect"). In addition, unless the contractowner dies soon after conversion, the life insurer will be compensated for the increased net amount at risk by increased cost of insurance charges. The "antiselection" risk seems still further minimized by the adjustment procedure, which ensures that the contractholder remains in the same underwriting class and, indeed, places him in the same position as if he had bought the fixed benefit contract on day one.

Balanced against this remote but possible risk to the life insurer, is concern for the contractholder. His decision to make the large initial payments would seem to entitle him to have the option of deciding, in effect, how to apply those funds upon conversion. Moreover, this approach is more consistent with the policies underlying rule 6e-2(b)(13)(v)(B) than is the ACLI's suggestion. Therefore, the Commission has determined to leave the rule as written.

The ACLI next recommended certain technical refinements related to the mechanics of conversion. They stated these refinements are necessary to implement the purposes of the rule.

The ACLI letter correctly noted that conversion may be made either to "traditional insurance policies" or to a universal life contract, provided the contractholder is given the right to convert to a fixed benefit contract without providing evidence of current insurability.[83] If the conversion is made

[81] The "compromise" was the extension of the refund period from 18 to 24 months, and the allowance for retention of 30% rather than 15% of the first year's payments.

[82] Investment Company Act Release No. 9482 (October 18, 1976) at 18–19, 23 [41 FR 47023, 47026 (Oct. 27, 1976)].

[83] One of the objectives of the conversion right, both in rule 6e-2 and in rule 6e-3(T), is to provide a means to prevent lapses by contractholders who become dissatisfied with a variable contract but who might prefer to continue coverage if it were fixed. Therefore, the new contract issued on conversion should offer essentially the same

Continued.

to a universal life contract or other flexible premium programs, the ACLI letter recommended that the insurance charges (rather than the premiums) should be required to correspond to those of the exchanged flexible contract. The Commission agrees and has added language to clarify that the new contract must provide for "premiums (*or cost of insurance or other charges, if such plan of insurance provides for flexible premiums)* which are based on the same issue age and risk classification of the insured as the flexible contract. A conforming change related to the equitable adjustment has also been added to this subparagraph.

The ACLI requested confirmation of its view of the requirement described above that the conversion reflect "the same issue age of the insured as the flexible contract. That is, if the conversion is made to a fixed premium contract, those premiums are computed as if payable from the insured's issue age under the flexible contract, subject to the equitable adjustment; if made instead to a flexible premium contract, the insurance charges (or other charges assessed on the basis of issue age and risk classification) are made on the same basis as if the new policy had been issued at the time the flexible contract was issued.[84] The Commission confirms this interpretation. It also notes that the method of computing the equitable adjustment must be filed as an exhibit to the registration statement.

One other matter regarding conversion rights warrants discussion. This concerns "combination" flexible contracts that allow contractholders at any time to shift all of their cash value from variable participation in the separate account to fixed participation in the general account.[85] This type of product design may meet the objectives of the conversion right and, therefore, may comply with paragraph (b)(13)(v)(B). For example, the Commission has received registration statements for contracts under which a contractholder, pursuant to his 24-month coversion right, is permitted to transfer all of his cash value to the general account, without charge or reference to any other limitations on transfers. The transfer also serves to change his allocation instructions for all future payments received. These contracts satisfy the rule's conversion rights.

f. Subparagraph (b)(13)(viii)—"Free Look" Period

Subparagraph (viii) provides an exemption section 27(f) [15 U.S.C. 80a-27(f)], and rule 27f-1 [17 CFR 270.27f-1] thereunder, provided that the contractholder is permitted to withdraw from the contract at any time up to the latest of (i) 45 days from the date of the application for insurance, (ii) 10 days from receipt of the contract by the insured, or (iii) 10 days from the mailing of the notice of the right to withdraw.[86] This is known as the "free look" right. The amount of the refund upon withdrawal is permitted to reflect investment performance (unless state law or the contract requires a refund of all payments made).[87] All contract fees or other changes, however, must be refunded to the contractholder.

The ACLI letter recommended that the 45 day period be eliminated as one of the alternative measuring periods for the free look right. The letter argued that this period unduly extends the time during which the life insurer must bear the insurance risk without compensation (in the event the free look right is exercised, the cost of insurance charges must be refunded to the contractholder). As Petitioner, the ACLI had made a similar request to delete the 45 day period.[88]

The Commission has reached the same conclusion as it did in response to the original petition. As stated in the adopting release, " the 45 day provision already represents a shortening of the 60 day withdrawal period provided by section 27(f), and the Commission is reluctant to shorten this period further. [M]oreover, the fact that the flexible contractholder will bear the investment risk during the free look period further lessens any need to shorten the withdrawal period. Therefore, no change has been made in this provision.

The ACLI letter also requested a revision "to clarify" that asset charges reflected in net investment earnings need not be refunded upon exercise of the free look right. The letter argued that because investment risk is borne by the contractholder, there is an implication that the contractholder should also incur these charges. The Commission disagrees. The phrase denoting the refundable amount, "any contract fees and other charges imposed, refers not only to cash value charges, but also to charges assessed against separate account assets, such as investment advisory fees.[89]

7 Paragraph (b)(15)—Trust Accounts

This paragraph provides certain exemptions for underlying funds of separate accounts organized as unit investment trusts. The exemptions parallel those provided elsewhere in the rule for open-end management investment companies that are separate accounts.[90] The relief provided is subject to the condition that the underlying fund sell only to the separate accounts of the life insurer or of any affiliated life insurer. The comments on this paragraph focused on "shared funding" (described below), seed money, and "mixed funding. [91]

The ACLI letter requested that the rule permit separate accounts of unaffiliated insurance companies to use the same underlying fund ("shared funding"). It based its request on perceived economic advantages for the industry and the public. The economic advantages cited were the shared expertise of the investment manager and the cost efficiencies and investment

insurance protection, with the benefits being fixed instead of variable. While a flexible premium fixed benefit contract ("universal life") would be the most parallel contract to offer upon conversion, a guaranteed annual renewable term ("ART") contract that is renewable to the greatest extent permitted by state law would be permissible under rule 6e-3(T). Thus, an ART contract would be acceptable even though, typically, state regulatory requirements may limit coverage to age 60, 65, or 70 and/or limit the number of renewals.

[84] The ACLI letter cited two examples: (1) if the insured was age 35 when the flexible contract was issued, the insurance charges under the new contract will be those determined under the relevant mortality table for an issue age of 35 and (2) if the insured is age 37 at the time of conversion and the new contract (like the flexible contract) deducts cost of insurance based on the insured's attained age, the insurance charge for the year following conversion will be based on a 37-year old insured (not a 35-year old).

[85] Combination contracts are contracts that offer the options of both variable and fixed cash values.

[86] This provision also conditionally permits the life insurer to design the form of the notice required by Form N-27I-2 [17 CFR 274.303], and to mail or personally deliver it to the contractholder.

[87] The life insurer, consistent with bearing the investment risk (when payments are to be refunded), may require that contractholder's funds be paced in a particular account, (*e.g.*, the money market portfolio of the funding vehicle) for the free look period.

[88] The petition implied that the 45 day alternative to the section 27(f) 60 day period was based solely on the NAIC Variable Life Insurance Model Regulation in effect at the time rule 6e-2 was adopted (but which had been dropped by the time the suggested rule was drafted). However, in rule 6e-2, the section 27(f) 60 day refund period was already liberalized because the life insurer was required to refund all premium payments. The life insurer would thereby assume the investment risk, and the costs of insurance and administration for the duration of the free look period.

[89] As a practical matter, the advisory fee will probably be a fairly small amount even over the longest period, *e.g.*, 45 days. Other examples of refundable charges would be sales load and premium taxes.

[90] *See* discussion in Section B.4., *supra*, for additional background on paragraph (b)(15). This paragraph is based on rule 6e-2(b)(15).

[91] *See* Section A., *supra*, for a discussion of "mixed funding.

flexibility offered by a large pool of funds.

The Commission has granted several exemptive orders to allow applicants to participate in shared funding arrangements.[92] However, this is a very new and somewhat complicated area from a regulatory perspective. Too few applications have been received to have raised and explored all of the issues inherent in these arrangements.[93] For example, there are a number of issues concerning voting arrangements in this area. Therefore, the Commission has decided not to address shared funding arrangements in the rule at this time, but expects to deal with this by rule after more applications experience.

The ACLI letter suggested adding a clause to the paragraph which would permit an underlying fund to contain "seed money" as a direct contribution from a life insurer's general account.[94] The letter asserted that a direct contribution is administratively less complex than the method currently contemplated by the paragraph. The Commission has no objection to amending paragraph (b)(15) generally along the lines suggested. However, this amendment is technical in nature and limited in scope; it is not meant to be read as a substantive change or as affecting the substantive voting rights of contractholders under the Act.[95]

With respect to the conditional exemption to permit mixed funding (variable life insurance and variable annuities in the same funding media), the ACLI letter endorsed the omission in the rule of certain conditions contained in individual applications.[96] It also suggested a modification to the condition requiring that a majority of the underlying fund's board of directors not be "interested persons" under the Act.[97] The ACLI letter stated that section 10(a) of the Act [15 U.S.C. 80a–10a] does not require such board composition, and it asserted that there are no policy reasons for conditioning mixed funding relief in this manner. The ACLI argued that the purposes of the rule would be satisfied if either the board or a board committee, constituted in either case with a majority of disinterested directors, performed the monitoring function.

The Commission agrees that the position taken in this paragraph is more conservative than the requirements of section 10(a) of the Act. This is primarily a function of codifying exemptive relief granted on the basis of specific applications—the only administrative experience the Commission has with respect to mixed funding. However, the policy of requiring a disinterested majority on the board is appropriate in that the board is charged with monitoring for irreconcilable conflicts and promptly taking whatever corrective action may be necessary. These responsibilities require a cautious approach. This is not to say that there are no other, equally appropriate, safeguards to deal with potential conflicts of interests arising from mixed funding. It means simply that the Commission would prefer to see any evolvement in this area, along the lines suggesed by the ACLI or otherwise, take place in the context of the application process. In that process, alternative safeguards could be fully discussed and evaluated against the backdrop of specific factual situations.[98] Hopefully, subsequent administrative experience will provide a basis for dealing with this area by rule.

C. Paragraph (c)—The Definitions

Paragraph (c) of the rule defines various terms used in the rule.

1. Paragraph (c)(1)—Flexible Premium Variable Life Insurance

This paragraph defines a flexible contract for purposes of the rule as a contract of life insurance, subject to regulation under the insurance laws of every jurisdiction in which it is offered, which contains certain features. Those features include payments which are not fixed as to both timing and amount (with a limited exception for the first two contract periods), a death benefit the amount or duration of which may vary to reflect the separate account's investment experience, and a cash value that varies to reflect the separate account's investment experience.

Comment was requested on the Commission's decision to omit a proviso to the definition in paragraph (c)(1) suggested by the Petitioner, that a flexible contract shall not include that portion of a contract treated under state law as providing any annuity benefits other than as a settlement option. The ACLI letter stated that this proviso was modeled on the Code definition of those flexible contracts entitled to life insurance treatment for tax purposes, *i.e.*, only contracts treated as life insurance (rather than as annuities) under state law.

The Commission believes that the definition of a flexible contract, as currently stated, is sufficient. As written, it already provides that the contract be one of life insurance and be appropriately regulated by the states. Therefore, the suggested priviso has not been adopted.

The ACLI letter suggested other modifications, including that the definition expressly acknowledge "combination products." [99] On the other hand, the ACLI letter also stated their belief that rule 6e-3(T), "properly read," already applies to any such product to the extent it is funded by a separate account. The Commission agrees with the ACLI, as an interpretative matter; the rule does not require that the contract be funded exclusively by a separate account or provide for a cash value the exclusively varies to reflect the investment experience of a separate account. Therefore, the Commission believes the language of the definition should be given its plain meaning and

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[92] *See, e.g., Equitable Life Insurance Company*, Investment Company Act Release Nos. 14860 (Dec. 18, 1985) [50 FR 53037 (Dec. 27, 1985)] and 14899 (Jan. 14, 1986); *Scudder Variable Life Investment Fund*, Investment Company Act Release Nos. 14729 (Sept. 18, 1985) [50 FR 38934 (Sept. 25, 1985)] and 14752 (Oct. 11, 1985); *Variable Insurance Products Fund*, Investment Company Act Release Nos. 14714 (Sept. 11, 1985) [50 FR 37933 (Sept. 18, 1985) and 14757 (Oct. 15, 1985); *Provident Mutual Variable Life Insurance Company*, Investment Company Act Release Nos. 14710 (Sept. 10, 1985) [50 FR 37747 (Sept. 17, 1985)] and 14744 (Oct. 3, 1985).

[93] Indeed, a hearing has been requested on one of these applications, a notice of the filing of that application appears in Investment Company Act Release No. 15233 (July 31, 1986) [51 FR 28470 (Aug. 7, 1986.)]

[94] Currently, the life insurer may "seed" the underlying fund only by purchasing an interest in the separate account. In 1983, the staff issued a no-action letter to permit the parent of a scheduled life insurance issuer to invest initial seed money directly in the shares of the underlying fund from its general account without having to go through the trust account (as contemplated by paragraph (b)(15) of rule 6e-2). No-action assurance was given on the basis of representations that investing via the trust account would result, in this particular case, in increased costs and materially complicated recordkeeping, without any concomitant benefits to contractholders. *See* Metropolitan Tower Life Insurance Company (pub. avail. June 13, 1983).

[95] The Commission has determined to make some modifications in subparagraph (b)(15)(iii) to clarify contractholders' voting rights in the unit investment trust context. These changes are discussed in the Section B.4., *supra*.

[96] In the adopting release, at note 63, the Commission specifically requested comment on whether those omissions were appropriate.

[97] Paragraph (b)(15) conditions the exemption on, among other things, the board of directors (comprised of a disinterested majority) monitoring the fund for the existence of an irreconcilable conflict of interest.

[98] This would be especially important in the area of shared and mixed funding (*see* note 92 and accompanying text, *supra*) where, *e.g.*, the issues of control by the sponsoring life insurer and irreconcilable conflicts have yet to be fully analyzed for all factual situations.

[99] *See* note 85 and accompanying text, *supra*.

has not made any revision in the text.[100]

The ACLI letter requested a revision of subparagraph (c)(1)(i) to extend the ability of the life insurer to fix the timing and minimum amount of payments during the first two contract periods following the initial issuance to the same period following an increase in the level of death benefits. Their rationale was that life insurers have the same sales load concerns on the sale of an increase in benefits as they do on the initial sale of the contract—designing a "refund-proof" sales load structure while at the same time, assuring themselves of sufficient early sales load to cover the high initial sales expenses.[101] The Commission agrees and has amended the rule in line with the letter's suggestion. However, subsequent payments, and sales loads thereon, will have to be allocated proportionately between the original contract and the increase or addition of insurance benefits (the "incremental contract").[102]

On a related point, subparagraph (c)(1)(i) further allows the life insurer to prescribe a "reasonable minimum amount" for any payment in addition to those in the first two contract periods following issuance. The Commission wishes to clarify that in its view, a guideline annual premium is the highest minimum payment, that qualifies as the "reasonable minimum amount" a life insurer may prescribe. This is consistent with permitting guideline annual premiums to be used as a basis for measuring sales load compliance.

The ACLI and another commenter urged the Commission to view the two-year fixed premium language as a "safe harbor," and not to exclude from the rule other contracts with different premium requirements.[103] The commenters suggested expanding the rule to cover contracts resembling flexible contracts only in that they provide for at least *some* payments which are not fixed by the life insurer as to both timing and amount. The Commission does not believe it prudent to expand the rule's definition of flexible contracts. We acknowledge that not every contract will clearly fall within rule 6e-2 or rule 6e-3(T). The insurance industry is extremely innovative; it would be difficult to draft rules that would take into account prospectively every conceivable variation of contract design. The industry's pattern of innovation and product differentiation has already established itself for the new flexible life insurance product. The Commission prefers to treat "hybrid" contracts on a case by case basis, placing them in the context of either rule 6e-2 or rule 6e-3(T), with appropriate exemptive relief and conditions tailored to the particular contract. This practice will continue until a pattern emerges and the Commission has had enough experience to amend the existing rules or draft a new, separate rule.

a. Single Premium Contracts

The hallmark of a flexible contract, according to the petition, is the ability of the contractholder to adapt payments and the death benefits levels to his individual insurance needs, as economic conditions and personal circumstances change.[104] Rule 6e-3(T) and the guideline annual premium approach to sales load regulation were designed specifically to accommodate this novel life insurance product. Thus, the rule's regulatory approach is not intended to include those contracts which provide only a very limited range of flexibility.[105]

Assessing whether there is sufficient flexibility to qualify a contract for rule 6e-3(T) is particularly difficult in the case of a single premium variable life insurance contract ("single payment" contract). These contracts typically require an initial payment that is large enough to provide the future benefits under the contract until the maturity date. In the context of rule 6e-3(T), this payment is usually set at an amount no greater than the guideline single premium limitation (sometimes referred to as "GSP") defined in the Code.[106]

Under the Code, a single payment contract that requires a payment equal to the guideline single premium (assuming the Code's 6% rate) could not permit any further payments. Therefore, it is functionally equivalent to a scheduled contract, and is appropriately regulated under rule 6e-2.[107] However, a more analytically difficult situation is that involving a "flexible" single payment contract that requires payment of some amount less than 100% of the guideline single premium and that permits subsequent payments to be dropped-in (subject to certain conditions).[108]

Rule 6e-3(T) should apply only to contracts for which there is a reasonable expectation that unscheduled payments will be made by contractholders.[109] For example, the rule would generally not encompass contracts that require more than 80% of the guideline single premium as the initial payment.[110] As the amount of the

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[100] This conclusion does not constitute a judgment of the Commission on the question of whether interests in the general account should be registered as securities under the Securities Act of 1933 or the general account registered as an investment company under the Act.

[101] The ability to fix payments in the first two contract periods was meant to address these concerns.

[102] Allocation is discussed in greater detail in connection with paragraph (d)(2), the computational section for sales loads on changes in contract benefits. *See* discussion in Section D.2, *infra.*

[103] The example cited by the ACLI letter was of a contract that provided for a minimum death benefit guarantee conditioned on payment of specified minimum premiums. This type of contract attempts to encourage regular, specified payments by tying the meeting of a payment schedule to the additional benefit of a guaranteed minimum death benefit. However, the payments so "scheduled" are not mandatory; the schedule merely represents an additional option to the contractholder. Therefore, as an interpretative matter, this type of contract design may rely on the rule.

[104] *See* petition at 9–11.

[105] *See* the adopting release's discussion on the definition of flexible premium variable life insurance.

[106] The more widely used of the two tests in Section 7702 of the Code, either of which a contract must meet in order to be treated as life insurance for tax purposes, is the guideline premium/cash value corridor test. This test provides that two requirements be met at all times: (1) the sum of the premiums paid cannot exceed the guideline premium limitation; and (2) the death benefit cannot be less than the "applicable percentage" multiplied by the contract's cash value. *See* note 31, *supra,* for a discussion of the term "applicable percentage. Generally speaking, unless the contract has been in force for many years, the guideline premium limitation is the single premium at issue necessary to fund the future benefits provided under the contract, based on mortality and other charges fixed in the contract and based on interest at the greater of 6 percent or the minimum rate(s) guaranteed in the contract. *See Deficit Reduction Act of 1984* (Pub. L. No. 98–369, § 221, 98 Stat. 767), H.R. Report No. 432, 98th Cong., 2d Sess. 1442–1450 (1984).

[107] *See, e.g.,* registrations statements filed by IDS Life Insurance Company (File No. 2–97637, Aug. 11, 1986) and The Guardian Insurance and Annuity Company, Inc. (File No. 2–97765, May, 2, 1986).

[108] Two typical conditions are that the payment (1) not increase the death benefit, because the "drop-in" payments are accepted without new evidence of insurability, and (2) not cause the contract to fail to qualify as life insurance under the Code's definition.

[109] The text of paragraph (c)(1) has been amended to provide expressly for this standard, which was previously implicit in the rule but addressed directly only in the adopting release. Comment is requested, however, on this clarification.

[110] The Commission realizes, however, that nothing in the rule text, as originally adopted, or the adopting release, expressly prohibits these contracts. In this regard, some registration statements for similar contracts have been declared effective by the staff.

There may be other ways to satisfy the "reasonable expectation" standard. *See, e.g.,* the prospectus for the flexible contract offered by Charter National Life Insurance Company (File No. 33–3446, July 9, 1986). The contract provides for a large initial premium that is consistent with the GSP limitation under Section 7702 of the Code. It also permits an additional premium payment up to $5,000 in a contract year without evidence of insurability, even though the additional premium payment causes the death benefit to increase.

initial premium payment approaches the Code's guideline single premium limitation, a contractholder is restricted in the amount of additional premium that can be paid. In addition, a contractholder may be less inclined to make further payments since the initial payment would keep the contract in force for many years, assuming the cash value earns a moderate return.

This is not to say that contracts which permit (rather than require) a contractholder to pay 100% of the guideline single premium or which condition a desirable contract feature, such as simplified underwriting, on such a payment, would necessarily fail the "reasonable expectation of further payments" standard of the rule. In these cases, the making of a very large (or maximum) initial payment is a choice for the contractholder, not a requirement of the life insurer; the life insurer would have to be prepared to deal with the potential payments.

One difficult question in this area is to determine where a true choice exists. A true choice would not exist, for example, where a contractholder is offered the sole option of accepting or declining a contract based on simplified underwriting and payment of an amount equal to 100% of the guideline single premium. That would simply be a one-payment schedule. A more problematic scenario, for example, is where a choice is given to an employer to select for the benefit of the contractholder either an 80% GSP/full underwriting contract or a 100% GSP/modified and simplified underwriting contract.[111] Comment (particularly a cost/benefit analysis for the industry and contractholders) is requested on these interpretive matters and on single payment contracts offered in the group market, with respect to their status under rule 6e-3(T).

Finally, the Commission wishes to discuss a matter relating to the fixing of premium payments for the first two years, as permitted by paragraph (c)(1). This matter concerns both single payment contracts and other flexible contracts. The issue is the need for, and appropriateness of, the guideline annual premium approach (contrasted with the "payments" approach) to sales load regulation where large payments are required in the early years of the contract.[112]

The reason for allowing payments to be fixed by the life insurer in the first two years is to ensure that, by requiring two full annual guideline payments, the life insurer will have a reasonable base against which to assess a full sales load to help offset the high early distribution expenses of this product.[113] Requiring the equivalent of four guideline annual premiums in the first two year period provides the life insurer with the opportunity to assess the maximum total sales load permitted upon the sale of this product, *i.e.*, the full 180% of a guideline annual premium.[114] The more guideline annual premiums that are required to be paid, the larger the amount the insurer can count on receiving and against which it can assess a sales load.

Requiring more than four guideline annual premiums in the first two years should obviate the need (and, indeed, the rationale) for a sales load test based on guideline annual premiums. The Commission believes it would be an inappropriate departure from what was contemplated by section 27 to permit excess sales loads to be assessed against payments of such large amounts. The alternate sales load test under subparagraph (b)(13)(i)(B) for "payments" contracts, should, therefore, be used in these circumstances. The Commission has amended the rule to include this requirement.[115] However, it requests comments on this issue.

2. Paragraph (c)(2)—Incidental Insurance Benefits

This provision defines the term "incidental insurance benefits" as those insurance benefits under the contract which do not vary with the investment experience of the separate account.

The adopting release requested comment on the omission of the petition's suggestion that incidental insurance benefits under rule 6e-3(T) be limited only as to those insurance benefits which do not "have discrete cash values that may" vary with investment experience. The ACLI letter commented that there may be additional benefit riders to a contract that indirectly reflect the variable benefits of the contract, but that do not have independent variable cash values in the separate account. It asserted that these riders should legitimately be included within the paragraph (c)(2) definition. As an example, the ACLI letter cited the waiver of premium rider.[116] This type of rider provides that if the insured becomes disabled, the monthly deduction for all costs of insurance are waived for the period of the disability. The amount waived (the monthly deduction) varies depending upon the net amount at risk and cash value, which are related to, in turn, the investment experience of the separate account. However, this incidental insurance benefit does not have any "discrete cash value;" it is only indirectly related to fluctuations in the separate account. The cost to the contractholder of this benefit does not vary based on the amount waived and, the ACLI letter maintained, this rider is a form of traditional insurance benefit. In contrast, the ACLI letter stated that a rider for variable annuity benefits funded by its own variable cash value does have a "discrete cash value.

The Commission agrees that certain incidental insurance benefits that indirectly fluctuate with the investment performance of the separate account, but which do not have independent cash values, can be fairly treated as "fixed" benefits for purposes of the rule.[117] Therefore, the Commission has adopted the ACLI's suggested language in this provision.

3. Paragraph (c)(4)—Sales Load

This provision defines "sales load" as the difference between "payments" made and certain enumerated items deemed *not* to be sales load. Because sales load and other expenses may not necessarily be deducted from payments, this provision measures sales loads in terms of receipt of guideline annual premiums (*see* the discussion of this measurement under subparagraph (b)(13)(i), Section B.6.a., *supra*).

a. Subparagraph (c)(4)(i)—Increase in Cash Value

The first item deemed not to be sales load is "the amount of the increase in the cash value for the period that is attributable to payments made and not

[111] This question arises because of the traditional posture of federal securities regulation in this area that has always looked through, for example, a master contractholder or plan administrator to the individual contractholder. (*See, e.g.*, the latest amendment to rule 22c-1, Investment Company Act Rel. No. 14756 (October 15, 1985)) [50 FR 42680 (Oct. 22, 1985)].

[112] Subparagraphs (b)(13)(i) (A) and (B), respectively, of rule 6e-3(T).

[113] *See* discussion in Section B.6.a., *supra*.

[114] This is based on the permissible loads of 50% of the first, second, and third guideline annual premiums, and 30% of the fourth guideline annual premium. This excess sales load design would, of course, be subject to the surrender and refund rights under subparagraph (b)(13)(v).

[115] *See* revised paragraph (b)(13)(i).

[116] The staff subsequently granted a no-action letter request for this type of rider. *See* USAA Life Insurance Company (pub. avail. August 30, 1985).

[117] *See, e.g.*, the prospectus for Variable Appreciable Life Insurance Contracts, offered by Pruco Life Insurance Company (File No. 2-89558, May 1, 1986), which includes a description of a rider that provides monthly renewable term life insurance at increasing rates, designed to increase the amount payable upon the death of the insured.

to net investment earnings for the period." [118] The ACLI letter repeated a suggestion made in the petition that the definition of sales load look to the increase in the "cash surrender value" instead of the "cash value." It contended that the "cash surrender value approach recognizes load at the time the payment is made, rather than upon actual surrender or withdrawal, and was intended as a way of equating the treatment of front-end and deferred loads with respect to the stair step requirement. However, the ACLI letter also stated that the "cash value" formulation is "workable" if their understanding of the application of stair step rule is correct. The letter contains certain examples designed to reflect this understanding. Since most of these examples seem correct, the "cash value" formulation has been retained.[119]

Two commenters suggested that the "attributable to payments made" modifier on increases in cash value in (c)(4)(i) could cause sales load to be understated and should be deleted. There was also concern that in a contract period where no payment is made, it would appear there is a large negative sales load where, in fact, subtraction of a negative "increase" in cash value (in connection with subsequent sales loads) from payments algebraically produces a positive effect in determining sales load. Finally, they both recommended that, similar to investment earnings, where dividends are directly credited to cash value they should also be disregarded in determining sales load. The Commission believes that the rule already allows for these effects but has modified the wording of the subparagraph (c)(4)(i) to make it clearer.

b. Subparagraph (c)(4)(ii)—Use of the 1980 CSO Table

Subparagraph (c)(4)(ii) specifies the 1980 CSO Table for purposes of the cost of insurance deduction. The ACLI letter repeated its suggestion made in the petition and urged that the 1958 CSO Table be specified instead. The discussion of those comments can be found under the discussion of paragraph (c)(8), the definition of "guideline annual premium." [120]

On a related point, the Commission has decided to permit the use of the 1958 CSO Table, for purposes of the cost of insurance deduction, in calculating sales load under paragraph (c)(4), provided that the flexible contract is subject to paragraph (b)(13)(i)(B).[121] The reason for this decision is that sales load on these contracts is based on payments actually made, rather than on guideline annual pemiums, and can at no time exceed 9 percent of payments made. The Commission has amended subparagraph (c)(4)(ii) to reflect this determination, subject, however, to an appropriate "sunset" provision.

c. Subparagraph (c)(4)(vi)—Substandard Risk Charges

Subparagraph (c)(4)(vi) excludes from sales load any additional charge made where the insured does not meet standard underwriting requirements. The ACLI letter proposed a modification to this subsection to clarify that this item includes additional insurance charges in guaranteed issue and simplified underwriting markets (*e.g.*, the pension market). The Commission agrees and has adopted the suggested language.

d. Subparagraph (c)(4)(viii)—Modal Payment Charge

Subparagraph (c)(4)(viii) excludes from sales load an additional "interest" charge when payments are made more frequently than annually, [122] but only in connection with required minimum payments during the first two contract periods. The ACLI letter stated that this item should be read to encompass interest charges reflected in the first modal payment payable on the normal due date because each such modal payment is typically priced to contain a level interest component. The letter also expressed concern that the example in footnote 67 of the adopting release could preclude the above interpretation. The Commission, as an interpretative matter, agrees with the ACLI's comment that to the extent each of several modal payments contains a level interest component, it would nonetheless be permitted under the rule.[123]

e. Subparagraph (c)(4)(x)—Dividend Allowance

Subparagraph (c)(4)(x) permits, for a participating flexible contract, the deduction of dividends assuming a gross annual investment return of 5% for the separate account which funds the contract. It also prescribes two methods of determining the deduction. The ACLI letter repeated the recommendation of the petition that the dividend allowance reflect a net rather than gross investment return. The adopting release stated that this suggestion seemed to permit a greater dividend deduction (and correspondingly a higher sales load) than rule 6e–2, was not discussed in the petition, and appeared unwarranted.

The ACLI letter represented that the change from a gross rate to a net rate does not permit a relatively higher sales load, mirrors the effect of rule 6e–2, and is necessary in light of changes in product design since rule 6e–2 was adopted. The ACLI letter stated that under scheduled contracts, where the assets of a single separate account were all invested in the same fund, there was for each company (and within the industry) an approximately uniform relationship between the 4% gross rate prescribed for the dividend deduction and the 3% to 3½% *net* rate used to compute the cost of insurance deduction. Today, the ACLI argued, with miltiple separate accounts or underlying funds and differing expense charges, the stipulation of a *gross* interest rate means that there is generally no standard *net* interest rate. The ACLI letter also offered that since the principal element of dividends is a return of mortality charges which are likely to incorporate a 5% net interest assumption (to match the basis for deducting such charges from payments pursuant to subparagraph (b)(13)(i) regarding sales load calculation), it is desirable to calculate dividends using the same interest rate, *e.g.*, to avoid stair step problems. Finally, the ACLI letter represented that if a life insurer used

[118] Subparagraph (c)(4)(i).

[119] The ACLI letter asked for the Commission's concurrence with examples 6, 7, 8, and 9, used in their comments on paragraph (d)(1)(ii), on pages 133–136 of the letter. The Commission concurs with examples 6–8, subject to the replacement of the "years" concept of measurement with receipt of guideline annual premiums in example 7 (*see* discussion in Section B.6.a., *supra*). The Commission does not, however, concur with example 9 on page 135 of the ACLI letter, to the extent that sales load is charged on the basis of payments not actually received. *See* discussion on the guideline annual premium in Section B.6.a., *supra*, and on the computational rule in Section C.4., *infra*.

[120] *See* discussion in Section C.4., *infra*.

[121] *See* note 40, *supra*. The Commission has granted several exemptive orders to permit the use of the 1958 CSO Table in flexible contract designs that compute their sales load on the basis of actual payments. *See, e.g., The Life Insurance Company of Virginia*, Investment Company Act Release Nos. 14428 (March 19, 1985) [50 FR 11967 (March 26, 1985)] and 14475 (April 17, 1985); *The Volunteer State Life Insurance Company*, Investment Company Act Release Nos. 14525 (May 17, 1985) [50 FR 21529 (May 24, 1985)] and 14653 (August 1, 1985).

[122] The various frequencies (*e.g.*, semiannually, quarterly, and monthly) are generally referred to as "modes" of premium payment.

[123] The referenced example in the adopting release was of a contract that required a $1000 payment in the second year, and a contractholder who made a $400 payment on January 1 (the normal due date) and a $750 payment on June 1, thus incurring an interest charge on the $600 ($1000–$400=$600) reflecting the time value of the money the life insurer had anticipated collecting on the normal due date. To the extent interest on the $600 was factored into all payments, on a level basis. It would be permitted under the rule.

calculation method B, the 5% net interest rate has only a small effect on the size of the deduction, and if calculation method A is chosen, it will actually reduce the size of the deduction. The Commission concurs in the ACLI's assessment of the effect, and utility, of changing the investment return reflected in the dividend allowance from a gross to a net amount and has amended subparagraph (c)(4)(x) accordingly.

f. Additional Risk Charges

The ACLI letter proposed a new subparagraph under (c)(4) to permit the exclusion from sales load of any additional charge assessed specifically for any mortality or expense risk or interest rate guarantees, to the extent that such charges are not reflected in net investment earnings. The ACLI cited as the basis for this suggestion the possibility that in the future some companies may impose risk charges as cash value charges rather than asset charges, and may develop contracts with guaranteed minimum rates of investment return for which a charge would be appropriate. The Commission believes such "possibilities" are too speculative to warrant attention in the rule at this time. Therefore, this provision has not been adopted.

4. Paragraph (c)(8)—Guidance Annual Premium

As discussed above,[124] rule 6e-3(T) adopted the concept of a "guideline annual premium" as an analogue to scheduled payments under rule 6e-2. "Guideline annual premium" is defined in subparagraph (c)(8)(i) generally as the level annual payment necessary to provide the future benefits under the contract through maturity. Subparagraph (c)(8)(i)(A) of the definition assumes annual payments fixed by the life insurer as to both timing and amount. Four additional assumptions are specified by subparagraph (c)(8)(i)(B): (1) the 1980 CSO Table; (2) net investment earnings at the greater of an annual effective rate of 5% or the rate guaranteed at issuance; (3) sales load under the contract; and (4) the fees and charges associated with the contract. Comment was received on two of these assumptions, the 1980 CSO Table (which was the primary focus of the commenters) and the 5% rate.

Several commenters recommended that the definition of "guideline annual premium" mirror the definition provided in the Code, particularly with reference to the 4% rate used in the Code. They argued that it would be administratively easier to use the same rate in the rule as is in the Code. They also argued that use of a 5% rate in the rule would produce an unacceptable risk since its use for flexible contracts (which do not guarantee any rate of return) would necessitate its use (instead of the usual 4%) in pricing fixed benefit policies (which do contain a guaranteed rate). These arguments, however, are not persuasive. The Commission carefully considered these same arguments earlier (in the context of comments on the petition) and the adopting release sufficiently discussed many of them.[125] The Commission concluded therein that similar definitions between the Code and the rule were not necessary. It also concluded that the 5% rate was a sufficiently conservative estimate of long term investment performance.

The ACLI stated that use of the 1980 CSO Table in the definition of sales load and elsewhere in rule 6e-3(T) is of critical concern to the industry. The ACLI argued that it is inappropriate for the Commission to specify insurance charges, even in the definition of sales load. It also disagreed with the statement in the adopting release that the 1980 CSO Table will "more closely reflect the actual mortality experience upon which flexible life will be priced."

Moreover, it stated that specification of the 1980 CSO Table effectively requires use of that table for insurance-related purposes, contrary to the Commission's intent. Finally, the ACLI maintained that rule 6e-3(T) should be conformed to the proposed amendment to rule 6e-2. This amendment would permit use of either the 1958 CSO Table or the 1980 CSO Table, whichever is guaranteed in the contract. Three other commenters made similar comments.[126]

Notwithstanding the above, the ACLI letter concluded that if the Commission chose to retain the assumption of the 1980 CSO Table, the adopting release should specifically reconfirm that it is for the sole purpose of providing an assumption for regulating sales load under the Act.

The Commission disagrees with the ACLI's assertion that it is inappropriate to specify the 1980 CSO Table as an assumption necessary to the definition of sales load. To permit sales load to be based upon the guideline annual premium, the assumptions used must be designed, to the maximum extent possible, to produce an amount that could reasonably be expected to be paid by a flexible life insurance contractholder. The 1980 CSO Table, combined with the 5% rate for net investment earnings and the other assumptions, produces such an amount.[127] However, the 1980 CSO Table is specified here for the sole purpose of regulating sales load under the Act. It does not require insurers to use that table for insurance-related purposes, such as calculating the cost of insurance or valuing reserves.[128]

The ACLI also had a clarifying comment with respect to the 1980 CSO Table. It noted the ambiguity created by the existence of several versions of the 1980 CSO Table (most of which were issued after the petition was filed),[129] and suggested two alternative resolutions. Specifically, the ACLI proposed that companies be permitted to use (1) a 1980 CSO male table for compliance demonstrations in all circumstances, or (2) any "non-biased" combination of tables. The ACLI stated that this latter suggestion could be accomplished by either a "universal" reference to the 1980 CSO Table in the rule or by a definition of the table parallel to that in the Code. Two other commentators recommended generally that smoker/non-smoker and sex distinctions, based on the relevant 1980 CSO Table (and factored into a particular flexible contract's mortality charges), be recognized in rule 6e-3(T).

The Commission has determined that any fair and "non-biased" combination

[124] *See* discussion of Subparagraph (b)(13)(i) in Section B.6.a., *supra*.

[125] Adopting release at Section II.C.B.

[126] In addition, one commenter proposed a very different definition of the "guideline annual premium. Its definition deleted reference to a maturity date and defined the "guideline annual premium" as equal to that for an Option I contract (even when the contract issued is an Option II contract). The suggestion was based on the commenter's earlier conclusion that the guideline annual premium would be substantially higher than most target premiums. *See* discussion of subparagraph (b)(13)(i) in Section B.6.a., *supra*.

[127] It is true that stipulation of the 1980 CSO Table may not permit certain life insurers to charge the maximum amount for cost of insurance and sales load, and still rely on the guideline annual premium contract to receive that sales load as early as possible. On the other hand, a life insurer would be able to deduct the maximum permissible cost of insurance charges (based on the 1958 CSO Table) and sales load under the 1940 Act, if it deducted the load on the basis of a level percentage of payments received.

[128] To meet the concern outlined in the ACLI letter that use of the 1980 CSO Table in the rule would dictate its use for all other insurance products offered by a company, one commenter suggested that companies consider guaranteeing charges based on the 1958 CSO Table, while actually charging on the basis of the 1980 CSO Table.

[129] The ACLI letter, at pages 101–104, mentioned a pair of 1980 CSO Tables for male and female lives, each with or without ten-year select factors; a 1980 CSO smoker and non-smoker mortality table each with a male and female table, with or without 10-year select mortality factors; and gender-blended mortality tables, with or without ten-year select mortality factors.

of tables is acceptable.[130] Therefore, the rule will continue to refer to the "1980 CSO Table" with this understanding.

Finally, the ACLI suggested that subparagraph (c)(8)(i)(B) of the guideline annual premium definition should refer specifically to subparagraph (c)(4)(x). Subparagraph (c)(4)(x) reflects the dividend allowance for "participating" contracts.[131] The Commission agrees and has amended the rule accordingly.

5. Paragraph (c)(9)—Cash Value and Paragraph (c)(10)—Cash Surrender Value

"Cash value" is defined generally as the amount available in cash upon a voluntary termination of a contract, without regard to any charges upon termination and any deduction of contract loans. "Cash surrender value" is defined as the cash value of a contract, less any sales load or other charges that may be deducted upon redemption. The ACLI suggested that, for clarification purposes, the definitions be revised to exclude specifically charges refunded upon exercise of the free look and refund rights. The ACLI stated that this would reflect the commonly understood meaning of these terms in the industry.

The definitions do not need to be amended; rather, certain interpretive matters raised by the ACLI's letter need to be clarified. When sales load is assessed as a front-end charge, it is deducted from payments and, therefore, never becomes part of the investment base that is put into the separate account. Thus, refundable excess sales load would not normally be thought of as part of the cash value. Conversely, amounts attributable to deferred or contingent deferred sales loads are placed in the separate account and made part of the investment base. Contractholders benefit from returns on these amounts and the life insurer assesses asset charges (*e.g.*, daily mortality and expense risk charges item.[132] Until deducted, these amounts are therefore treated as part of the cash value. This does not mean, however, that an insurer may not ultimately take the full sales load to which it is entitled; sales load that would be refunded upon exercise of the free look and refund rights does not become part of a contractholder's cash surrender value merely because of deferral. The only limitation is that no greater amount may be deducted as a deferred charge than could have been deducted as a front-end charge.

6. Paragraph (c)(12)—Contract Processing Day

The term "contract processing day" is used in subparagraph (b)(13)(iv) dealing with redeemability and contract lapses, and in subparagraph (b)(13)(vii) dealing with notification of the free look right. It is defined in paragraph (c)(13) (renumbered as (c)(12)) of rule 6e-3(T) as any day on which charges under th contract are deducted from the separate account. The ACLI requested confirmation of its view that the phrase "charges under the contract" does not refer to asset charges reflected in net investment earnings in the manner described in paragraph (c)(11). The Commission concurs in this view.

D. Paragraph (d)—The Computational Rules

Paragraph (d) sets forth several computational rules to be used in applying rule 6e-3(T).

1. Paragraph (d)(1)—Subsequent Sales Loads

a. Subparagraph (d)(1)(i)—Limitations

As discussed above, rule 6e-3(T) provides generally that sales load imposed on a flexible contract may not exceed 9% of the sum of twenty guideline annual premiums.[133] Paragraph (d)(1) permits sales load to be deducted other than from payments, *i.e.*, as a subsequent sales load.[134] The 9% limit on sales load shall be deemed satisfied with respect to any subsequent sales load if the amount of sales load deducted (together with any previously deducted front-end load) is not more than the amount that could have been deducted had the entire amount been taken as a front-end sales load.

The ACLI requested that the Commission reconsider the rejected "economic value" approach to sales load regulation.[135] It contended that the rule's failure to incorporate this approach would significantly limit the economic viability of flexible life insurance, particularly those contracts with contingent deferred sales load designs. In addition to the economic justifications referenced from the petition, the ACLI argued that this approach is consistent with the purposes of section 27(a)(1) and that the contractholder would often be in a better position, even if the dollar amount of sales load exceeded 9% of payments actually made. For similar reasons, four other commenters supported this approach.

The Commission continues to believe that, to the extent possible, permissible sales load should be limited to 9% of payments, as mandated by section 27 of the Act. In this regard, there is no persuasive reason for treating subsequent sales loads of flexible contract issuers differently from those of other issuers. Therefore, the Commission declines to reverse its findings on the "economic value" approach.[136]

The ACLI also offered certain other revisions of paragraph (d)(1). They stated that the paragraph, by its reference to sales load deducted "during each contract period" through the specified maturity date, can be read to suggest that the subsequent sales load in any year may not exceed the permissible front-end sales load deductible in that year only. The Commission agrees with the need for technical revision to clarify that the subsequent sales load is to be tested on a cumulative basis. This will be accomplished by replacing the timing notion of contract periods for purposes of sales load regulations with that of receipt of guideline annual premiums, i.e., "aggregate" approach to sales loads.[137]

In connection with this comment, the ACLI asserted that subsequent sales load "may be imposed in any contract period even if payments equal to the guideline amount have not been made." The Commission reiterates that the assumed payment of 20 guideline annual premiums to demonstrate, prospectively,

[130] For example, it would be appropriate to use a male table for male lives and a female table for female lives.

[131] A "participating" contract is an insurance contract under which contractholder dividends are payable—that is, a contract that entitles its owner to participate in allocations of surplus, as determined by the corporation's board of directors, if the experience of that class of contracts warrants a refund.

[132] These amounts are included when calculating the number of votes that a contractholder is eligible to cast.

[133] *See* Section B.6.a., *supra*.

[134] As discussed at note 46, *supra*, examples of subsequent sales load are: (1) a deferred sales load upon full or partial redemption; (2) a periodic deduction directly from a contract's cash value; (3) an asset-based sales load; or (4) a combination of any of the above. *See also* the discussion of sales load definition in Section B.1., *supra*.

[135] Under the "economic value approach, any subsequent sales load would be permitted so long as the contractholder would be in the same financial condition as would have resulted from a completely front-end sales loaded contract.

[136] The findings are discussed more fully in the adopting release in connection with paragraph (d)(1). The light of the rejection of the "economic value approach, paragraph (d)(1)(i)(B)'s reference to "guideline single premium" and paragraph (d)(2)(ii)(B) have been deleted. In addition, the Commission has streamlined the text of paragraph (d)(1). The changes are strictly clarifying ones; they represent no change in substantive policy.

[137] *See* Section B.6.a. and b., *supra*. One commenter also suggested that subsequent sales loads be limited by reference to the permissible cumulative front-end load.

sales load compliance with the 9% of payments limitation, is not the same as "pretending" that guideline annual premiums have been paid at the time the sales load is deducted.[138] The policy that sales load cannot be taken unless a payment has actually been made is also consistent with the rule's provision that life insurers be able to fix payments for the first two years. This provision was designed to enable insurers to charge the maximum permissible sales loads they claimed were necessary.

b. Subparagraph (d)(1)(ii)—Stair Step

Subparagraph (d)(1)(ii) provides exemptive relief from the requirements of section 27(a)(3) for subsequent sales loads. It corresponds to the relief provided by subparagraph (b)(13)(ii) for front-end sales loads. The paragraph provides for a stair step requirement that the amount of any subsequent sales load deducted shall not exceed the proportionate amount of sales load previously deducted under the same methods.

The ACLI noted that the terms "proportionate amount" and sales load "method" are not defined in the rule. It requested confirmation of its understanding that "methods" appears to be distinguished on the basis of timing and the manner in which a charge is calculated, and that "proportionate amount" refers to sales load under each separate method in proportion to the base on which sales load is computed pursuant to the method. Another commenter suggested that it would be sufficient to limit sales load deducted from assets by reference to permissible cumulative front-end load. This commenter argued that it was not helpful to "strain" the stair step concept by applying it to subsequent sales loads.

In examining sales load structures for stair step violations, a method-by-method approach should be used, as noted in the release adopting Rule 6e-3(T). Under this approach, the stair step requirement is applied separately to the base test contract and the incremental test contract. Therefore, upon an increase in the contract's death benefit, a new, separate determination of whether the sales load structure complies with the stair step requirement should be made. *However*, such a determination is subject to the additional requirement that the maximum amount charged for sales load pursuant to each method under the incremental test contract cannot be greater than that charged pursuant to the corresponding method under the base test contract. For example, if the base test contract provided for a front-end load of 30% on the first guideline annual premium, the front end load on the first guideline annual premium under the incremental test contract could not exceed 30%.

The Commission believes that, consistent with section 27 the stair step concept should not be limited to front-end sales loads. The concept may, however, be difficult to apply to one particular method, *i.e., an* asset-based sales load structure. A literal application of the stair step requirement would, in effect, thwart the use of asset-based sales load designs. Thus, the language of the stair step requirement, as applied to asset-based sales loads, has been modified slightly to sharpen its focus. Solely with respect to this sales load method, the stair step provision is now directed at changes in the asset-based rate, rather than changes in the actual dollar amount deducted. The stair step requirement would preclude an asset-based sales load structure that allows the insurer to deduct a higher percentage of assets than was previously deducted under the same method. Thus, an insurer may not increase the percentage of assets taken as sales load above any of the percentages previously taken, without violating the stair step requirement.[139]

2. Paragraph (d)(2)—Sales Load on Changes in Contract Benefits

Paragraph (d)(2) sets forth the computational rules to be used in determining the permissible sales load on an increase in, or addition of, insurance benefits requested by a contractholder after issuance of the contract.[140] Subparagraph (d)(2)(i) affirmatively permits sales load in those cases. Sales load on each payment up through receipt of each guideline annual premium,[141] may not, however, exceed that which would be permissible under the "base test contract" [142] and the "incremental test contract, [143] *i.e.*, the total sales load may not exceed the sum of the corresponding loads under these tests.[144]

Paragraph (d)(2) goes on to provide that a flexible contract need not contain free look, refund or conversion rights with respect to an increase or addition if the incremental test contract deducts no more than fifty percent of the otherwise permissible maximum sales load.[145] Finally, subparagraph (d)(2)(iii)(D) does not permit additional sales loads on automatic benefit changes or on changes in death benefit options.

The ACLI and others suggested that the Commission clarify the application of the "50%" incremental test contract requirement.[146] The ACLI also commented on coversion rights following an increase in death benefits. Finally, the ACLI and another commenter inquired as to whether sales load could be deducted upon a decrease in face amount.

As a result of the comments received and the flexible contracts filed since rule 6e-3(T) was adopted, it is apparent that further clarification of the fifty percent sales load test is necessary.

The sales load limits for the base test contract dictate the maximum sales load for the incremental test contract.[147] If

[138] *See* Section B.6.a., *supra*. However, the ACLI letter is correct if it was referring to the situation where, for example, a fourth "guideline annual premium" of $2,000, subject to a 10% sales load, arrives in three installments; the life insurer may deduct 10% for each of the two installments that were received prior to a partial redemption without waiting until the full fourth guideline amount has been received. The assumption that 20 GAPs will be paid is necesary to demonstrate that, over the life of the contract, the sales load paid will average no more than 9%. In a scheduled premium product, one is permitted to assume that 20 annual premiums will be paid. The GAP concept is needed only to approximate an "annual premium. No other difference in sales load structure is needed or intended.

[139] *See* paragraph (d)(1)(ii)(B). The Commission recognizes that the dollar amount of sales load actually taken may increase or decrease daily as a percentage of payments. This does not contravene the policies underlying the stair step requirement, since the fluctuations would be due to factors beyond the insurer's control. The insurer nevertheless would be subject to the sales load limitations set out in subparagraphs (b)(13) (i), (v) and (viii) of the rule, and it may not deduct more sales load on a subsequent basis than that permitted to be deducted as a front-end charge.

[140] The text of the paragraph has been simplified.

[141] *See* Section B.6.a., *supra*, regarding the "aggregate" approach to sales load regulation.

[142] The base test contract is defined in paragraph (d)(2)(iii)(B) generally as the actual contract without the increase or change in insurance benefits.

[143] The incremental test contract is defined in paragraph (d)(2)(iii)(C) generally as a contract identical to the actual contract (defined in paragraph (d)(2)(iii)(A)), but providing only the incremental change in benefits.

[144] Paragraph (d)(2)(i) previously set forth these limitations as two separate tests (former paragraphs (d)(2)(i)(A) and (d)(2)(i)(B)). With the adoption of the aggregate approach, however, this is no longer necessary, and the paragraph has been revised accordingly.

[145] This limitation was formerly part of the definition of "incremental test contract." It is now set forth separately in paragraph (d)(2)(ii)(D) as one of the procedures for applying paragraph (d)(2).

[146] The ACLI stated that the "50%" test could be read as limiting average sales loads to 4½% rather than 9%. It should not, however, be read to limit sales load that does not otherwise trigger free look rights.

[147] The exemptive relief granted from the stair step provisions (discussed below) does not permit a larger percentage of sales load to be deducted for the incremental test contract than for the base test contract. In reality, there is only one "actual" contract.

the original (base test) contract provides for a sales load of 9% or less of each payment, then neither section 27 of the Act nor rule 6e-3(T)(b)(13) requires the contractholder to be given "free look, refund, or conversion rights. Therefore, an incremental test contract related to this base test contract would not be required to provide these rights either.

If, for example, an original contract provides for a sales load of 10–30% of payments up to the first guideline annual premium, section 27(f) of the Act and paragraph (b)(13)(viii) of the rule, would require that a free look right be given.[148] If the incremental test contract deducts the same sales load, this same right would have to be provided. However, if the incremental test contract takes only half of the sales load otherwise permissible under the actual contract,[149] *e.g.*, 50% of 30% of payments up to the first guideline annual premium (15% of such payments), then, under paragraph (d)(2)(ii)(D), no free look need be provided. The paragraph would effectively exempt the incremental test contract from the Act's requirement of a free look right at sales loads of 10% to 15%, as long as those amounts represent no more than half of the otherwise permissible sales load under the original contract.

If a contract initially deducts an excess sales load of 31% to 50% of payments up to the first guideline annual premium, paragraph (b)(13)(v) would require that a 24-month surrender and refund right, and a 24-month conversion right, be provided.[150] If the incremental test contract charged the same amounts, it would be subject to the same requirements. However, if the incremental test contract deducted only half of the otherwise permissible sales load, *e.g.*, 50% of 50% (25%) of payments up to the first guideline annual premium, none of these rights need be provided.[151] Sales load in excess of 25% of payments up to the first guideline annual premium for the incremental test contract would trigger the need to provide the rights contained in paragraph 6e-3(T)(b)(13)(v). Therefore, the conversion right would be immediately operable, but only sales load in excess of 30% of payments up to the first guideline annual premium would have to be refunded (sales load between 26% and 30% would be refund-proof).[152]

A related issue that has arisen in this area involves the need for guidance and uniformity on premium allocations between the original contract and the increase or addition of benefits.[153] A proportionate allocation is the fairest rule to apply across the board. This means that for all payments received after an increase of insurance benefits, there would be a proportionate allocation of payments between the base test contract and the incremental test contract, on the basis of their relative guideline annual premiums.[154] Thus, under proportionate allocation, a life insurer may not automatically deem the next payments received as being entirely "for" the increase in benefits. Were the insurer permitted to do so, it would likely subject those payments to a higher percentage of sales load because the base test contract would be in "trail load, while the incremental test contract would be subject to higher early sales load.[155]

Proportionate allocation also applies where no additional payments are required. Under the design of a flexible contract, charges may be assessed against cash value to continue the contract without the necessity of a payment being made. In addition, sales load may be taken as a charge against assets. Therefore, it would be possible, under the designs of some contracts, for an increase to be added and funded on the basis of the existing cash value rather than by requiring that a payment be made specifically for the increase. Under proportionate allocation, the existing cash value would be allocated proportionately between the base test and incremental test contracts on the basis of their respective guideline annual premiums. The cash value under the incremental test contract would be treated as a payment received in anticipation of the increase and could be subject to a sales load. The insurer may, however, require the contractholder to make a further payment if the cash value, as allocated, is insufficient to support the actual contract. The Commission has determined to amend paragraph (d)(2) of the rule to better reflect the above interpretations. Although these amendments represent no change in policy, comment is requested.

With reference to conversion rights upon an addition or increase in face amount, the ACLI suggested that these rights be afforded only if the contractholder could have purchased outright a fixed benefit contract providing the same type and amount of benefit as the increase. The ACLI also noted that when these rights are exercised, it is necessary to determine the contract values allocable to the increase. It recommended that these allocation procedures, like the conversion right at issue, be developed by the life insurer and filed as an exhibit to the registration statement for Commission review. However, the letter also requested that a standardized allocation procedure be incorporated into the rule as a "safe harbor.

As indicated above, the rules has been amended to require proportionate allocation. While conversion rights would not accompany certain types of additions,[156] simple increases in benefits should have these rights attached, as discussed above, with respect to allocation.

Finally, with respect to sales load upon decreases in face amount, rule 6e-3(T) permits the assessment of a sales load in any manner that is fair, non-discriminatory, and consistent with the rule. Once again, the operative principle is that no more sales load may be deducted on a subsequent basis than could have been deducted as a front-end charge; sales loads on decreases in face amount would be in the nature of deferred or contingent deferred sales loads.[157] For these purposes, a decrease in face amount would be analogous to a partial redemption.[158]

Several sales load designs relevant to decreases in face amount can be seen in public registration statements on file.[159]

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[148] A free look right must be given with respect to any base test contract having sales load of greater than 9% of payments.

[149] "Actual contract" is defined in subparagraph (d)(2)(iii) as the flexible contract issued to the contractholders, and adjusted for the increase in or addition of insurance benefits, as of the date of the increase or addition.

[150] A free look right would also have to be provided.

[151] A free look right would not have to be provided either in this instance.

[152] *See* section B.6.a., *supra*. The free look right would also be immediately operable.

[153] One commenter supported the idea of premium allocation.

[154] If the base test contract had a GAP of $1,000 and an increase with a GAP of $500 was added, the next $9,000 payment received would be allocated $6,000 to the base test contract and $3,000 to the incremental test contract.

[155] After one or more assessments of sales load in excess of 9%, the percentage must drop so that the total sales load for twenty guideline annual premiums does not exceed an average of 9% overall.

[156] The ACLI cited in its letter examples of benefits as to which conversion rights should not be required: waiver of premium riders and incidental benefits such as cost of living adjustments and guaranteed insurability options. This view is correct.

[157] This is, of course, different from increases in fact amount, which justify an additional sales load, whether front-end or subsequent.

[158] If sales load is taken as a percentage of payments up to one or more GAPs, the appropriate GAP limit to use after a decrease in face amount is, of course, the GAP for the revised contract.

[159] *See, e.g.*, MONY America Variable Account L (File No. 2-95990, Feb. 20, 1986) and Luthern

Continued

Nonetheless, this area has not developed sufficiently to permit discussion on all possible ways in which it may be permissible to deduct sales load on a decrease. However, where there is a decrease in face amount following an increase, the "fairness" standard requires that the determination of sales load assessments be on a basis consistent with cost of insurance deductions. For example, the method of "last in, first out" would mean that, for purposes of *both* the sales load and the cost of insurance deductions, the face amount would be reduced in the order of (a) the face amount provided by the most recent increase; (b) the next most recent increases successfully; and (c) the initial face amount. The rule already permits decreases in the face amount of insurance and a series of increases; therefore, no further amendments in this regard have been made.

Transition Period and "Grandfathering"

Registration statements for flexible contracts that are filed within 30 days of publication of this release in the Federal Register may use the provisions of rule 6e-3(T) as constituted prior to this modification or may use the rule as modified. Registration statements that are filed 31 days or more after the publication would have to rely on the modified temporary rule. All registrants, of course, may rely on the many clarifications and interpretations of both versions of the rule that are spelled out in this release. Registrants relying on the old version of the temporary rule do not have to modify their contract designs to conform with the new version of the temporary rule. However, at the time of final adoption of rule 6e-3, registrants using either version of the temporary rule would have one year to adjust to any changes required to conform their contract designs to the final rule. Contracts sold during that year and during times prior to that transition year would be "grandfathered" to prevent the need to modify executed contracts retroactively.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission previously certified that rule 6e-3(T) will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification. The amendments do not alter the basis for this determination.

Paperwork Reduction Act

These amendments to Rule 6e-3(T) are not subject to the Act because they do not impose an information collection requirement.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Revised Rule

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80c-89 § 270.6e-3(T) also issued under sec. 6(e), 15 U.S.C. 80a-5(e).

2. By revising § 270.6e-3(T) to read as follows:

§ 270.6e-3(T) Temporary exemptions for flexible premium variable life insurance separate accounts.

(a) A separate account, and its investment adviser, principal underwriter and depositor, shall, except as provided in paragraph (b) of this Rule, comply with all provisions of the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] and the rules under it that apply to a registered investment company issuing periodic payment play certificates if:

(1) It is a separate account within the meaning of section 2(a)(37) of the Act [15 U.S.C. 80a-2(a)(37)] and is established and maintained by a life insurance company pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies with Rule 7d-1 [17 CFR 270.7d-1] under the Act (the "life insurer");

(2) The assets of the separate account are derived solely from (i) the sale of flexible premium variable life insurance contracts ("flexible contracts") as defined in paragraph (c)(1) of this Rule, (ii) the sale of scheduled premium variable life insurance contracts ("scheduled contracts") as defined in paragraph (c)(1) of Rule 6e-2 [17 CFR 270.6e-2] under the Act, (iii) funds corresponding to dividend accumulations with respect to such contracts, and (iv) advances made by the life insurer in connection with the operation of such separate account;

(3) The separate account is not used for variable annuity contracts or other contract liabilities not involving life contingencies;

(4) The separate account is legally segregated, and that part of its assets with a value approximately equal to the reserves and other contract liabilities for such separate account are not chargeable with liabilities arising from any other business of the life insurer;

(5) The value of the assets of the separate account, each time adjustments in the reserves are made, is at least equal to the reserves and other contract liabilities of the separate account, and at all other times approximately equals or exceeds the reserves and liabilities; and

(6) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.].

(b) A separate account that meets the requirements of paragraph (a) of this Rule, and its investment adviser, principal underwriter and depositor shall be exempt with respect to flexible contracts funded by the separate account from the following provisions of the Act:

(1) Section 2(a)(35) [15 U.S.C. 80a-2(a)(35)], *Provided, however,* That the term "sales load, as used in the Act and rules under it, shall have the meaning set forth in paragraph (c)(4) of this Rule. *And provided further,* That in connection with any sales load deducted pursuant to paragraph (d)(1) of this Rule, the separate account and other persons shall be exempt from sections 2(a)(32) [15 U.S.C. 80a-2(a)(32)], 12(b) [15 U.S.C. 80a-12(b)], 22(c) [15 U.S.C. 80a-22(c)], 26(a) [15 U.S.C. 80a-26(a)], 27(c)(1) [15 U.S.C. 80a-27(c)(1)], 27(c)(2)[15 U.S.C. 80a-27(c)(2)], and 27(d) [15 U.S.C. 80a-27(d)], and Rules 12b-1 [17 CFR 270.12b-1] and 22c-1 [17 CFR 270.22c-1].

(2) Section 7 [15 U.S.C. 80a-7].

(3) Section 8 [15 U.S.C. 80a-8], to the extent that:

(i) For purposes of paragraph (a) of section 8, the separate account filed with the Commission a notification on Form N-6EI-1 [17 CFR 274.301] which identifies the separate account; and

(ii) For purposes of paragraph (b) of section 8, the separate account shall file with the Commission the form designated by the Commission within ninety days after filing the notification on Form N-6EI-1, *Provided, however,* That if the fiscal year of the separate account end within this ninety day period, the form may be filed within ninety days after the end of such fiscal year.

Brotherhood Variable Insurance Account (File No. 33-3243, Feb. 11, 1986). *See also* the exemptive order issued to the Pruco Life Insurance Company, *et al.*, Investment Company Act Release Nos. 14545 (May 29, 1985) [50 FR 23782 (June 5, 1985)] and 14605 (June 28, 1985).

(4) Section 9 [15 U.S.C. 80a–9], to the extent that:

(i) The eligibility restrictions of section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates and who do not participate directly in the management or administration of the separate account or in the sale of flexible contracts; and

(ii) A life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser, depositor of or principal underwriter for the separate account only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates directly in the management or administration of the separate account or in the sale of flexible contracts.

(5) Section 13(a) [15 U.S.C. 80a–13(a)], to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the sub-classification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by its contractholders or board of directors may be disapproved by the life insurer, if the disapproval is reasonable and is based on a good faith determination by the life insurer that:

(A) The change would violate state law; or

(B) The change would not be consistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques used by other separate accounts of the life insurer or of an affiliated life insurance company with similar investment objectives;

(iii) Any action described in paragraph (b)(5)(i) or (ii) of this Rule and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than twelve months from the date of such action.

(6) Section 14(a) [15 U.S.C. 80a–14(a)], *Provided,* That until the separate account has total assets of at least $100,000, the life insurer shall have (i) a combined capital and surplus, if a stock company, or (ii) an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in the balance sheet of such life insurer contained in the registration statement for flexible contracts filed under the Securities Act of 1933 [15 U.S.C. 77a et seq.] (the "1933 Act").

(7)(i) Section 15(a) [15 U.S.C. 80a–15(a)], to the extent it requires that the initial written contract with the investment adviser shall have been approved by the vote of a majority of the outstanding voting securities of the registered investment company, *Provided,* That:

(A) The investment adviser is selected and a written contract is entered into before the effective date of the 1933 Act registration statement for flexible contracts, and that the terms of the contract are fully disclosed in the registration statement, and

(B) A written contract is submitted to a vote of contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement, unless the Commission upon written request and for good cause shown extends the time for the holding of such meeting;

(ii) Sections 15 (a), (b) and (c), to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, *Provided,* That such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, *Provided,* That such disapproval is reasonable and is based on a good faith determination by the life insurer that:

(*1*) The proposed investment advisory fee will exceed the maximum rate specified in any flexible contract that may be charged against the assets of the separate account for such services; or

(*2*) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques used by the current investment adviser to the separate account, or advise the purchase or sale of securities which would not be consistent with the investment objectives of the separate account, or which would vary from the quality and nature of investments made by other separate accounts with similar investment objectives of the life insurer or an affiliated life insurance company;

(D) Any action described in paragraph (b)(7)(ii) (A), (B) or (C) of this Rule and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than twelve months from the date of such action.

(8) Section 16(a) [15 U.S.C. 80a–16(a)], to the extent that:

(i) Directors of the separate account serving before the first meeting of the account's contractholders are exempt from the requirement of section 16(a) that they be elected by the holders of outstanding voting securities of the account at an annual or special meeting called for that purpose, *Provided,* That:

(A) Such persons were appointed directors of the account by the life insurer before the effective date of the 1933 Act registration statement for flexible contracts and are identified in the registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors), and

(B) An election of directors for the account is held at the first meeting of contractholders and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the meeting is extended by the Commission upon written request and for good cause shown;

(ii) A member of the board of directors of the separate account may be disapproved or removed by an insurance regulatory authority if the person is not eligible to be a director of the separate account under the law of the life insurer's domicile.

(9) Section 17(f) [15 U.S.C. 80a–17(f)], to the extent that the securities and similar investments of a separate account organized as a management investment company may be maintained in the custody of the life insurer or of an affiliated life insurance company, *Provided,* That:

(i) The securities and similar investments allocated to the separate account are clearly identified as owned by the account, and the securities and similar investments are kept in the vault of an insurance company which meets the qualifications in paragraph (b)(9)(ii) of this Rule, and whose safekeeping function is supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a state or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance

Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of the Commission, representatives of insurance regulatory authorities, independent public accountants retained by the separate account (or on its behalf by the life insurer), accountants for the life insurer, and to no more than 20 persons authorized by a resolution of the board of directors of the separate account, which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated life insurance company in whose vault the investments are kept (if applicable), and access to such securities and similar investments shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(9)(i) of this Rule that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in accordance with any rule under section 17(f), or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated life insurance company, shall sign a notation showing (A) the date and time of the deposit, withdrawal or order, (B) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another person, the name of such person. The notation shall be sent promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who is not himself permitted to have access to the securities or investments under paragraph (b)(9)(iii) of this Rule. The notation shall be on serially numbered forms and shall be kept for at least one year;

(vi) The securities and similar investments shall be verified by complete examination by an independent public accountant retained by the separate account (or on its behalf by the life insurer) at least three times each fiscal year, at least two of which shall be chosen by the accountant without prior notice to the separate account. A certificate of the accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be sent to the Commission by the accountant promptly after each examination;

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by federal or state authorities under any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of Section 17(f) so long as the arrangement complies with all provisions of this paragraph (b)(9), except that such securities will be maintained in the vault of a bank or other company rather than the vault of an insurance company.

(10) Section 18(i) [15 U.S.C. 80a–18(i)], to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the investment company:

(A) Flexible contractholders shall have one vote for each $100 of cash value funded by the separate account, with fractional votes allocated for amounts less than $100;

(B) The life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders under paragraph (b)(10)(i)(A) of this Rule, with fractional votes allocated for amounts less than $100, *Provided*, That after the commencement of sales of flexible contracts, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days before any meeting at which such vote is held, *Provided*, That if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date;

(ii) The requirement of this section that every share of stock issued by a registered management investment company (except a common-law trust of the character described in section 16(c) [15 U.S.C. 80a–16(c)]) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provisions of this Rule.

(11) Section 19 [15 U.S.C. 80a–19], to the extent that the provisions of this section shall not apply to any dividend or similar distribution paid or payable under provisions of participating flexible contracts.

(12) Sections 22(c), 22(d) [15 U.S.C. 80a–22(d)], 22(e) [15 U.S.C. 80a–22(e)], and 27(c)(1) and Rule 22c–1 to the extent:

(i) The cash value of each flexible contract shall be computed in accordance with Rule 22c–1(b) under the Act; *Provided, however*, That where actual computation is not necessary for the operation of a particular contract, then the cash value of that contract must only be capable of computation; *And provided further*, That to the extent the calculation of the cash value reflects deductions for the cost of insurance and other insurance benefits or administrative expenses and fees or sales loads, such deductions need only be made at such times as specified in the contract or as necessary for compliance with insurance laws and regulations; and

(ii) The death benefit, unless required by insurance laws and regulations, shall be computed on any day that the

investment experience of the separate account would affect the death benefit under the terms of the contract provided that such terms are reasonable, fair, and nondiscriminatory;

(iii) Necessary to comply with this Rule or with insurance laws and regulations and established administrative procedures of the life insurer for issuance, increases in or additions of insurance benefits, transfer and redemption of flexible contracts, including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract, *Provided, however,* That any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contractholders and to all other holders of contracts of the same class or series funded by the separate account, *And provided further,* That any such action shall be disclosed in the form filed by the separate account with the Commission under paragraph (b)(3)(ii) of this Rule.

(13) Section 27 [15 U.S.C. 80a–27], to the following extent:

(i) Section 27(a)(1) [15 U.S.C. 80a–27(a)(1)], 27(h)(1) [15 U.S.C. 80a–27(h)(1)], and 27(h)(4) [15 U.S.C. 80a–27(h)(4)], to the extent that sales load, as defined in paragraph (c)(4) of this Rule, deducted does not exceed that permitted by either subparagraph (A) or (B) below:

(A) 9 per centum of the sum of the guideline annual premiums that would be paid during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the contract based on the 1980 Commissioners Standard Ordinary Mortality Table, *Provided,* That this subparagraph (b)(13)(i)(A) shall not prohibit deduction of sales load, in any manner permitted by this Rule, from payments made in excess of the sum of the guideline annual premiums that would be paid during the lesser of 20 years or the anticipated life expectancy of the insured based on the 1980 Commissioners Standard Ordinary Mortality Table; or

(B) 9 per centum of payments made thereon; *Provided,* That the separate account elects by written notice to the Commission to be governed (with respect to each class of flexible contract offered) by either subparagraph (b)(13)(i)(A) or (B); *Provided, however,* that for each class of flexible contract that requires more than four guideline annual premiums within the first two contract periods following issuance of the contract or of an increase in or addition of insurance benefits (within the meaning of paragraph (d)(2)), the separate account must elect to be governed by subparagraph (b)(13)(i)(B).

(ii) Sections 27(a)(3) [15 U.S.C. 80a–27(a)(3)] and 27(h)(3) [15 U.S.C. 80a–27(h)(3)], *Provided,* That the proportionate amount of sales load deducted from any payment shall not exceed the proportionate amount deducted from any prior payment unless an increase is caused by reductions in the annual cost of insurance, or a reduction in the sales load deducted from amounts transferred to a flexible contract from another plan of insurance;

(iii) Sections 27(c)(2), 26(a)(1) [15 U.S.C. 80a–26(a)(1)], and 26(a)(2) [15 U.S.C. 80a–26(a)(2)], to the extent necessary to permit the actions described in paragraphs (A) through (F) of this section, *Provided,* That the life insurer complies with all other applicable provisions of Section 26 as if it were a trustee, depositor or custodian for the separate account; files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000; and is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operations.

(A) Payment of a fee to the life insurer, or to any affiliated person or agent of the insurer, for bookkeeping or other administrative services provided to the separate account, or for administrative services or expenses incurred in underwriting, issuing, and maintaining flexible contracts, *Provided,* That the fee is not greater than the expenses, without profit:

(*1*) Actually paid by the life insurer for the services provided; and

(*2*) Increased by the value of any services provided directly by the life insurer, as determined in accordance with generally accepted accounting principles consistently applied. The standard set forth in this paragraph shall be applied as follows: if the separate account reserves the right to increase the fee, the fee shall not exceed the cost of the services to be provided for one year; or if the fee is guaranteed not to increase for a specified period of time, the fee shall not exceed the average expected cost of the services to be provided during the period of the guarantee;

(B) The holding of the assets of the separate account by the life insurer without a trust indenture or other such instrument;

(C) When the separate account is organized as a unit investment trust, the holding of the securities of any registered management investment company which offers its shares to the separate account in uncertificated form;

(D) When the separate account is organized as a management investment company, the holding of its assets in any manner permitted by paragraph (b)(9) of this Rule or by section 17(f) or the rules under it;

(E) The deduction of premium or other taxes imposed by any state or other governmental entity, the cost of insurance, charges assessed for incidental insurance benefits or if the insured does not meet standard underwriting requirements, and, if the separate account is organized as a management investment company, an investment advisory fee;

(F) The deduction of a charge for mortality, expense, and any guaranteed death benefit risks assumed by the life insurer under the flexible contracts (collectively, a "risk charge"), *Provided,* That the registration statement under the 1933 Act for flexible contracts includes:

(*1*) A representation that this paragraph is being relied upon;

(*2*) A representation that the level of the risk charge either is:

(*i*) Within the range of industry practice for comparable flexible or scheduled contracts, or

(*ii*) Reasonable in relation to the risks assumed by the life insurer under the contracts;

(*3*) A brief description of the methodology used to support the representation made in response to paragraph (b)(13)(iii)(F)(*2*) of this Rule and an undertaking to keep and make available to the Commission upon request the documents used to support that representation;

(*4*) A representation that either:

(*i*) The proceeds from explicit sales loads will be sufficient to cover the expected costs of distributing the flexible contracts; or

(*ii*)(*A*) The life insurer has concluded that there is a reasonable likelihood that the distribution financing arrangement of the separate account will benefit the separate account and contractholders and will keep and make available to the Commission on request a memorandum setting forth the basis for this representation; and

(*B*) If the separate account is organized as a management investment company, a representation that the account will have a board of directors, a majority of whom are not interested persons of the separate account, formulate and approve any plan under Rule 12b–1 to finance distribution expenses. If the separate account is organized as a unit investment trust, a representation that the account will invest only in management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notwithstanding the provisions of this paragraph (b)(13)(iii)(F), no risk charge may be deducted in reliance thereupon if the registration statement or amendment thereto which initially sets forth the deduction of such charge or its increase becomes effective by lapse of time pursuant to section 8(a) of the 1933 Act or Rule 486 [17 CFR 230.486] thereunder. Such charge shall be disclosed in the prospectus and shall not be less than fifty per centum of the maximum charge for risk assumption as disclosed in the prospectus and as provided for in the contract. Any separate account organized under the Act as a management investment company and deducting a risk charge pursuant to this section shall be exempt from section 12(b) and Rule 12b–1 thereunder to the extent that monies derived from the risk charge may be used to finance distribution of the flexible contracts;

(iv) Sections 27(c)(1) and 27(d), and sections 2(a)(32) and 22(c) and Rule 22c–1 thereunder, to the extent that:

(A) Such sections require that the flexible contract be redeemable or provide for a refund in cash, *Provided,* That the contract provides for election by the contractholder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered, *And provided further,* That unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, the contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an interest or similar charge.

(B) Notwithstanding the provisions of paragraph (b)(13)(iv)(A) of this Rule, if the amounts available under the contract to pay the charges due under the contract on any contract processing day are less than such charges due, the contract may provide that the cash surrender value (and any excess paid for sales loading not used to keep the contract in force pursuant to paragraph (b)(13)(iv)(B)(*2*) of this Rule) shall be applied to purchase a non-forfeiture option specified by the life insurer in such contract, *Provided,* That the contract also provides that:

(*1*) Contract processing days occur not less frequently than monthly, and

(*2*) the amount of any excess paid for sales loading (as provided in paragraph (b)(13)(v)(A) of this Rule) shall first be applied to keep the contract in force, *Provided, however,* That if the contractholder subsequently makes a payment, the life insurer may recover such excess loading;

(C) Subject to other provisions of this Rule, sales loads and administrative expenses or fees may be deducted upon redemption.

(v) Section 27(d), *Provided,* That the flexible contract gives the holder thereof the right to:

(A) Surrender the contract at any time during the first 24 months after issuance and receive in cash an amount not less than the sum of the present value of his contract which is the cash surrender value next computed after receipt by the life insurer of the request for surrender in proper form, plus, an amount which is a refund of any excess paid for sales loading prior to or in connection with the surrender. The amount of sales loading to be refunded shall be equal to that part of the sales loading in excess of (1) the sum of 30 per centum of payments in aggregate amount less than or equal to one guideline annual premium, plus 10 per centum of payments in aggregate amount greater than one guideline annual premium but not more than two guideline annual premiums, and (2) 9 per centum of each payment made in excess of two guideline annual premiums;

(B) Convert the contract at any time during the first 24 months after issuance, so long as the contract is in force, to a life insurance policy on the life of the insured under a plan of insurance (other than a plan involving a flexible contract as defined in paragraph (c)(1) of this Rule or a scheduled contract as defined in paragraph (c)(1) of Rule 6e–2) specified in the contract, issued by the life insurer or by an affiliated life insurance company, which provides for (*1*) at the election of the contractholder, either the same death benefit or the same net amount at risk as the flexible contract at the time of conversion and (*2*) premiums (or cost of insurance or other charges, ("charges") if such plan of insurance provides for flexible premiums) which are based on the same issue age and risk classification of the insured as the flexible contract. The conversion shall be subject to an equitable adjustment in payments and cash values to reflect variances, if any, in the payments (or charges), dividends, and cash values under the flexible contract and the new policy. The method of computing such adjustment shall be filed with the Commission as an exhibit to the form required under paragraph (b)(3)(ii) of this Rule;

(vi) A depositor or principal underwriter for a flexible contract sold subject to section 27(d) or section 27(f), or both, shall be exempt from the requirements of Rule 27d–1 [17 CFR 270.27d–1] if an insurance company undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter under sections 27(d) and 27(f) to refund charges, and such insurance company, depositor and principal underwriter comply with all provisions of Rule 27d–2 [17 CFR 270.27d–2];

(vii) Section 27(e) [15 U.S.C. 80a–27(e)] and Rule 27e–1 [17 CFR 270.27e–1] thereunder, to the extent that the separate account and the depositor and principal underwriter therefor, when such persons are subject to paragraph (b)(13)(v)(A) of this Rule, are required to provide a notice of right of surrender and refund to holders of flexible contracts, if the life insurer or a duly authorized agent provides a notice of surrender and refund rights on a written document containing information comparable to that required by Form N–27I–1 [17 CFR 274.301] to the holder of any flexible contract under which a refund may be available, *Provided,* That such notice shall be sent by first class mail or personal delivery to the contractholder:

(A) Upon issuance of the flexible contract, which notice may be sent together with the issued contract and an illustration, in a form appropriate for inclusion in the prospectus for the flexible contract, of guideline annual premiums, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured; and

(B) On any contract processing day, prior to the expiration of the surrender and refund right provided in paragraph (b)(13)(v)(A) of this Rule, on which the amounts available under the contract on such day to pay the charges authorized by the contract are less than the amount necessary to keep the contract in force

until the next following contract processing day. This notice may be sent together with any notice required by applicable state authority to be sent in these circumstances; *Provided, however,* That the right of surrender and refund provided by paragraph (b)(13)(v)(A) of this Rule shall not expire until not less than 15 days after the mailing or receipt, if personally delivered, of the last notice referred to in this paragraph (b)(13)(vii)(B);

(viii) Section 27(f) and Rule 27f–1 thereunder [17 CFR 270.27f–1], *Provided,* That:

(A) The contractholder may elect to return the contract within 45 days of the date of the execution of the application for insurance, or within 10 days after receipt of the issued contract by the contractholder, or within 10 days after mailing or personal delivery of the notice of the right of withdrawal referred to in paragraph (b)(13)(viii)(C) of this Rule, whichever is later, and receive a refund equal to the sum of (*1*) the difference between the payments made, including any contract fees or other charges, and the amounts allocated to the separate account under the contract, (*2*) the value of the amounts allocated to the separate account under the contract on the date the returned contract is received by the insurer or its agent, and (*3*) any contract fees and other charges imposed on the amounts allocated to such separate account, *Provided, however,* That if state law or the contract so require, the redeeming contractholder shall receive a refund of all payments made for such contract;

(B) A refund in accordance with paragraph (b)(13)(viii)(A) of this Rule to redeeming contractholders will not in any way affect the interests in the separate account or the benefits of other flexible or scheduled contractholders;

(C) Notice of such withdrawal right and a statement of contract fees and other charges on a written document containing information comparable to that required by Form N–27I–2 [17 CFR 274.303] is sent by first class mail or personal delivery to the contractholder, which notice and statement may be accompanied by the flexible contract, and an illustration, in a form appropriate for inclusion in the prospectus for the flexible contract, of guideline annual premiums (or, if the contract is subject to paragraph (b)(13)(i)(B), payments), death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured;

(D) The contractholder, in conjunction with the notice of withdrawal right referred to in paragraph (b)(13)(viii)(C), is provided with a form of request for refund of the amount computed in accordance with paragraph (b)(13)(viii)(A), which form shall set forth:

(*1*) Instructions as to the manner in which a refund may be obtained, including the address to which the request form should be mailed; and

(*2*) Spaces necessary to indicate the date of such request, the contract number and the signature of the contractholder; and

(E) Within 7 days from the receipt of such duly executed timely request for refund, the life insurer will refund in cash to the contractholder the amount computed in accordance with paragraph (b)(13)(viii)(A) of this Rule; and

(ix) Solely for purposes of paragraphs (b)(13)(v) and (b)(13)(viii) of this Rule, the postmark date on the envelope containing the flexible contract shall determine whether such contract has been submitted for surrender, conversion, or withdrawal within the designated period.

(14) Section 32(a)(2) [15 U.S.C. 80a–31(a)(2)], *Provided,* That:

(i) The independent public accountant is selected before the effective date of the 1933 Act registration statement for flexible contracts, and the identity of the accountant is disclosed in the registration statement, and

(ii) The selection of the accountant is submitted for ratification or rejection to flexible contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the meeting is extended by order of the Commission.

(15) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account; *Provided,* That: the board of directors of each investment company, constituted with a majority of disinterested directors, will monitor such company for the existence of any material irreconcilable conflict between the interests of variable annuity contractholders and scheduled or flexible contractholders investing in such company; the life insurer agrees that it will be responsible for reporting any potential or existing conflicts to the directors; and if a conflict arises, the life insurer will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the scheduled or flexible contracts; Then:

(i) The eligibility restrictions of section 9(a) shall not apply to those persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described in this paragraph (b)(15);

(ii) The life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser of or principal underwriter for any registered management investment company described in this paragraph (b)(15) only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) For purposes of any section of the Act which provides for the vote of securityholders on matters relating to the separate account or the underlying registered investment company, the voting provisions of paragraph (b)(10)(i) and (ii) of this Rule apply, *Provided,* That:

(A) The life insurer may vote shares of the registered management investment companies held by the separate account without regard to instructions from contractholders of the separate account if such instructions would require such shares to be voted:

(*1*) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of this Rule; or

(*2*) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of this Rule;

(B) Any action taken in accordance with paragraph (b)(15)(iii)(A) (*1*) or (*2*) of this Rule and the reasons therefor shall

be disclosed in the next report contractholders made under Section 30(d) [15 U.S.C. 80a-29(d)] and Rule 30d-2 [17 CFR 270.30d-2];

(iv) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from section 14(a), *Provided*, That until the company has total assets of at least $100,000, the life insurer shall have at least the minimum net worth prescribed in paragraph (b)(6) of this Rule; and

(v) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from sections 15(a), 16(a), and 32(a)(2), to the extent prescribed by paragraphs (b)(7)(i), (b)(8)(i), and (b)(14) of this Rule, *Provided*, That the company complies with the conditions set forth in those paragraphs as if it were a separate account.

(C) When used in this Rule:

(1) "Flexible premium variable life insurance contract" means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which contract provides for:

(i) Payments which are not fixed by the life insurer as to both timing and amount: *Provided, however*, That the life insurer may fix the timing and minimum amount of payments for the first two contract periods following issuance of the contract or of an increase in or addition of insurance benefits (within the meaning of paragraph (d)(2)), and may prescribe a reasonable minimum amount for any additional payment;

(ii) A death benefit the amount or duration of which may vary to reflect the investment experience of the separate account;

(iii) A cash value which varies to reflect the investment experience of the separate account; and

(iv) There is a reasonable expectation that subsequent payments will be made.

(2) "Incidental insurance benefits" means insurance benefits provided pursuant to the flexible contract, other than any guaranteed and variable death benefit, which do not have discrete cash values that may vary in amount in accordance with the investment experience of the separate account, and include, but are not limited to, accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, and family income or fixed benefit term riders.

(3) "Guaranteed death benefit" is any amount guaranteed by the life insurer to be paid pursuant to a flexible contract in the event of the death of the insured without regard to the investment experience of the separate account, if there are no outstanding loans or partial surrenders, but does not include any incidental insurance benefits.

(4) "Sales load" charged during a contract period is the excess of any payments made during the period over the sum of the following:

(i) The amount of the change (whether it is an increase or decrease) in the cash value for the period that is not attributable to net investment earnings or to dividends for a participating flexible contract for the period;

(ii) The cost of insurance for the period based on:

(A) For a flexible contract subject to paragraph (b)(13)(i)(A), the 1980 Commissioners Standard Ordinary Mortality Table and net interest at the annual effective rate specified for purposes of paragraph (c)(8)(i)(B) of this Rule; or

(B) For a flexible contract subject to paragraph (b)(13)(i)(B), either the 1980 Commissioners Standard Ordinary Mortality Table or the 1958 Commissioners Ordinary Mortality Table (whichever relates to rates guaranteed by the contract) and the assumed investment rate specified in the contract, *Provided, however*, That the 1958 Commissioners Ordinary Mortality Table may only be used for those contracts issued before 1990, or such earlier mandatory date for implementation of the 1980 Commissioners Standard Ordinary Mortality Table under the applicable Standard Nonforfeiture Law for life insurance;

(iii) A reasonable charge necessary to cover the risk assumed by the life insurer that the variable death benefit will be less than any guaranteed death benefit;

(iv) Any administrative expenses or fees which are deducted pursuant to paragraph (b)(13)(iii)(A) of this Rule;

(v) A deduction for and approximately equal to state premium taxes;

(vi) Any additional charge assessed if the insured does not meet standard underwriting requirements, including, but not limited to, any additional cost of insurance charge for a contract purchased on a simplified underwriting or guaranteed issue basis;

(vii) Any additional charge assessed specifically for any incidental insurance benefits;

(viii) Any additional charge, the nature of an interest charge, assessed when payments are made more frequently than annually, but only to the extent that such payments are made to fulfill a minimum payment requirement imposed pursuant to paragraph (c)(1)(i) of this Rule;

(ix) Any amounts redeemed by the contractholder or paid out to the beneficiary upon the death of the insured which are not attributable to net investment earnings for the period; and

(x) For a participating flexible contract, a deduction for dividends to be paid or credited in accordance with the dividend scale in effect on the issue date of the contract assuming a net annual investment return for the separate account which funds the contract of 5 per centum. The deduction may be determined by either of the following methods, but the same method must be used for each contract period:

(A) The actuarial level annual equivalent of dividends to be paid or credited over the contract periods described in paragraph (b)(13)(i) of this Rule, based upon the mortality, interest and lapse assumptions used in computing the dividend scale for the contract (and, if the contract is subject to paragraph (b)(13)(i)(A), the assumption that the guideline annual premium will be paid in each contract period) multiplied by the fraction of the contract year represented by the contract period; or

(B) That portion of the dividend to be paid for the contract year which does not depend on the making of payments in addition to those made during the period.

(5) "Contract period" means the period from a contract issue or anniversary date to the earlier of the next following anniversary date (or, if later, the last day of any grace period commencing before such next following anniversary date) or the termination date of the contract.

(6) "Variable death benefit" is the amount of death benefit, other than incidental insurance benefits, payable under a flexible contract which varies to reflect the investment experience of the separate account and which would be payable in the absence of any guaranteed death benefit.

(7) "Payment," as used in paragraphs (b)(13)(i), (b)(13)(ii), and (b)(13)(v)(A) of this Rule and in sections 27(a)(2) and 27(h)(2) solely with respect to flexible contracts, means for a contract period the gross premiums paid less any portion of such gross premiums charged for the items specified in paragraphs (c)(4)(vi), (c)(4)(vii), and (c)(4)(viii) of this Rule. "Payment," as used in any other section of this Rule, means the gross premiums paid or payable for the flexible contract, *Except*, That "Payment" shall not include any amount deducted by the life insurer to recover

excess sales loading previously applied to keep the contract in force pursuant to paragraph (b)(13)(iv)(B)(*2*) of this Rule.

(8)(i) "Guideline annual premium" means the level annual amount that would be payable through the maturity date specified in paragraph (c)(8)(ii)(B) of this Rule for the future benefits under the contract if, subject to the provisions of paragraph (c)(8)(ii) of this Rule:

(A) The payments were fixed by the life insurer as to both timing and amount, and

(B) The payments were based on the 1980 Commissioners Standard Ordinary Mortality Table, net investment earnings at the greater of an annual effective rate of 5 per centum or rate or rates guaranteed at issuance of the flexible contract, the sales load under the contract, and the fees and charges associated with the contract specified in parapraphs (c)(4)(iii), (c)(4)(iv), (c)(4)(v), (c)(4)(vi), (c)(4)(vii), (c)(4)(viii) (for the first two contract periods as permitted by paragraph (c)(1)(i)), and (c)(4)(x) of this Rule.

(ii) In computing the future benefits under the flexible contract for determining the guideline annual premium:

(A) The excess of the amount payable by reason of the death of the insured (determined without regard to any incidental insurance benefits) over the cash value of the contract shall be deemed to be not greater than such excess at the time the contract was issued,

(B) The maturity date shall be the latest maturity date permitted under the contract but not less than 20 years after the date of issue or (if earlier) age 95, and

(C) The amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death of the insured (determined without regard to any incidental insurance benefits) at any time under the contract.

(9) "Cash value" means the amount that would be available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, without regard to any charges that may be assessed upon such termination and before deduction of any outstanding contract loan.

(10) "Cash surrender value" means the amount available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, after any charges assessed in connection with the termination have been deducted and before deduction of any outstanding contract loan.

(11) "Net investment earnings" means investment earnings in the separate account after deduction of any asset charges, including but not limited to, such charges for income tax; brokerage and other investment expenses; mortality, expense, and guaranteed death benefit risks; and an investment advisory fee, but not including deductions for sales load. However, "net investment earnings" as used in paragraph (c)(4)(i) of this Rule shall not include any amount deducted pursuant to subparagraphs (ii) through (viii) of paragraph (c)(4).

(12) "Contract processing day" means any day on which charges under the contract are deducted from the separate account.

(d) The following computational rules shall be used in applying this Rule:

(1) Paragraphs (b)(13)(i) and (b)(13)(ii) of this Rule shall be deemed to be satisfied with respect to any flexible contract under which sales load is deducted other than from payments prior to the allocation of net payments to the separate account if:

(i) from issuance of the contract through each contract period, the aggregate amount of sales load deducted is not more than the aggregate amount of sales load that could be deducted under an otherwise identical flexible contract that deducted sales load only from payments prior to their allocation to the separate account; and

(ii)(A) the amount of sales load deducted pursuant to any method permitted under this paragraph (other than asset-based sales loads) does not exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method, unless an increase in such proportionate amount is caused by reductions in the annual cost of insurance, or a reduction in the sales load deducted from amounts transferred to a flexible contract from another plan of insurance; or

(B) for asset-based sales load structures, the percentage of assets taken as sales load does not exceed any of the percentages previously taken pursuant to the same method, unless an increase in such percentage is caused by a reduction in the percentage taken on amounts transferred to a flexible contract from another plan of insurance.

(2)(i) Solely with respect to increases in or additions of insurance benefits requested by a contractholder after issuance of a flexible contract, the contract shall be deemed to satisfy paragraphs (b)(13)(i)(A), (b)(13)(ii), (b)(13)(v), (b)(13)(viii), and (d)(1)(ii) of this Rule, *Provided,* That from issuance of the contract through each contract period the aggregate amount of sales load imposed is not more than the aggregate amount of sales load that would be permissible under the base test contract, as defined in paragraph (d)(2)(iii)(B) of this Rule, and the incremental test contract, as defined in paragraph (d)(2)(iii)(C) of this Rule.

(ii) The following procedures shall be used in applying paragraph (d)(2)(i):

(A) Payments for the actual contract, as defined in paragraph (d)(2)(iii)(A) of this Rule, and the base and incremental test contracts shall, for purposes of demonstrating compliance with the sales load provisions of this Rule, be deemed paid in the following proportionate amounts: level annual payments for the base test contract equal to the guideline annual premium for the contract, commencing upon issuance; level annual payments for the incremental test contract equal to the difference between the guideline annual premium for the actual contract after the increase in or addition of insurance benefits and before such increase or addition, commencing upon such increase or addition; and level annual payments for the actual contract equal to the guideline annual premium for such contract, commencing upon issuance and adjusted for such increase or addition as of the date of such increase or addition, *Provided* that the guideline annual premium used is that defined in paragraph (c)(8);

(B) To the extent that the increases in, or additions of, insurance benefits are funded out of cash value, such cash value shall be proportionately allocated between the base test contract and incremental test contract according to the ratio of their respective guideline annual payments, as described in (d)(2)(ii)(A); and

(C) It is assumed that no redemptions are made under the actual and test contracts.

(D) An incremental test contract may deduct, in any manner permitted by this Rule, not more than 50 per centum of the sales load which would otherwise be permitted under the base test contract, and not be subject to the surrender, conversion, and withdrawal provisions set forth in paragraphs (b)(13)(v) (A) and (B) and (b)(13)(viii) of this Rule, *Provided, however,* That the increased or added benefit will be subject to the surrender, conversion, and withdrawal provisions referenced above if more than such 50 per centum of sales load is assessed. (iii) For purposes of this paragraph (d)(2):

(A) Actual contract" shall mean the flexible contract issued to the contractholder, and adjusted for the increase in or addition of insurance

benefits, as of the date of the increase or addition;

(B) "Base test contract" shall mean the actual contract had the increase or addition not occurred;

(C) "Incremental test contract" shall mean a flexible contract that, (*1*) is issued on the date of the increase or addition, and (*2*) provides insurance benefits identical to the incremental change in insurance benefits under the actual contract upon such increase or addition; and

(D) Any change in insurance benefits which would occur automatically under a contract, with or without the opportunity for contractholder disapproval, or any change in death benefit operation shall not be considered an "increase in or addition of insurance benefits requested by a contractholder" for purposes of imposing additional sales load.

Dated: March 30, 1987

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-7597 Filed: 4-7-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 87-46]

Change of Practice Regarding Country of Origin (Substantial Transformation) Determinations on Threading of Certain Pipe Fittings

AGENCY: Customs Service, Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice that Customs is changing its current practice of considering pipe fittings, produced in one country, to be substantially transformed by virtue of threading operations performed in a second country so as to be considered products of that second country. The current practice is based upon a published Customs ruling. After review of comments received in response to a notice proposing this change, and following further consideration of the matter, it has been decided that threading operations alone do not substantially transform pipe fittings so as to change their country of origin.

EFFECTIVE DATE: This change of practice will be effective as to merchandise entered for consumption or withdrawn from warehouse for consumption, on or after July 7 1987

FOR FURTHER INFORMATION CONTACT: John L. Valentine, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW Washington, DC 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on August 23, 1985 (50 FR 34165), it was announced that Customs was reviewing the practice of considering pipe fittings, produced in one country and threaded in a second country, to have been substantially transformed by the threading operation. The notice invited public comments with respect to the correctness of the contemplated change.

The current practice is based upon a published Customs Service ruling of November 9, 1978 (C.S.D. 79-437 13 Cust. Bul. 1666 (1979)). Pursuant to § 177.10(b), Customs Regulations (19 CFR 177.10(b)), the publication of a ruling in the Customs Bulletin which affects a rate of duty or charge, will establish a uniform practice. Pursuant to section 315, Tariff Act of 1930, as amended (19 U.S.C. 1315), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)), before publication of a ruling which changes an established practice and results in an increase in duty, Customs is required to publish a notice that the practice is under review and to give interested parties an opportunity to comment on the contemplated change.

A review of the published decision was initiated in light of several judicial and Treasury decisions which concerned whether specific processing operations are sufficient to affect the country of origin of imported articles for Customs purposes. One example is the decision in the case of *Uniroyal, Inc.* v. *United States*, 3 C.I.T. 220, 542 F Supp. 1026 (1982), in which pre-shaped soles were attached to substantially complete shoes (shoe uppers) from Indonesia after the shoes had entered the U.S. The court found that the shoes were not substantially transformed as a result of the domestic application of soles, and thus remained products of Indonesia for country-of-origin marking purposes. In so holding, the court in *Uniroyal, supra.*, reaffirmed the validity of the long-standing criteria which, for substantial transformation determinations, examine whether the name, character, or use of an article has been changed by second-country processing. In *Uniroyal* the court held that the imported shoe uppers—which were the very essence of the completed shoes—were already substantially complete shoes, and that the attachment of the outsoles was a relatively minor operation which did not alter the identity of the uppers.

Analysis of Comments

Seven comments were submitted in response to the notice published on August 23, 1985. One commenter did not take a position on the substantial transformation issue but requested that the final decision include a holding that the product coverage under the steel restraint arrangements is not affected by the decision. This question is not properly within the scope of this document. Any determinations regarding the operation of steel restraint arrangements are properly made by the International Trade Administration, Department of Commerce.

Two commenters opposed any change because an unthreaded coupling is a useless raw material that must be changed into a functional coupling, and threading, as a processing step, is complex and critical and requires great precision.

We concur with these commenters that the threading operation is required in order to produce a functional coupling. Although the threading, which can range from coarse threads to proprietary specialty threads, varies in its complexity and critical nature as demanded by the intended application, even the more complex and precise threading oprations are not substantial manufacturing operations and do not change the essential character of the article: it remains a fitting.

The remaining commenters supported a change because, as they reasoned, the fundamental character and use of a fitting is established when it is cast or formed. The threading operation is described as a finishing operation which, in relation to the cost of processing a fitting prior to threading, typically represents (together with the other finishing operations) less than one-third of that cost.

One commenter suggested that reliance on *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499, C.D. 4026 (1970), as controlling in C.S.D. 79-437 was misplaced because threading constituted only one of the various processing operations that were considered as a whole in *Midwood*. We agree that *Midwood* is distinguishable on this and other grounds. In addition, we conclude that, as the court noted concerning the shoe uppers in *Uniroyal, Inc. v. United States*, 3 C.I.T. 220 (1982), the essential character of the fitting is established in the first country, and that

the treading merely completes it for its intended use. The name, character, and use of the article have already been established. These facts are not affected by the threading operations.

Although the argument is raised that an unthreaded pipe fitting is still a producer's good, we find that, in addition to our conclusion that threading does not change the name, character, or use of a fitting, the nature of the threading operation is insubstantial in relation to the nature of the operations required to manufacture the fitting. Many unfinished steel articles (as well as other articles) are "producer's" goods rather than "consumer's" goods because they cannot be used in the unfinished condition. However, these finishing operations are not always substantial processing operations, and may not change the underlying nature of the article. The change from a producer's to consumer's good is not controlling on the issue of substantial transformation. *National Juice Products Association, et al. v. United States*, 11 CIT _____ (Slip op. 86-13, dated January 30, 1986). The established criteria of new name, character, or use, together with the nature of the processing, must be addressed.

In this case, even though the threading of a fitting does change it from a producers good to a consumers good, we find that the threading operation does not so transform the unthreaded fitting as to cause its identity to be lost in the finished product, nor is the value added by threading and related finishing operations, typically less than one-third, substantial.

Change of Practice

After careful analysis of the comments and following further review of the matter, we find that the mere threading of pipe fittings does not result in a substantial transformation which would change the country of origin of the pipe fittings and that our previously published ruling to the contrary is clearly wrong. Therefore, the ruling of November 9, 1978 (file 055619), published as C.S.D. 79-437 13 Cust. Bull. 1666 (1979), is revoked. Other ruling letters that are in conflict with the principles of this decision are modified accordingly.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: March 18, 1987

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 87-7748 Filed 4-7-87; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Establishment of Board of Alien Labor Certification Appeals

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is revising the procedures for review of denials of certifications for the permanent employment of immigrant aliens in the United States. This final rule establishes a Board of Alien Labor Certification Appeals in the Office of Administrative Law Judges to hear and decide such appeals.

DATES: Effective date, May 8, 1987 This final rule applies to requests for review filed (*i.e.*, mailed by certified mail to the Certifying Officer who denied the application) on or after May 8, 1987

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, United States Employment Service, Employment and Training Administration, United States Department of Labor, Room N4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0163.

SUPPLEMENTARY INFORMATION:

Introduction

The Department of Labor (Department) is revising the procedures for review of denials of certifications for the permanent employment of immigrant aliens in the United States. The revised procedures establish a Board of Alien Labor Certification Appeals in the Office of Administrative Law Judges to hear and decide such appeals.

Permanent Alien Labor Certification Process

Pursuant to section 212(a)(14) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(14)), certain immigrant aliens seeking to enter the United States for the purpose of permanent employment are excluded, unless the Secretary of Labor first certifies in each such case to the Attorney General that there are not sufficient United States workers who are able, willing, qualified, and available for the job opportunity at the time of the alien's application for a visa and admission into the United States and at the place where the alien is to perform the work; and that the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

Aliens required by 8 U.S.C. 1182(a)(14) to be beneficiaries of permanent alien labor certifications are aliens eligible for nonpreference status pursuant to 8 U.S.C. 1153(a)(7), and aliens who are eligible for third and sixth preference status under 8 U.S.C. 1153(a) (3) and (6).

The regulations in 20 CFR Part 656 set forth the Department's procedures under which such permanent alien labor certifications may be applied for, and given or denied. Decisions on permanent alien labor certification applications are made in *Final Determinations* by Certifying Officers in the Employment and Training Administration of the Department.

Appeals Process

1. Prior Procedure

Under the regulations revised by this final rule, a *Final Determination* by a Certifying Officer denying an application of permanent alien labor certification was appealed by the employer-applicant (and the alien beneficiary, but only if the employer appeals) to the Office of Administrative Law Judges of the Department. See 20 CFR 656.26, 656.27 and 656.27a (1986). These requests for review were heard by individual Administrative Law Judges designated by the Chief Administrative Law Judge. 20 CFR 656.26(d) (1986). These Administrative Law Judges, while assigned to the Department, are, pursuant to the Administrative Procedure Act, independent of the Department, and, thus, individually heard and decided permanent alien labor certification appeals.

2. Revised Procedure

The Department is establishing a Board of Alien Labor Certification Appeals (Board) to hear and decide on requests for review from denials of applications for permanent alien labor certification. While the decisions of the

Administrative Law Judges, by and large, have been of high quality, the Board will enhance uniformity and consistency of decisions.

The Board, chaired by the Chief Administrative Law Judges of the Department, consists of Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 and assigned to the Department who are designated by the Chief Administrative Law Judge to sit on the Board. Requests for review may be considered by panels of the Board, or by individual Administrative Law Judges making recommendations to the Board or to such panels. The scope of review essentially remains unchanged from the prior regulations at 20 CFR 656.26 and 656.27 (1986). However, in the case of hearings, the procedures now are governed by the Department's "Rules of Practice and Procedure For Administrative Hearings Before the Office of Administrative Law Judges" set forth at 29 CFR Part 18.

Regulatory Impact

The rule promulgated in this document is one of internal agency administrative organization, practice, and procedure. As such, the Administrative Procedure Act does not require it to be first published for public notice and comment. 5 U.S.C. 553(b)(A). The appeal and other rights which may accrue to the public under the prior regulations remain unchanged. The only changes are to the organization of the body (Administrative Law Judges in the Department's Office of Administrative Law Judges) hearing appeals.

In addition, the process in the final rule would affect only those approximately 500–900 appeals from employers across the nation each year appealing from denials of applications for permanent alien labor certification.

The economic and other impact of this final rule is not so great as to make it a major rule requiring the development of a regulatory impact analysis. See E.O. 12291, 3 CFR, 1981 comp., p. 127 (February 17 1981).

Since a general notice of proposed rulemaking has not been published for this final rule, it is not a "rule" as defined under the Regulatory Flexibility Act. 5 U.S.C. 601(2).

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.203, "Certification for Immigrant Workers"

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Fraud, Labor, Unemployment, Wages.

Final Rule

Accordingly, Part 656 of Chapter V of Title 20, Code of Federal Regulations, is amended, as follows:

Authority

1. Revise the authority citation for Part 656 to read as follows, and remove all separate authority citations following the sections in Part 656:

Authority: 8 U.S.C. 1182(a)(14); 29, 49 *et seq.*

2. In 20 CFR 656.26(c), remove the words Administrative Law Judge" and "Chief Administrative Law Judge" and add, in their place, the words "Board of Alien Labor Certification Appeals".

3. In 20 CFR 656.26, in addition to the amendments set forth in 2. above, remove paragraphs (d), (e), (f), (g), and (h); and revise the section heading and the introductory text to paragraph (a) to read as follows:

§ 656.26 Board of Alien Labor Certification Appeals review of denials of labor certification.

(a) If a labor certification is denied, a request for review of the denial made be made to the Board of Alien Labor Certification Appeals:

3. Revise 20 CFR 656.27 to read as follows:

§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.

(a) *Designations.* In considering requests for review before it, the Board of Alien Labor Certification Appeals may sit in panels of three members. The Chief Administrative Law Judge may designate any Board of Alien Labor Certification Appeals member to submit proposed findings and recommendations to the Board of Alien Labor Certification Appeals or to any duly designated panel thereof to consider a particular case.

(b) *Briefs and Statements of Position.* In considering requests for review before it, the Board of Alien Labor Certification Appeals shall afford all parties 21 days to submit or decline to submit any appropriate Statement of Position or legal brief. The Department of Labor shall be represented solely by the Solicitor of Labor or the Solicitor's designated representative. In the cases involving college or university teachers and aliens represented to be of exceptional ability in the performing arts, if the employer has designated a person or organization to submit an *amicus curiae* brief, the Board of Alien Labor Certification Appeals shall afford *amicus curiae* 21 days to submit a brief. Briefs, statements, and *amicus curiae* briefs submitted pursuant to this paragraph (b) shall be deemed timely if either mailed or delivered to the Board of Alien Labor Certification Appeals on or before the end of the 21-day period set forth in this paragraph, and shall be consistent with the requirements of § 656.26(b)(4) of this Part.

(c) *Review on the record.* The Board of Alien Labor Certification Appeals shall review the denial of labor certification on the basis of the record upon which the denial of labor certification was made, the request for review, and any Statements of Position or legal briefs submitted and shall:

(1) Affirm the denial of the labor certification; or

(2) Direct the Certifying Officer to grant the certification; or

(3) Remand the matter to the Certifying Officer for further consideration or factfinding and determination; or

(4) Direct that a hearing on the case be held pursuant to paragraph (f) of this section.

(d) *Notifications of decisions.* The Board of Alien Labor Certification Appeals shall notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the decision pursuant to paragraph (c) of this section, and shall return the record to the Certifying Officer unless the case has been set for hearing pursuant to paragraph (f) of this section.

(e) *Remanded cases.* If the case is remanded, the Certifying Officer shall do the additional factfinding or consideration in accordance with §§ 656.24 and 656.25 of this Part, but such factfinding and consideration shall be limited to the issues for which the case has been remanded.

(f) *Hearings.* (1) *Notification of hearing.* If the case has been set for a hearing, the Board of Alien Labor Certification Appeals shall notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the date, time, and place of the hearing, and that the hearing may be rescheduled upon written request and for good cause shown.

(2) *Hearing procedure.* (i) The "Rules of Practice and Procedure For Administrative Hearings Before the Office of Administrative Law Judges" set forth at 29 CFR Part 18, shall apply to hearings pursuant to this paragraph (f).

(ii) For the purposes of this paragraph (f)(2), references in 29 CFR Part 18 to: "administrative law judge" shall mean

the Board of Alien Labor Certification Appeals member or the Board of Alien Labor Certification Appeals panel duly designated pursuant to § 656.27(a) of this Part; "Office of Administrative Law Judges" shall mean the Board of Alien Labor Certification Appeals; and "Chief Administrative Law Judge" shall mean the Chief Administrative Law Judge in that official's function of chairing the Board of Alien Labor Certification Appeals.

§ 656.27a [Removed]

4. Remove 20 CFR 656.27a.

5. In 20 CFR 656.50, between the definitions of the terms Attorney General" and "Certifying Officer" add a new definition of the term "Board of Alien Labor Certification Appeals" to read as follows:

§ 656.05 Definitions.

"Board of Alien Labor Certification Appeals" means the permanent Board of Alien Labor Certification Appeals established by this Part, chaired by the Chief Administrative Law Judge, and consisting of Administrative Law Judges assigned to the Department of Labor and designated by the Chief Administrative Law Judge to be members of the Board of Alien Labor Certification Appeals. The Board of Alien Labor Certification Appeals is located in Washington, DC, and reviews and decides appeals in Washington, DC.

Signed at Wasington, DC, this 2nd day of April, 1987

William E. Brock,

Secretary of Labor.

[FR Doc. 87-7703 Filed 4-7-87; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 154

[DoD 5200.2-R]

Personnel Security Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part prescribes the policy and procedures for the Department of Defense governing access to classified information and employment in sensitive positions by DoD military, civilian and contractor personnel. It also specifies the nature and extent of the investigative scope required for a DoD security clearance and employment in a variety of sensitive positions; provides adjudicative policy and criteria against which investigative results are compared and evaluated in order to ensure that the access or employment is consistent with the interests of national security; prescribes due process/appeal procedures for DoD military and civilian employees who are being considered for denial or revocation of a security clearance or employment in a sensitive position.

EFFECTIVE DATE: January 2, 1987

FOR FURTHER INFORMATION CONTACT: Mr. Pete Nelson, Office of the Under Secretary of Defense (Policy), The Pentagon, Washington, DC 20301, telephone (202) 697-3969.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 154

Security, Classified information.

Accordingly, Title 32 is amended to add Part 154 to read as follows:

PART 154—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM REGULATION

Subpart A—General Provisions

Sec.
154.1 Purpose.
154.2 Applicability.
154.3 Definitions.

Subpart B—Policies

154.6 Standards for access to classified information or assignment to sensitive duties.
154.7 Criteria for application of security standards.
154.8 Types and scope of personnel security investigations.
154.9 Authorized personnel security investigative agencies.
154.10 Limitations and restrictions.

Subpart C—Personnel Security Investigative Requirements

154.13 Sensitive positions.
154.14 Civilian employment.
154.15 Military appointment, enlistment, and induction.
154.16 Security clearance.
154.17 Special access programs.
154.18 Certain positions not necessarily requiring access to classified information.
154.19 Reinvestigation.
154.20 Authority to waive investigative requirements.

Subpart D—Reciprocal Acceptance of Prior Investigations and Personnel Security Determinations

154.23 General.
154.24 Prior investigations conducted by DoD investigative organizations.
154.25 Prior personnel security determinations made by DoD authorities.
154.26 Investigations conducted and clearances granted by other agencies of the Federal government.

Subpart E—Requesting Personnel Security Investigations

Sec.
154.30 General.
154.31 Authorized requesters.
154.32 Criteria for requesting investigations.
154.33 Request procedures.
154.34 Priority requests.
154.35 Personal data provided by the subject of the investigation.

Subpart F—Adjudication

154.40 General.
154.41 Central adjudication.
154.42 Evaluation of personnel security information.
154.43 Adjudicative record.

Subpart G—Issuing Clearance and Granting Access

154.47 General.
154.48 Issuing clearance.
154.49 Granting access.
154.50 Administrative withdrawal.

Subpart H—Unfavorable Administrative Actions

154.55 Requirements.
154.56 Procedures.
154.57 Reinstatement of civilian employees.

Subpart I—Continuing Security Responsibilities

154.60 Evaluating continued security eligibility.
154.61 Security education.

Subpart J—Safeguarding Personnel Security Investigative Records

154.65 General
154.66 Responsibilities.
154.67 Access restrictions.
154.68 Safeguarding procedures.
154.69 Records disposition.
154.70 Foreign source information.

Subpart K—Program Management

154.75 General.
154.76 Responsibilities.
154.77 Reporting requirements.
154.78 Inspections.

Appendix A—Investigative Scope

Appendix B—Request Procedures

Appendix C—Tables for Requesting Investigations

Appendix D—Reporting of Nonderogatory Cases

Appendix E—Personnel Security Determination Authorities

Appendix F—Guidelines for Conducting Prenomination Personal Interviews

Appendix G—List of Designated Countries

Appendix H—Adjudication Policy

Appendix I—Overseas Investigations

Appendix J—ADP Position Categories and Criteria for Designating Positions

Authority: E.O. 10450; E.O. 12356; E.O. 10865; E.O. 12333.

Subpart A—General Provisions

§ 154.1 Purpose.

(a) To establish policies and procedures to ensure that acceptance and retention of personnel in the Armed Forces, acceptance and retention of civilian employees in the Department of Defense (DoD), and granting members of the Armed Forces, DoD civilian employees, DoD contractors, and other affiliated persons access to classified information are clearly consistent with the interests of national security.

(b) This part: (1) Establishes DoD personnel security policies and procedures;

(2) Sets forth the standards, criteria and guidelines upon which personnel security determinations shall be based;

(3) Prescribes the kinds and scopes of personnel security investigations required;

(4) Details the evaluation and adverse action procedures by which personnel security determinations shall be made; and

(5) Assigns overall program management responsibilities.

§ 154.2 Applicability.

(a) This part implements the Department of Defense Personnel Security Program and takes precedence over all other departmental issuances affecting that program.

(b) All provisions of this part apply to DoD civilian personnel, members of the Armed Forces, excluding the Coast Guard in peacetime, contractor personnel and other personnel who are affiliated with the Department of Defense except that the unfavorable administrative action procedures pertaining to contractor personnel requiring access to classified information are contained in DoD 5220.22–R and in 32 CFR Part 155.

(c) The policies and procedures which govern the National Security Agency are prescribed by Public Laws 88–290 and 86–36, Executive Orders 10450 and 12333, DoD Directive 5210.45[1] Director of Central Intelligence Directive (DCID) 1/14[2] and regulations of the National Security Agency.

(d) Under combat conditions or other military exigencies, an authority in paragraph A, Appendix E, may waive such provisions of this part as the circumstances warrant.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Attn: Code 301, Philadelphia, PA 19120.

[2] Copies may be obtained, if needed from Central Intelligence Agency (CCISCMS/ICS), 1225 Ames Building, Washington, DC 20505.

§ 154.3 Definitions.

(a) *Access.* The ability and opportunity to obtain knowledge of classified information. An individual, in fact, may have access to classified information by being in a place where such information is kept, if the security measures that are in force do not prevent him from gaining knowledge of such information.

(b) *Adverse action.* A removal from employment, suspension from employment of more than 14 days, reduction in grade, reduction in pay, or furlough of 30 days or less.

(c) *Background Investigation (BI).* A personnel security investigation consisting of both record reviews and interviews with sources of information as prescribed in paragraph 3, Appendix A, this part, covering the most recent 5 years of an individual's life or since the 18th birthday, whichever is shorter, provided that at least the last 2 years are covered and that no investigation will be conducted prior to an individual's 16th birthday.

(d) *Classified information.* Official information or material that requires protection in the interests of national security and that is classified for such purpose by appropriate classifying authority in accordance with the provisions of Executive Order 12356.

(e) *Defense Central Security Index (DCSI).* An automated sub-system of the Defense Central Index of Investigations (DCII) designed to record the issuance, denial or revocation of security clearances, access to classified information, or assignment to a sensitive position by all DoD Components for military, civilian, and contractor personnel. The DCSI will serve as the central DoD repository of security related actions in order to assist DoD security officials in making sound clearance and access determinations. The DCSI shall also serve to provide accurate and reliable statistical data for senior DoD officials, Congressional committees, the General Accounting Office and other authorized Federal requesters.

(f) *DoD component.* Includes the Office of the Secretary of Defense; the Military Departments; Organization of the Joint Chiefs of Staff; Directors of Defense Agencies and the Unified and Specified Commands.

(g) *Entrance National Agency Check (ENTNAC).* A personnel security investigation scoped and conducted in the same manner as a National Agency Check except that a technical fingerprint search of the files of the Federal Bureau of Investigation is not conducted.

(h) *Head of DoD component.* The Secretary of Defense; the Secretaries of the Military Departments; the Chairman, Joint Chiefs of Staff; and the Commanders of Unified and Specified Commands; and the Directors of Defense Agencies.

(i) *Immigrant alien.* Any alien lawfully admitted into the United States under an immigration visa for permanent residence.

(j) *Interim security clearance.* A security clearance based on the completion of minimum investigative requirements, which is granted on a temporary basis, pending the completion of the full investigative requirements.

(k) *Limited access authorization.* Authorization for access to Confidential or Secret information granted to non-United States citizens and immigrant aliens, which is limited to only that information necessary to the successful accomplishment of their assigned duties and based on a background investigation scoped for 10 years (paragraph 3, Appendix A).

(l) *Minor derogatory information.* Information that, by itself, is not of sufficient importance or magnitude to justify an unfavorable administrative action in a personnel security determination.

(m) *National Agency check (NAC).* A personnel security investigation consisting of a records review of certain national agencies as prescribed in paragraph 1, Appendix A, this part, including a technical fingerprint search of the files of the Federal Bureau of Investigation (FBI).

(n) *National Agency Check Plus Written Inquiries (NACI).* A personnel security investigation conducted by the Office of Personnel Management, combining a NAC and written inquiries to law enforcement agencies, former employers and supervisors, references and schools.

(o) *DoD National Agency Check Plus Written Inquiries (DNACI).* A personnel security investigation conducted by the Defense Investigative Service (DIS) for access to SECRET information consisting of a NAC, credit bureau check, and written inquiries to current and former employers (see paragraph 2, Appendix A), covering a 5-year scope.

(p) *National security.* National security means the national defense and foreign relations of the United States.

(q) *Need-to-know.* A determination made by a possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, knowledge, or possession of the classified information, in order to perform tasks or services essential to the fulfillment of an official United States Government program.

Knowledge, possession of, or access to, classified information shall not be afforded to any individual solely by virtue of the individual's office, position, or security clearance.

(r) *Periodic Reinvestigation (PR).* An investigation conducted every five years for the purpose of updating a previously completed background or special background investigation on persons occupying positions referred to in § 154.19 (a) through (k). The scope will consist of a personal interview, NAC, LACs, credit bureau checks, employment records, employment references and developed character references and will normally not exceed the most recent five year period.

(s) *Personnel Security Investigation (PSI).* Any investigation required for the purpose of determining the eligibility of DoD military and civilian personnel, contractor employees, consultants, and other persons affiliated with the Department of Defense, for access to classified information, acceptance or retention in the Armed Forces, assignment or retention in sensitive duties, or other designated duties requiring such investigation. PSIs include investigations of affiliations with subversive organizations, suitability information, or hostage situations (see § 154.9(d)) conducted for the purpose of making personnel security determinations. They also include investigations of allegations that arise subsequent to adjudicative action and require resolution to determine an individual's current eligibility for access to classified information or assignment or retention in a sensitive position.

(t) *Scope.* The time period to be covered and the sources of information to be contacted during the prescribed course of a PSI.

(u) *Security clearance.* A determination that a person is eligible under the standards of this part for access to classified information.

(v) *Senior Officer of the Intelligence Community (SOIC).* The DoD Senior Officers of the Intelligence Community include: the Director, National Security Agency/Central Security Service; Director, Defense Intelligence Agency; Assistant Chief of Staff for Intelligence, U.S. Army; Assistant Chief of Staff for Intelligence, U.S. Air Force; and the Director of Naval Intelligence, U.S. Navy.

(w) *Sensitive position.* Any position so designated within the Department of Defense, the occupant of which could bring about, by virtue of the nature of the position, a materially adverse effect on the national security. All civilian positions are either critical-sensitive, noncritical-sensitive, or nonsensitive as described in § 154.13(b).

(x) *Significant derogatory information.* Information that could, in itself, justify an unfavorable administrative action, or prompt an adjudicator to seek additional investigation or clarification.

(y) *Special access program.* Any program imposing "need-to-know" or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program may include, but not be limited to, special clearance, adjudication, investigative requirements, material dissemination restrictions, or special lists of persons determined to have a need-to-know.

(z) *Special Background Investigation (SBI).* A personnel security investigation consisting of all of the components of a BI plus certain additional investigative requirements as prescribed in paragraph 4, Appendix B, this part. The period of investigation for an SBI is the last 15 years or since the 18th birthday, whichever is shorter, provided that the last 2 full years are covered and that no investigation will be conducted prior to an individual's 16th birthday.

(aa) *Special Investigative Inquiry (SII).* A supplemental personnel security investigation of limited scope conducted to prove or disprove relevant allegations that have arisen concerning a person upon whom a personnel security determination has been previously made and who, at the time of the allegation, holds a security clearance or otherwise occupies a position that requires a personnel security determination under the provisions of this part.

(bb) *Service.* Honorable active duty (including attendance at the military academies), membership in ROTC Scholarship Program, Army and Air Force National Guard, Military Reserve Force (including active status and ready reserve), civilian employment in Government service, or civilian employment with a DoD contractor or as a consultant involving access under the DoD Industrial Security Program. Continuity of service is maintained with change from one status to another as long as there is no single break in service greater than 12 months.

(cc) *Unfavorable administrative action.* Adverse action taken as the result of personnel security determinations and unfavorable personnel security determinations as defined in this part.

(dd) *Unfavorable personnel security determination.* A denial or revocation of clearance for access to classified information; denial or revocation of access to classified information; denial or revocation of a Special Access authorization (including access to SCI); nonappointment to or nonselection for appointment to a sensitive position; nonappointment to or nonselection for any other position requiring a trustworthiness determination under this part; reassignment to a position of lesser sensitivity or to a nonsensitive position; and nonacceptance for or discharge from the Armed Forces when any of the foregoing actions are based on derogatory information of personnel security significance.

(ee) *United States Citizen (Native Born).* A person born in one of the 50 United States, Puerto Rico, Guam, American Samoa, Northern Mariana Islands, U.S. Virgin Islands; or Panama Canal Zone (if the father or mother (or both) was or is, a citizen of the United States).

Subpart B—Policies

§ 154.6 Standards for access to classified information or assignment to sensitive duties.

(a) *General.* Only United States citizens shall be granted a personnel security clearance, assigned to sensitive duties, or granted access to classified information unless an authority designated in Appendix E has determined that, based on all available information, there are compelling reasons in furtherance of the Department of Defense mission, including, special expertise, to assign an individual who is not a citizen to sensitive duties or grant a Limited Access Authorization to classified information. Non-U.S. citizens may be employed in the competitive service in sensitive civilian positions only when specifically approved by the Office of Personnel Management, pursuant to E.O. 11935. Exceptions to these requirements shall be permitted only for compelling national security reasons.

(b) *Clearance and sensitive position standard.* The personnel security standard that must be applied to determine whether a person is eligible for access to classified information or assignment to sensitive duties is whether, based on all available information, the person's loyalty, reliability, and trustworthiness are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interests of national security.

(c) *Military service standard.* The personnel security standard that must be applied in determining whether a person is suitable under national

security criteria for appointment, enlistment, induction, or retention in the Armed Forces is that, based on all available information, there is no reasonable basis for doubting the person's loyalty to the Government of the United States.

§ 154.7 Criteria for application of security standards.

The ultimate decision in applying either of the security standards set forth in § 154.6 (b) and (c) must be an overall common sense determination based upon all available facts. The criteria for determining eligibility for a clearance under the security standard shall include, but not be limited to the following:

(a) Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act.

(b) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or with an espionage or other secret agent or similar representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(c) Advocacy or use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(d) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organization, association, movement, group or combination of persons (hereafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the U.S. or of any State or which seeks to overthrow the Government of the U.S. or any State or subdivision thereof by unlawful means.

(e) Unauthorized disclosure to any person of classified information, or of other information, disclosure of which is prohibited by Statute, Executive Order or Regulation.

(f) Performing or attempting to perform one's duties, acceptance and active maintenance of dual citizenship, or other acts conducted in a manner which serve or which could be expected to serve the interests of another government in preference to the interests of the U.S.

(g) Disregard of public law, Statutes, Executive Orders or Regulations including violation of security regulations or practices.

(h) Criminal or dishonest conduct.

(i) Acts of omission or commission that indicate poor judgment, unreliability or untrustworthiness.

(j) Any behavior or illness, including any mental condition, which, in the opinion of competent medical authority, may cause a defect in judgment or reliability with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(k) Vulnerability to coercion, influence, or pressure that may cause conduct contrary to the national interest. This may be (1) the presence of immediate family members or other persons to whom the applicant is bonded by affection or obligation in a nation (or areas under its domination) whose interests may be inimical to those of the U.S., or (2) any other circumstances that could cause the applicant to be vulnerable.

(l) Excessive indebtedness, recurring financial difficulties, or unexplained affluence.

(m) Habitual or episodic use of intoxicants to excess.

(n) Illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis or other dangerous drug.

(o) Any knowing and willful falsification, coverup, concealment, misrepresentation, or omission of a material fact from any written or oral statement, document, form or other representation or device used by the Department of Defense or any other Federal agency.

(p) Failing or refusing to answer or to authorize others to answer questions or provide information required by a congressional committee, court, or agency in the course of an official inquiry whenever such answers or information concern relevant and material matters pertinent to an evaluation of the individual's trustworthiness, reliability, and judgment.

(q) Acts of sexual misconduct or perversion indicative of moral turpitude, poor judgment, or lack of regard for the laws of society.

§ 154.8 Types and scope of personnel security investigations.

(a) *General.* The types of personnel security investigations authorized below vary in scope of investigative effort required to meet the purpose of the particular investigation. No other types are authorized. The scope of a PSI may be neither raised nor lowered without the approval of the Deputy Under Secretary of Defense for Policy.

(b) *National Agency Check.* Essentially, a NAC is a records check of designated agencies of the Federal Government that maintain record systems containing information relevant to making a personnel security determination. An ENTNAC is a NAC (scope as outlined in paragraph 1, Appendix A) conducted on inductees and first-term enlistees, but lacking a technical fingerprint search. A NAC is also an integral part of each BI, SBI, and Periodic Reinvestigation (PR). Subpart C prescribes when an NAC is required.

(c) *National Agency Check plus written inquiries.* The Office of Personnel Management (OPM) conducts a NAC plus Written Inquiries (NACIs) on civilian employees for all departments and agencies of the Federal Government, pursuant to E.O. 10450. NACIs are considered to meet the investigative requirements of this Regulation for a nonsensitive or noncritical sensitive position and/or up to a SECRET clearance and, in addition to the NAC, include coverage of law enforcement agencies, former employers and supervisors, references, and schools covering the last 5 years.

(d) *DoD National Agency check plus written inquiries.* DIS will conduct a DNACI, consisting of the scope contained in paragraph 2, Appendix A, for DoD military and contractor personnel for access to SECRET information. Subpart C prescribes when a DNACI is required.

(e) *Background investigation.* The BI is the principal type of investigation conducted when an individual requires TOP SECRET clearance or is to be assigned to a critical sensitive position. The BI normally covers a 5-year period and consists of a subject interview, NAC, LACs, credit checks, developed character references (3), employment records checks, employment references (3), and select scoping as required to resolve unfavorable or questionable information. (See paragraph 3, Appendix A). Subpart C prescribes when a BI is required.

(f) *Special background investigation.* (1) An SBI is essentially a BI providing additional coverage both in period of time as well as sources of information, scoped in accordance with the provisions of DCID 1/14 but without the personal interview. While the kind of coverage provided for by the SBI

determines eligibility for access to SCI, DoD has adopted this coverage for certain other Special Access programs. Subpart C prescribes when an SBI is required.

(2) The OPM, FBI, Central Intelligence Agency (CIA), Secret Service, and the Department of State conduct specially scoped BIs under the provisions of DCID 1/14. Any investigation conducted by one of the above-cited agencies under DCID 1/14 standards is considered to meet the SBI investigative requirements of this part.

(3) The detailed scope of an SBI is set forth in paragraph 4, Appendix A.

(g) *Special investigative inquiry.* (1) A Special Investigative Inquiry is a personnel security investigation conducted to prove or disprove allegations relating to the criteria outlined in § 154.7(a) of this part except current criminal activities (see § 154.9(c)(4)), that have arisen concerning an individual upon whom a personnel security determination has been previously made and who, at the time of the allegation, holds a security clearance or otherwise occupies a position that requires a trustworthiness determination.

(2) Special Investigative Inquiries are scoped as necessary to address the specific matters requiring resolution in the case concerned and generally consist of record checks and/or interviews with potentially knowledgeable persons. An SII may include an interview with the subject of the investigation when necessary to resolve conflicting information and/or to provide an opportunity to refute or mitigate adverse information.

(3) In those cases when there is a disagreement between Defense Investigative Service (DIS) and the requester as to the appropriate scope of the investigation, the matter may be referred to the Deputy Under Secretary of Defense for Policy for resolution.

(h) *Periodic reinvestigation.* As referred to in § 154.19(a) and other national directives, certain categories of duties, clearance, and access require the conduct of a PR every five years according to the scope outlined in paragraph 5, Appendix A. The PR scope applies to military, civilian, contractor, and foreign national personnel.

(i) *Personal interview.* Investigative experience over the years has demonstrated that, given normal circumstances, the subject of a personnel security investigation is the best source of accurate and relevant information concerning the matters under consideration. Further, restrictions imposed by the Privacy Act of 1974 dictate that Federal investigative agencies collect information to the greatest extent practicable directly from the subject when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. Accordingly, personal interviews are an integral part of the DoD personnel security program and shall be conducted in accordance with the requirements set forth in the following paragraphs of this section.

(1) *BI/PR.* A personal interview shall be conducted by a trained DIS agent as part of each BI and PR.

(2) *Resolving adverse information.* A personal interview of the subject shall be conducted by a DIS agent (or, when authorized, by investigative personnel of other DoD investigative organizations designated in this Regulation to conduct personnel security investigations), when necessary, as part of each Special Investigative Inquiry, as well as during the course of initial or expanded investigations, to resolve or clarify any information which may impugn the subject's moral character, threaten the subject's future federal employment, raise the question of subject's security clearability, or be otherwise stigmatizing.

(3) *Hostage situation.* A personal interview shall be conducted by a DIS agent (or, when authorized, by investigative personnel of other DoD investigative organizations designated in this Regulation to conduct personnel security investigations) in those instances in which an individual has immediate family members or other persons bound by ties of affection or obligation who reside in a nation whose interests are inimical to the interests of the United States. (See § 154.9(d).

(4) *Applicants/potential nominees for DoD military or civilian positions requiring access to SCI or other positions requiring an SBI.* A personal interview of the individual concerned shall be conducted, to the extent feasible, as part of the selection process for applicants/potential nominees for positions requiring access to SCI or completion of an SBI. The interview shall be conducted by a designee of the Component to which the applicant or potential nominee is assigned. Clerical personnel are not authorized to conduct these interviews. Such interviews shall be conducted utilizing resources in the order of priority indicated below:

(i) Existing personnel security screening systems (e.g., Air Force Assessment Screening Program, Naval Security Group Personnel Security Interview Program; U.S. Army Personnel Security Screening Program); or

(ii) Commander of the nominating organization or such official as he or she has designated in writing (e.g., Deputy Commander, Executive Officer, Security Officer, Security Manager, S-2, Counterintelligence Specialist, Personnel Security Specialist, or Personnel Officer); or

(iii) Agents of investigative agencies in direct support of the Component concerned.

(5) *Administrative procedures.* (i) The personal interview required by paragraph (i)(4) of this section shall be conducted in accordance with Appendix F

(ii) For those investigations requested subsequent to the personal interview requirements of paragraph (i)(4) of this section the following procedures apply:

(A) The DD Form 1879 (Request for Personnel Security Investigation) shall be annotated under Item 20 (Remarks) with the statement "Personal Interview Conducted by (cite the duty assignment of the designated official (e.g., Commander, Security Officer, Personnel Security Specialist, etc.))" in all cases in which an SBI is subsequently requested.

(B) Unfavorable information developed through the personal interview required by paragraph (i)(4) of this section, will be detailed in a written report attached to the DD Form 1879 to include full identification of the interviewer. Failure to provide such information may result in conduct of an incomplete investigation by DIS.

(C) Whenever it is determined that it is not feasible to conduct the personal interview required by paragraph (i)(4) of this section prior to requesting the SBI, the DD Form 1879 shall be annotated under Item 20 citing the reason for not conducting the interview.

(j) *Expanded investigation.* If adverse or questionable information relevant to a security determination is developed during the conduct of a personnel security investigation, regardless of type, the investigation shall be expanded, consistent with the restrictions in § 154.10(e) to the extent necessary to substantiate or disprove the adverse or questionable information.

§ 154.9 Authorized personnel security investigative agencies.

(a) *General.* The DIS provides a single centrally directed personnel security investigative service to conduct personnel security investigations within the 50 states, District of Columbia, and Commonwealth of Puerto Rico for DoD Components; except as provided for in DoD Directive 5100.23.[1] DIS will request

[1] See footnote 1 to § 154.2(c).

the Military Departments or other appropriate Federal Agencies to accomplish DoD investigative requirements in other geographic areas beyond their jurisdiction. No other DoD Component shall conduct personnel security investigations unless specifically authorized by the Deputy Under Secretary of Defense for Policy. In certain instances provided for below, the DIS shall refer an investigation to other investigative agencies.

(b) *Subversive affiliations*—(1) *General.* In the context of DoD investigative policy, subversion refers only to such conduct as is forbidden by the laws of the United States. Specifically, this is limited to information concerning the activities of individuals or groups that involve or will involve the violation of Federal law, for the purpose of:

(i) Overthrowing the Government of the United States or the government of a state;

(ii) Substantially impairing for the purpose of influencing U.S. Government policies or decisions:

(A) The functions of the Government of the United States, or

(B) The functions of the government of a state;

(iii) Depriving persons of their civil rights under the Constitution or laws of the United States.

(2) *Military Department/FBI jurisdiction.* Allegations of activities covered by § 154.7 (a) through (f) are in the exclusive investigative domain of either the counterintelligence agencies of the Military Departments or the FBI, depending on the circumstances of the case and the provisions of the Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the FBI. Whenever allegations of this nature are developed, whether before or after a security clearance has been issued or during the course of a personnel security investigation conducted by DIS, they shall be referred immediately to either the FBI or to a military department counterintelligence agency, as appropriate.

(3) *DIS jurisdiction.* Allegations of activities limited to those set forth in § 154.7 (g) through (j) of this part shall be investigated by DIS.

(c) *Suitability information*—(1) *General.* Most derogatory information developed through personnel security investigations of DoD military or civilian personnel is so-called suitability information, that is, information pertaining to activities or situations covered by § 154.7 (g) through (q). Almost all unfavorable personnel security determinations made by DoD authorities are based on derogatory suitability information, although such information is often used as a basis for unfavorable administrative actions not of a security nature, such as action under the Uniform Code of Military Justice or removal from Federal employment under OPM regulations.

(2) *Pre-clearance investigation.* Derogatory suitability information, except that covered in paragraph (c)(4) of this section, developed during the course of a personnel security investigation, prior to the issuance of an individual's personnel security clearance, shall be investigated by DIS to the extent necessary to confirm or refute its applicability to § 154.7 (g) through (q).

(3) *Postadjudication investigation.* Derogatory suitability allegations, except those covered by paragraph (c)(4) of this section arising subsequent to clearance requiring investigation to resolve and to determine the individual's eligibility for continued access to classified information, reinstatement of clearance/access, or retention in a sensitive position shall be referred to DIS to conduct a Special Investigative Inquiry. Reinvestigation of individuals for adjudicative reconsideration due to the passage of time or evidence of favorable behavior shall also be referred to DIS for investigation. In such cases, completion of the appropriate statement of personal history by the individual constitutes consent to be investigated. Individual consent or completion of a statement of personal history is not required when § 154.19(b) applies. Postadjudication investigation of allegations of a suitability nature required to support other types of unfavorable personnel security determinations or disciplinary procedures independent of a personnel security determination shall be handled in accordance with applicable Component administrative regulations. These latter categories of allegations lie outside the DoD personnel security program and are not a proper investigative function for departmental counterintelligence organizations, Component personnel security authorities, or DIS.

(4) *Allegations of criminal activity.* Any allegations of conduct of a nature indicating possible criminal conduct, including any arising during the course of a personnel security investigation, shall be referred to the appropriate DoD, military department or civilian criminal investigative agency. Military department investigative agencies have primary investigative jurisdiction in cases where there is probable cause to believe that the alleged conduct will be the basis for prosecution under the Uniform Code of Military Justice.

(d) *Hostage situations*—(1) *General.* A hostage situation exists when a member of an individual's immediate family or such other person to whom the individual is bound by obligation or affection resides in a country whose interests are inimical to the interests of the United States. The rationale underlying this category of investigation is based on the possibility that an individual in such a situation might be coerced, influenced, or pressured to act contrary to the best interests of national security.

(2) *DIS jurisdiction.* In the absence of evidence of any coercion, influence or pressure, hostage investigations are exclusively a personnel security matter, rather than counterintelligence, and all such investigations shall be conducted by DIS.

(3) *Military Department and/or FBI jurisdiction.* Should indications be developed that hostile intelligence is taking any action specifically directed against the individual concerned—or should there exist any other evidence that the individual is actually being coerced, influenced, or pressured by an element inimical to the interests of national security—then the case becomes a counterintelligence matter (outside of investigative jurisdiction of DIS) to be referred to the appropriate military department or the FBI for investigation.

(e) *Overseas personnel security investigations.* Personnel security investigations requiring investigation overseas shall be conducted under the direction and control of DIS by the appropriate military department investigative organization. Only postadjudication investigations involving an overseas subject may be referred by the requester directly to the military department investigative organization having investigative responsibility in the overseas area concerned (see Appendix I) with a copy of the investigative request sent to DIS. In such cases, the military department investigative agency will complete the investigation, forward the completed report of investigation directly to DIS, with a copy to the requester.

§ 154.10 Limitations and restrictions.

(a) *Authorized requesters and personnel security determination authorities.* Personnel security investigations may be requested and personnel security clearances (including Special Access authorizations as indicated) granted only by those

authorities designated in § 154.31 and Appendix E.

(b) *Limit investigations and access.* The number of persons cleared for access to classified information shall be kept to a minimum, consistent with the requirements of operations. Special attention shall be given to eliminating unnecessary clearances and requests for personnel security investigations.

(c) *Collection of investigative data.* To the greatest extent practicable, personal information relevant to security determinations shall be obtained directly from the subject of a personnel security investigation. Such additional information required to make the necessary personnel security determination shall be obtained as appropriate from knowledgeable personal sources, particularly the subject's peers, and through checks of relevant records including school, employment, credit, medical, and law enforcement records.

(d) *Privacy Act notification.* Whenever personal information is solicited from an individual preparatory to the initiation of a personnel security investigation, the individual must be informed of—

(1) The authority (statute or Executive order that authorized solicitation);

(2) The principal purpose or purposes for which the information is to be used;

(3) The routine uses to be made of the information;

(4) Whether furnishing such information is mandatory or voluntary;

(5) The effect on the individual, if any, of not providing the information and

(6) That subsequent use of the data may be employed as part of an aperiodic, random process to screen and evaluate continued eligibility for access to classified information.

(e) *Restrictions on investigators.* Investigation shall be carried out insofar as possible to collect only as much information as is relevant and necessary for a proper personnel security determination. Questions concerning personal and domestic affairs, national origin, financial matters, and the status of physical health thus should be avoided unless the question is relevant to the criteria of § 154.7 Similarly, the probing of a person's thoughts or beliefs and questions about conduct that have no personnel security implications are unwarranted. When conducting investigations under the provisions of this part, investigators shall:

(1) Investigate only cases or persons assigned within their official duties.

(2) Interview sources only where the interview can take place in reasonably private surroundings.

(3) Always present credentials and inform sources of the reasons for the investigation. Inform sources of the subject's accessibility to the information to be provided and to the identity of the sources providing the information. Restrictions on investigators relating to Privacy Act advisements to subjects of personnel security investigations are outlined in § 154.10(d).

(4) Furnish only necessary identity data to a source, and refrain from asking questions in such a manner as to indicate that the investigator is in possession of derogatory information concerning the subject of the investigation.

(5) Refrain from using, under any circumstances, covert or surreptitious investigative methods, devices, or techniques including mail covers, physical or photographic surveillance, voice analyzers, inspection of trash, paid informants, wiretap, or eavesdropping devices.

(6) Refrain from accepting any case in which the investigator knows of circumstances that might adversely affect his fairness, impartiality, or objectivity.

(7) Refrain, under any circumstances, from conducting physical searches of the subject or his property.

(8) Refrain from attempting to evaluate material contained in medical files. Medical files shall be evaluated for personnel security program purposes only by such personnel as are designated by DoD medical authorities. However, review and collection of medical record information may be accomplished by authorized investigative personnel.

(f) *Polygraph restrictions.* The polygraph may be used as a personnel security screening measure only in those limited instances authorized by the Secretary of Defense in DoD Directive 5210.48.[1]

Subpart C—Personnel Security Investigative Requirements

§ 154.13 Sensitive positions.

(a) *Designation of sensitive positions.* Certain civilian positions within the Department of Defense entail duties of such a sensitive nature, including access to classified information, that the misconduct, malfeasance, or nonfeasance of an incumbent in any such position could result in an unacceptably adverse impact upon the national security. These positions are referred to in this part as sensitive positions. It is vital to the national security that great care be exercised in the selection of individuals to fill such positions. Similarly, it is important that only positions which truly meet one or more of the criteria set forth in § 154.13(b) be designated as sensitive.

(b) *Criteria for security designation of positions.* Each civilian position within the Department of Defense shall be categorized, with respect to security sensitivity, as either nonsensitive, noncritical-sensitive, or critical-sensitive.

(1) The criteria to be applied in designating a position as sensitive are:

(i) Critical-sensitive.

(A) Access to Top Secret information.

(B) Development or approval of plans, policies, or programs that affect the overall operations of the Department of Defense or of a DoD Component.

(C) Development or approval of war plans, plans or particulars of future major or special operations of war, or critical and extremely important items of war.

(D) Investigative and certain investigative support duties, the issuance of personnel security clearances or access authorizations, or the making of personnel security determinations.

(E) Fiduciary, public contact, or other duties demanding the highest degree of public trust.

(F) Duties falling under Special Access programs.

(G) Category I automated data processing (ADP) positions.

(H) Any other position so designated by the head of the Component or designee.

(ii) Noncritical-sensitive.

(A) Access to Secret or Confidential information.

(B) Security police/provost marshal-type duties involving the enforcement of law and security duties involving the protection and safeguarding of DoD personnel and property.

(C) Category II automated data processing positions.

(D) Duties involving education and orientation of DoD personnel.

(E) Duties involving the design, operation, or maintenance of intrusion detection systems deployed to safeguard DoD personnel and property.

(F) Any other position so designated by the head of the Component or designee.

(2) All other positions shall be designated as nonsensitive.

(c) *Authority to designate sensitive positions.* The authority to designate sensitive positions is limited to those authorities designated in paragraph C, Appendix E. These authorities shall designate each position within their

[1] See footnote 1 to § 154.2(c).

jurisdiction as to its security sensitivity and maintain these designations current vis-a-vis the specific duties of each position.

(d) *Limitation of sensitive positions.* It is the responsibility of those authorities authorized to designate sensitive positions to insure that only those positions are designated as sensitive that meet the criteria of § 154.13 (b) and (c) that the designation of sensitive positions is held to a minimum consistent with mission requirements. Designating authorities shall maintain an accounting of the number of sensitive positions by category, i.e., critical or non-critical sensitive. Such information will be included in annual report required in Subpart K.

(e) *Billet control system for Top Secret.* (1) To standardize and control the issuance of Top Secret clearances within the Department of Defense, a specific designated billet must be established and maintained for all DoD military and civilian positions requiring access to Top Secret information. Only persons occupying these billet positions will be authorized a Top Secret clearance. If an individual departs from a Top Secret billet to a billet/position involving a lower level clearance, the Top Secret clearance will be administratively rescinded. This Top Secret billet requirement is in addition to the existing billet structure maintained for SCI access.

(2) Each request to DIS for a BI or SBI that involves access to Top Secret or SCI information will require inclusion of the appropriate billet reference, on the request for investigation. Each Component head should incorporate, to the extent feasible, the Top Secret billet structure into the component Manpower Unit Manning Document. Such a procedure should minimize the time and effort required to maintain such a billet structure.

(3) A report on the number of established Top Secret billets will be submitted each year to the DUSD(P) as part of the annual clearance report referred to in Subpart K.

§ 154.14 Civilian employment.

(a) *General.* The appointment of each civilian employee in any DoD Component is subject to investigation, except for reappointment when the break in employment is less than 12 months. The type of investigation required is set forth in this section according to position sensitivity.

(b) *Nonsensitive positions.* In accordance with the OPM Federal Personnel Manual, a NACI shall be requested not later than 3 working days after a person is appointed to a nonsensitive position. Although there is normally no investigation requirement for per diem, intermittent, temporary or seasonal employees in nonsensitive positions provided such employment does not exceed an aggregate of 120 days in either a single continuous or series of appointments, a NAC may be requested of DIS where deemed appropriate by the employing activity.

(c) *Noncritical-sensitive positions.* (1) An NACI shall be requested and the NAC portion favorably completed before a person is appointed to a noncritical-sensitive position (for exceptions see § 154.14(e) (1) and (2)). An ENTNAC, NAC or DNACI conducted during military or contractor employment may also be used for appointment provided a NACI has been requested from OPM and there is no more than 12 months break in service since completion of the investigation.

(2) Seasonal employees (including summer hires) normally do not require access to classified information. For those requiring access to classified information the appropriate investigation is required. The request for the NAC (or NACI) should be submitted to DIS by entering "SH" (summer hire) in red letters approximately one inch high on the DD Form 398-2, Personnel Security Questionnaire (National Agency Checklist). Additionally, to ensure expedited processing by DIS, summer hire requests should be assembled and forwarded to DIS in bundles, when appropriate.

(d) *Critical-sensitive positions.* A BI shall be favorably completed prior to appointment to critical-sensitive positions (for exceptions see § 154.14(e) (1) and (2). Certain critical-sensitive positions require a preappointment SBI in accordance with § 154.17 Preappointment BIs and SBIs will be conducted by DIS.

(e) *Exceptions*–(1) *Noncritical-sensitive.* In an emergency, a noncritical-sensitive position may be occupied pending the completion of the NACI if the head of the requesting organization finds that the delay in appointment would be harmful to the national security and such finding is reduced to writing and made part of the record. In such instances, the position may be filled only after the NACI has been requested.

(2) *Critical-sensitive.* In an emergency, a critical-sensitive position may be occupied pending completion of the BI (or SBI, as appropriate) if the head of the requesting organization finds that the delay in appointment would be harmful to the national security and such finding is reduced to writing and made a part of the record. In such instances, the position may be filled only when the NAC portion of the BI (or SBI) or a previous valid NACI, NAC or ENTNAC has been completed and favorably adjudicated.

(f) *Mobilization of DoD civilian retirees.* The requirements contained in paragraph (a) of this section, regarding the type of investigation required by position sensitivity for DoD civilian retirees temporary appointment when the break in employment is greater than 12 months, should either be expedited or waived for the purposes of mobilizing selected reemployed annuitants under the provisions of Title 5, United States Code, depending upon the degree of sensitivity of the position to which assigned. Particular priority should be afforded to newly assigned personnel assigned to the defense intelligence and security agencies with respect to granting security clearances in an expeditious manner under paragraph (a) of this section.

§ 154.15 Military appointment, enlistment, and induction.

(a) *General.* The appointment, enlistment, and induction of each member of the Armed Forces or their Reserve Components shall be subject to the favorable completion of a personnel security investigation. The types of investigation required are set forth in this section.

(b) *Entrance investigation.* (1) An ENTNAC shall be conducted on each enlisted member of the Armed Forces at the time of initial entry into the service. A DNACI shall be conducted on each commissioned officer, except as permitted by paragraph (d) of this section, warrant officer, cadet, midshipman, and Reserve Officers Training Candidate, at the time of appointment. A full NAC shall be conducted upon reentry of any of the above when there has been a break in service greater than 12 months.

(2) If an officer or warrant officer candidate has been the subject of a favorable NAC or ENTNAC and there has not been a break in service of more than 12 months, a new NAC is not authorized. This includes ROTC graduates who delay entry onto active duty pending completion of their studies.

(3) All derogatory information revealed during the enlistment or appointment process that results in a moral waiver will be fully explained on a written summary attached to the DD Form 398-2.

(c) *Reserve Components and National Guard.* Reserve Component and National Guard personnel not on active

duty are subject to the investigative requirements of this section.

(d) *Exceptions for certain commissioned officers of Reserve Components.* The requirements for entrance investigation shall be rigidly adhered to except as follows. Health professionals, chaplains, and attorneys may be commissioned in the Reserve Components prior to completion of a DNACI provided that:

(1) A DNACI is initiated at the time an application for a commission is received; and

(2) The applying health professional, chaplain, or attorney agrees in writing that, if the results of the investigation are unfavorable, he or she will be subject to discharge if found to be ineligible to hold a commission. Under this exception, commissions in Reserve Components other than the National Guard may be tendered to immigrant alien health professionals, chaplains, and attorneys.

(e) *Mobilization of military retirees.* The requirements contained in paragraph (c) of this section, regarding a full NAC upon reentry to active duty of any officer or enlisted regular/reserve military retiree or Individual Ready Reserve who has been separated from service for a period of greater than 12 months, should be waived for the purposes of partial or full mobilization under provisions of Title 10, (Title 14, pertaining to the US Coast Guard as an element of the Navy) United States Code, to include the period of prescribed service refresher training. Particular priority should be afforded to military retirees mobilized and assigned to the defense intelligence and security agencies communities.

§ 154.16 Security clearance.

(a) *General.* (1) The authorities designated in paragraph A, Appendix E are the only authorities authorized to grant, deny or revoke DoD personnel security clearances. The granting of such clearances shall be limited to only those persons who require access to classified information for mission accomplishment.

(2) Military, DoD civilian, and contractor personnel who are employed by or serving in a consultant capacity to the DoD, may be considered for access to classified information only when such access is required in connection with official duties. Such individuals may be granted either a final or interim personnel security clearance provided the investigative requirements set forth below are complied with, and provided further that all available information has been adjudicated and a finding made that such clearance would be clearly consistent with the interests of national security.

(b) *Investigative requirements for clearance*—(1) *Top Secret.* (i) Final Clearance:

(A) BI.

(B) Established billet per § 154.13(e) (1) through (3) (except contractors).

(ii) Interim Clearance:

(A) Favorable NAC, ENTNAC, DNACI, or NACI completed

(B) Favorable review of DD Form 398/ SF-86/SF-171/DD Form 49

(C) BI or SBI has been initiated

(D) Favorable review of local personnel, base/military police, medical, and other security records as appropriate.

(E) Established billet per § 154.13(e) (1) through (3) (except contractors)

(F) Provisions of paragraph § 154.14(e) (1) and (2) have been met regarding civilian personnel.

(2) *Secret.* (i) Final Clearance:

(A) DNACI: Military (except first-term enlistees) and contractor employees

(B) NACI: Civilian employees

(C) ENTNAC: First-term enlistees

(ii) Interim Clearance:

(A) When a valid need to access Secret information is established, an interim Secret clearance may be issued in every case, provided that the steps outlined in paragraphs (b)(2)(ii) (B) through (E) of this section have been complied with.

(B) Favorable review of DD Form 398-2/SF-85/SF-171/DD Form 48.

(C) NACI, DNACI, or ENTNAC initiated.

(D) Favorable review of local personnel, base military police, medical, and security records as appropriate.

(E) Provisions of § 154.14(e) have been complied with regarding civilian personnel.

(3) *Confidential.* (i) Final Clearance:

(A) NAC or ENTNAC: Military and contractor employees (except for Philippine national members of the United States Navy on whom a BI shall be favorably completed.)

(B) NACI: Civilian employees (except for summer hires who may be granted a final clearance on the basis of a NAC).

(ii) Interim Clearance

(A) Favorable review of DD Form 398-2/SF 85/SF 171/ DD Form 48.

(B) NAC, ENTNAC or NACI initiated.

(C) Favorable review of local personnel, base military police, medical, and security records as appropriate.

(D) Provisions of § 154.14(e) (1) and (2) have been complied with regarding civilian personnel.

(4) *Validity of previously granted clearances.* Clearances granted under less stringent investigative requirements retain their validity; however, if a higher degree of clearance is required, investigative requirements of this directive will be followed.

(c) *Naturalized United States citizens.* (1) Naturalized U.S. citizens, whose country of origin has been determined to have interests adverse to the United States (Appendix G), or who have resided in such countries for a significant period of their life, shall be eligible for a security clearance, under the provisions of paragraph (b) of this section, only if they have:

(i) Been a U.S. citizen for five years or longer, or

(ii) If a citizen for less than five years, must have resided in the U.S. for the past 10 years. Exceptions to the above policy may be granted only by the DUSD(P).

(2) Each year of active service in the U.S. military shall be counted to satisfy the foregoing residency requirements.

(3) In the event a naturalized U.S. citizen from one of the countries listed in Appendix G does not meet either of the criteria in § 154.16(c)(1) (i) and (ii) and a compelling need exists, he or she may be considered for issuance of a limited access authorization (as an exception to policy) in accordance with the provisions of paragraph (d) of this section. The scope of the background investigation shall be confined to the period of residence in the U.S.

(4) Naturalized U.S. citizens from countries other than those contained in Appendix G may be considered for a security clearance in the same manner as native born citizens (§ 154.16(b)).

(d) *Access to classified information by non-United States citizens.* (1) Only U.S. citizens are eligible for a security clearance. Therefore, every effort shall be made to ensure that non-United States citizens are not employed in duties that may require access to classified information. However, when there are compelling reasons to grant access to classified information to an immigrant alien or a foreign national in furtherance of the mission of the Department of Defense, such individuals may be granted a "Limited Access Authorization" (LAA) under the following conditions:

(i) LAAs will be limited to Secret and Confidential level only; LAAs for Top Secret are prohibited.

(ii) Access to classified information is not inconsistent with that determined releasable by designated disclosure authorities, in accordance with DoD Directive 5230.11[1] to the country of which the individual is a citizen.

See footnote 1 to § 154.2(c).

(iii) Access to classified information must be limited to information relating to a specific program or project.

(iv) Favorable completion of an BI (scoped for 10 years); where the full investigative coverage cannot be completed, a counterintelligence scope polygraph examination will be required in accordance with the provisions of DoD Directive 5210.48.

(v) Security clearances previously issued to immigrant aliens will be reissued as LAAs.

(vi) The Limited Access Authorization determination shall be made only by an authority designated in paragraph B, Appendix E.

(vii) LAAs issued by the Unified and Specified Commands shall be reported to the central adjudicative facility of the appropriate military department in accordance with the assigned responsibilities in DoD Directive 5100.3[1] for inclusion in the Defense Central Index of Investigation (DCII).

(2) In each case of granting a Limited Access Authorization, a record shall be maintained as to:

(i) The identity (including current citizenship) of the individual to whom the Limited Access Authorization is granted, to include name and date and place of birth;

(ii) Date and type of most recent investigation to include the identity of the investigating agency;

(iii) The nature of the specific program material(s) to which access is authorized (delineated as precisely as possible);

(iv) The classification level to which access is authorized; and

(v) The compelling reasons for granting access to the materials cited in (iii).

(vi) Status of the individual (i.e., immigrant alien or foreign national).

(3) Individuals granted LAAs under the foregoing provisions shall be the subject of a 5-year periodic reinvestigation as set forth in paragraph 5, Appendix A.

(4) Foreign nationals who are LAA candidates must agree to submit to a counterintelligence-scope polygraph examination prior to being granted access in accordance with DoD Directive 5210.48.

(5) If geographical and political situations prevent the full completion of the BI (and/or counterintelligence-scope polygraph) issuance of an LAA shall not be authorized; exceptions to the policy may only be authorized by the DUSD(P).

(6) A report on all LAAs in effect, including the data required in paragraphs (d)(2) (i) through (vi) of this section shall be furnished to the Deputy Under Secretary of Defense for Policy within 60 days after the end of each fiscal year. (See § 154.77).

(e) *Access by persons outside the Executive Branch.* (1) Access to classified information by persons outside the Executive Branch shall be accomplished in accordance with 32 CFR Part 159. The investigative requirement shall be the same as for the appropriate level of security clearance, except as indicated below.

(2) Members of the U.S. Senate and House of Representatives do not require personnel security clearances. They may be granted access to DoD classified information which relates to matters under the jurisdiction of the respective Committees to which they are assigned and is needed to perform their duties in connection with such assignments.

(3) Congressional staff members requiring access to DoD classified information shall be processed for a security clearance in accordance with 32 CFR Part 353 and the provisions of this part. The Director, Washington Headquarters Services (WHS) will initiate the required investigation (initial or reinvestigation) to DIS, adjudicate the results and grant, deny or revoke the security clearance, as appropriate. The Assistant Secretary of Defense (Legislative Affairs) will be notified by WHS of the completed clearance action.

(4) State governors do not require personnel security clearances. They may be granted access to specifically designated classified information, on a "need-to-know" basis, based upon affirmation by the Secretary of Defense or the head of a DoD Component or single designee, that access, under the circumstances, serves the national interest. Staff personnel of a governor's office requiring access to classified information shall be investigated and cleared in accordance with the prescribed procedures of this part when the head of a DoD Component, or single designee, affirms that such clearance serves the national interest. Access shall also be limited to specifically designated classified information on a "need-to-know" basis.

(5) Members of the U.S. Supreme Court, the Federal judiciary and the Supreme Courts of the individual states do not require personnel security clearances. They may be granted access to DoD classified information to the extent necessary to adjudicate cases being heard before these individual courts.

(6) Attorneys representing DoD military, civilian or contractor personnel, requiring access to DoD classified information to properly represent their clients, shall normally be investigated by DIS and cleared in accordance with the prescribed procedures in § 154.16(b). This shall be done upon certification of the General Counsel of the DoD Component involved in the litigation that access to specified classified information, on the part of the attorney concerned, is necessary to adequately represent his or her client. In exceptional instances, when the exigencies of a given situation do not permit timely compliance with the provisions of § 154.16(b), access may be granted with the written approval of an authority designated in Appendix E provided that as a minimum: a favorable name check of the FBI and the DCII has been completed, and a DoD Non-Disclosure Agreement has been executed. In post-indictment cases, after a judge has invoked the security procedures of the Classified Information Procedures Act (CIPA) the Department of Justice may elect to conduct the necessary background investigation and issue the required security clearance, in coordination with the affected DoD Component.

(f) *Restrictions on issuance of personnel security clearances.* Personnel security clearances must be kept to the absolute minimum necessary to meet mission requirements. Personnel security clearances shall *not* be issued:

(1) To persons in nonsensitive positions.

(2) To persons whose regular duties do not require authorized access to classified information.

(3) For ease of movement of persons within a restricted, controlled, or industrial area, whose duties do not require access to classified information.

(4) To persons who may only have inadvertent access to sensitive information or areas, such as guards, emergency service personnel, firemen, doctors, nurses, police, ambulance drivers, or similar personnel.

(5) To persons working in shipyards whose duties do not require access to classified information.

(6) To persons who can be prevented from accessing classified information by being escorted by cleared personnel.

(7) To food service personnel, vendors and similar commercial sales or service personnel whose duties do not require access to classified information.

(8) To maintenance or cleaning personnel who may only have inadvertent access to classified information unless such access cannot be reasonably prevented.

(9) To persons who perform maintenance on office equipment, computers, typewriters, and similar equipment who can be denied classified access by physical security measures.

(10) To perimeter security personnel who have no access to classified information.

(11) To drivers, chauffeurs and food service personnel.

(g) *Dual citizenship.* Persons claiming both U.S. and foreign citizenship shall be processed under § 154.16(b) and adjudicated in accordance with the "Foreign Preference" standard in Appendix I.

(h) *One-time access.* Circumstances may arise where an urgent operational or contractual exigency exists for cleared DoD personnel to have one-time or short duration access to classified information at a higher level than is authorized by the existing security clearance. In many instances, the processing time required to upgrade the clearance would preclude timely access to the information. In such situations, and only for compelling reasons in furtherance of the DoD mission, an authority referred to in paragraph (h)(1) of this section, may grant higher level access on a temporary basis subject to the terms and conditions prescribed below. This special authority may be revoked for abuse, inadequate record keeping, or inadequate security oversight. These procedures do not apply when circumstances exist which would permit the routine processing of an individual for the higher level clearance. Procedures and conditions for effecting emergency one-time access to the next higher classification level are as follows:

(1) Authorization for such one-time access shall be granted by a flag or general officer, a general court-martial convening authority or equivalent Senior Executive Service member, after coordination with appropriate security officials.

(2) The recipient of the one-time access authorization must be a U.S. citizen, possess a current DoD security clearance, and the access required shall be limited to classified information one level higher than the current clearance.

(3) Such access, once granted, shall be cancelled promptly when no longer required, at the conclusion of the authorized period of access, or upon notification from the granting authority.

(4) The employee to be afforded the higher level access shall have been continuously employed by a DoD Component or a cleared DoD contractor for the preceding 24-month period. Higher level access is not authorized for part-time employees.

(5) Pertinent local records concerning the employee concerned shall be reviewed with favorable results.

(6) Whenever possible, access shall be confined to a single instance or at-most, a few occasions. The approval for access shall automatically expire 30 calendar days from date access commenced. If the need for access is expected to continue for a period in excess of 30 days, written approval of the granting authority is required. At such time as it is determined that the need for access is expected to extend beyond 90 days, the individual concerned shall be promptly processed for the level of clearance required. When extended access has been approved, such access shall be cancelled at or before 90 days from original date of access.

(7) Access at the higher level shall be limited to information under the control and custody of the authorizing official and shall be afforded under the general supervision of a properly cleared employee. The employee charged with providing such supervision shall be responsible for:

(i) Recording the higher-level information actually revealed,

(ii) The date(s) such access is afforded; and

(iii) The daily retrieval of the material accessed.

(8) Access at the next higher level shall not be authorized for COMSEC, SCI, NATO, or foreign government information.

(9) The exercise of this provision shall be used sparingly and repeat use within any 12 month period on behalf of the same individual is prohibited. The approving authority shall maintain a record containing the following data with respect to each such access approved:

(i) The name, and SSN of the employee afforded higher level access.

(ii) The level of access authorized.

(iii) Justification for the access, to include an explanation of the compelling reason to grant the higher level access and specifically how the DoD mission would be furthered.

(iv) An unclassified description of the specific information to which access was authorized and the duration of access along with the date(s) access was afforded.

(v) A listing of the local records reviewed and a statement that no significant adverse information concerning the employee is known to exist.

(vi) The approving authority's signature certifying (h)(9) (i) through (v) of this section.

(vii) Copies of any pertinent briefing/debriefings administered to the employee.

(i) *Access by retired flag/general officers.* (1) Upon determination by an active duty flag/general officer that there are compelling reasons, in furtherance of the Department of Defense mission, to grant a retired flag/general officer access to classified information in connection with a specific DoD program or mission, for a period not greater than 90 days, the investigative requirements of this part may be waived. The access shall be limited to classified information at a level commensurate with the security clearance held at the time of retirement—not including access to SCI.

(2) The flag/general officer approving issuance of the clearance shall, provide the appropriate DoD Component central clearance facility a written record to be incorporated into the DCII detailing:

(i) Full identifying data pertaining to the cleared subject;

(ii) The classification of the information to which access was authorized.

(3) Such access may be granted only after the compelling reason and the specific aspect of the DoD mission which is served by granting such access has been detailed and under the condition that the classified materials involved are not removed from the confines of a government installation or other area approved for storage of DoD classified information.

§ 154.17 Special access programs.

(a) *General.* It is the policy of the Department of Defense to establish, to the extent possible, uniform and consistent personnel security investigative requirements. Accordingly, investigations exceeding established requirements are authorized only when mandated by statute, national regulations, or international agreement. In this connection, there are certain Special Access programs originating at the national or international level that require personnel security investigations and procedures of a special nature. These programs and the special investigative requirements imposed by them are described in this section. A Special Access program is any program designed to control access, distribution and protection of particularly sensitive information established pursuant to section 4–2 of Executive Order 12356 and prior Orders. 32 CFR Part 159 governs the establishment of Departmental Special Access Programs.

(b) *Sensitive Compartmented Information (SCI).* (1) The investigative requirements for access to SCI is an SBI (See paragraph 4, Appendix A) including a NAC on the individual's spouse or cohabitant. When conditions indicate additional investigation shall be conducted on the spouse of the

individual and members of the immediate family (or other persons to whom the individual is bound by affection or obligation) to the extent necessary to permit a determination by the adjudication agency that the Personnel Security standards of DCID 1/14 are met.

(2) A previous investigation conducted within the past five years which substantially meets the investigative requirements prescribed by this section may serve as a basis for granting access approval provided that there has been no break in the individual's military service, DoD civilian employment, or access to classified information under the Industrial Security Program greater than 12 months. The individual shall submit one copy of an updated PSQ covering the period since the completion of the last SBI.

(c) *Single Integrated Operation Plan—Extremely Sensitive Information (SIOP-ESI).* The investigative requirement for access to SIOP-ESI is an SBI, including a NAC on the spouse and the individual's immediate family who are 18 years of age or over and who are United States citizens other than by birth or who are resident aliens.

(d) *Presidential support activities.* (1) DoD Directive 5210.55 [1] prescribes the policies and procedures for the nomination, screening, selection, and continued evaluation of DoD military and civilian personnel and contractor employees assigned to or utilized in Presidential Support activities. The type of investigation of individuals assigned to Presidential Support activities varies according to whether the person investigated qualifies for Category One or Category Two as indicated below:

(i) *Category one.* (A) Personnel assigned on a permanent or full-time basis to duties in direct support of the President (including the office staff of the Director, White House Military Office, and all individuals under his control):

(1) Presidential aircrew and associated maintenance and security personnel.

(2) Personnel assigned to the White House communications activities and the Presidential retreat.

(3) White House transportation personnel.

(4) Presidential mess attendants and medical personnel.

(5) Other individuals filling administrative positions at the White House.

(B) Personnel assigned on a temporary or part-time basis to duties supporting the President:

(1) Military Social Aides.

(2) Selected security, transportation, flight-line safety, and baggage personnel.

(3) Others with similar duties.

(C) Personnel assigned to the Office of the Military Aide to the Vice President.

(ii) *Category two.* (A) Personnel assigned to honor guards, ceremonial units, and military bands who perform at Presidential functions and facilities.

(B) Employees of contractors who provide services or contractors employees who require unescorted access to Presidential Support areas, activities, or equipment—including maintenance of the Presidential retreat, communications, and aircraft.

(C) Individuals in designated units requiring a lesser degree of access to the President or Presidential Support activities.

(2) Personnel nominated for Category One duties must have been the subject of an SBI, including a NAC on the spouse and all members of the individual's immediate family of 18 years of age or over who are United States citizens other than by birth or who are resident aliens. The SBI must have been completed within the 12 months preceding selection for Presidential Support duties. If such an individual marries subsequent to the completion of the SBI, the required spouse check shall be made at that time.

(3) Personnel nominated for Category Two duties must have been the subject of a BI, including a NAC on the spouse and all members of the individual's immediate family of 18 years of age or over who are United States citizens other than by birth or who are resident aliens. The BI must have been completed within the 12 months preceding selection for Presidential Support duties. It should be noted that duties (separate and distinct from their Presidential Support responsibilities) of some Category Two personnel may make it necessary for them to have special access clearances which require an SBI.

(4) The U.S. citizenship of foreign-born immediate family members of all Presidential Support nominees must be verified by investigation.

(5) A limited number of Category One personnel having especially sensitive duties have been designated by the Director, White House Military Office as "Category A. These personnel shall be investigated under special scoping in accordance with the requirements of the Memorandum of Understanding between the Director, White House Military Office and the Special Assistant to the Secretary and Deputy Secretary of Defense, July 30, 1980.

(e) *Nuclear Weapon Personnel Reliability Program (PRP).* (1) DoD Directive 5210.42 [1] sets forth the standards of individual reliability required for personnel performing duties associated with nuclear weapons and nuclear components. The investigative requirement for personnel performing such duties is:

(i) Critical Position: BI. In the event that it becomes necessary to consider an individual for a critical position and the required BI has not been completed, interim certification may be made under carefully controlled conditions as set forth below.

(A) The individual has had a favorable DNACI, NAC (or ENTNAC) within the past 5 years without a break in service or employment in excess of 1 year.

(B) The BI has been requested.

(C) All other requirements of the PRP screening process have been fulfilled.

(D) The individual is identified to supervisory personnel as being certified on an interim basis.

(E) The individual is not used in a two-man team with another such individual.

(F) Justification of the need for interim certification is documented by the certifying official.

(G) Should the BI not be completed within 150 days from the date of the request, the certifying official shall query the Component clearance authority, who shall ascertain from DIS the status of the investigation. On the basis of such information, the certifying official shall determine whether to continue or to withdraw the interim certification.

(ii) Controlled Position: DNACI/NACI. (A) An ENTNAC completed for the purpose of first term enlistment or induction into the Armed Forces does not satisfy this requirement.

(B) Interim certification is authorized for an individual who has not had a DNACI/NACI completed within the past 5 years, subject to the following conditions:

(1) The individual has had a favorable ENTNAC/NAC, or higher investigation, that is more than 5 years old and has not had a break in service or employment in excess of 1 year.

(2) A DNACI/NACI has been requested at the time of interim certification.

(3) All other requirements of the PRP screening process have been fulfilled.

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[1] See footnote 1 to § 154.2(c).

[1] See footnote 1 to § 154.2(c).

(4) Should the DNACI/NACI not be completed within 90 days from the date of the request, the procedures set forth in paragraph (e)(1)(i)(C) of this section for ascertaining the delay of the investigation in the case of a critical position shall apply.

(iii) Additional requirements apply. (A) The investigation upon which certification is based must have been completed within the last 5 years from the date of initial assignment to a PRP position and there must not have been a break in service or employment in excess of 1 year between completion of the investigation and initial assignment.

(B) In those cases in which the investigation was completed more than 5 years prior to initial assignment or in which there has been a break in service or employment in excess of 1 year subsequent to completion of the investigation, a reinvestigation is required.

(C) Subsequent to initial assignment to the PRP reinvestigation is not required so long as the individual remains in the PRP

(D) A medical evaluation of the individual as set forth in DoD Directive 5210.42.

(E) Review of the individual's personnel file and other official records and information locally available concerning behavior or conduct which is relevant to PRP standards.

(F) A personal interview with the individual for the purpose of informing him of the significance of the assignment, reliability standards, the need for reliable performance, and of ascertaining his attitude with respect to the PRP

(G) Service in the Army, Navy and Air Force Reserve does not constitute active service for PRP purposes.

(f) *Access to North Atlantic Treaty Organization (NATO) classified information.* (1) Personnel assigned to a NATO staff position requiring access to NATO Cosmic (Top Secret), Secret, or Confidential information shall have been the subject of a favorably adjudicated BI (10 year scope), DNACI/NACI or NAC/ENTNAC, current within five years prior to the assignment, in accordance with USSAN Instruction 1-69 and § 154.19(f).

(2) Personnel *not* assigned to a NATO staff position, but requiring access to NATO Cosmic, Secret or Confidential information in the normal course of their duties, must possess the equivalent final U.S. security clearance based upon the appropriate personnel security investigation (Appendix A) required by §§ 154.16(b) and 154.19(j) of this part.

(g) *Other special access programs.* Special investigative requirements for Special Access programs not provided for in this paragraph may not be established without the written approval of the Deputy Under Secretary of Defense for Policy.

§ 154.18 Certain positions not necessarily requiring access to classified information.

(a) *General.* DoD Directive 5200.8[1] outlines the authority of military commanders under the Internal Security Act of 1950 to issue orders and regulations for the protection of property or places under their command. Essential to carrying out this responsibility is a commander's need to protect the command against the action of untrustworthy persons. Normally, the investigative requirements prescribed in this part should suffice to enable a commander to determine the trustworthiness of individuals whose duties require access to classified information or appointment to positions that are sensitive and do not involve such access. However, there are certain categories of positions or duties which, although not requiring access to classified information, if performed by untrustworthy persons, could enable them to jeopardize the security of the command or otherwise endanger the national security. The investigative requirements for such positions or duties are detailed in this section.

(b) *Access to restricted areas, sensitive information or equipment not involving access to classified information.* (1) Access to restricted areas, sensitive information or equipment by DoD military, civilian or contractor personnel shall be limited to those individuals who have been determined trustworthy as a result of the favorable completion of a NAC (or ENTNAC) or who are under the escort of appropriately cleared personnel. Where escorting such persons is not feasible, a NAC shall be conducted and favorably reviewed by the appropriate component agency or activity prior to permitting such access. DoD Components shall not request, and shall not direct or permit their contractors to request, security clearances to permit access to areas when access to classified information is not required in the normal course of duties or which should be precluded by appropriate security measures. In determining trustworthiness under this paragraph, the provisions of § 154.7 and Appendix H will be utilized.

(2) In meeting the requirements of this paragraph, approval shall be obtained from one of the authorities designated in paragraph A, Appendix E of this part, for authority to request NACs on DoD military, civilian or contractor employees. A justification shall accompany each request which shall detail the reasons why escorted access would not better serve the national security. Requests for investigative requirements beyond a NAC shall be forwarded to the Deputy Under Secretary of Defense for Policy for approval.

(3) NAC requests shall—

(i) Be forwarded to DIS in accordance with the provisions of paragraph B, Appendix C,

(ii) Contain a reference to this paragraph on the DD Form 398-2, and

(iii) List the authority in Appendix E who approved the request.

(4) Determinations to deny access under the provisions of this paragraph must not be exercised in an arbitrary, capricious, or discriminatory manner and shall be the responsibility of the military or installation commander as provided for in DoD Directive 5200.8.

(c) *Nonappropriated fund employees.* Each Nonappropriated Fund employee who is employed in a position of trust as designated by an official authorized in paragraph H, Appendix E, shall have been the subject of a NAC completed no longer than 12 months prior to employment or a prior personnel security investigation with no break in Federal service or employment greater than 12 months in accordance with DoD Manual 1401.1-M. An individual who does not meet established suitability requirements may not be employed without prior approval of the authorizing official. Issuance of a Confidential or Secret clearance will be based on a DNACI or NACI in accordance with § 154.16(b).

(d) *Customs inspectors.* DoD employees appointed as customs inspectors, under waivers approved in accordance with DoD 5030.49-R shall have undergone a favorably adjudicated NAC completed within the past 5 years unless there has been a break in DoD employment greater than 1 year in which case a current NAC is required.

(e) *Red Cross/United Service Organizations personnel.* A favorably adjudicated NAC shall be accomplished on Red Cross or United Service Organizations personnel as prerequisite for assignment with the Armed Forces overseas (32 CFR Part 253).

(f) *Officials authorized to issue security clearances.* Any person authorized to adjudicate personnel security clearances shall have been the subject of a favorably adjudicated BI.

(g) *Personnel security clearance adjudication officials.* Any person

[1] See footnote 1 to § 154.2(c).

selected to serve with a board, committee, or other group responsible for adjudicating personnel security cases shall have been the subject of a favorably adjudicated BI.

(h) *Persons requiring DoD building passes.* Pursuant to DoD Directive 5210.46 [1] each person determined by the designated authorities of the Components concerned as having an official need for access to DoD buildings in the National Capital Region shall be the subject of a favorably, adjudicated NAC prior to issuance of a DoD building pass. Conduct of a BI for this purpose is prohibited unless approved in advance by ODUSD(P).

(i) *Foreign national employees overseas not requiring access to classified information.* Foreign nationals employed by DoD organizations overseas, whose duties do not require access to classified information, shall be the subject of the following record checks, initiated by the appropriate military department investigative organization consistent with § 154.9(e) prior to employment:

(1) Host government law enforcement and security agency checks at the city, state (province), and national level, whenever permissible by the laws of the host government; and

(2) DCII.

(3) FBI–HQ/ID. (Where information exists regarding residence by the foreign national in the United States for one year or more since age 18).

(j) *Special agents and investigative support personnel.* Special agents and those noninvestigative personnel assigned to investigative agencies whose official duties require continuous access to complete investigative files and material require an SBI.

(k) *Persons requiring access to chemical agents.* Personnel whose duties involve access to or security of chemical agents shall be screened initially for suitability and reliability and shall be evaluated on a continuing basis at the supervisory level to ensure that they continue to meet the high standards required. At a minimum, all such personnel shall have had a favorably adjudicated NAC completed within the last 5 years prior to assignment in accordance with the provisions of DoD Directive 5210.65.[1]

(l) *Education and orientation personnel.* Persons selected for duties in connection with programs involving the education and orientation of military personnel shall have been the subject of a favorably adjudicated NAC prior to such assignment. This does not include teachers/administrators associated with university extension courses conducted on military installations in the United States. Non-US citizens from a country listed in Appendix G shall be required to undergo a BI if they are employed in a position covered by this paragraph.

(m) *Contract guards.* Any person performing contract guard functions shall have been the subject of a favorably adjudicated NAC prior to such assignment.

(n) *Transportation of arms, ammunition and explosives (AA&E).* Any DoD military, civilian or contract employee (including commercial carrier) operating a vehicle or providing security to a vehicle transporting Category I, II or Confidential AA&E shall have been the subject of a favorably adjudicated NAC or ENTNAC.

(o) *Personnel occupying information systems positions designated ADP–I, ADP–II & ADP–III.* DoD military, civilian personnel, consultants, and contractor personnel performing on unclassified automated information systems may be assigned to one of three position sensitivity designations (in accordance with Appendix J) and investigated as follows:

ADP–I:	BI
ADP–II:	DNACI/NACI
ADP–III:	NAC/ENTNAC

Those personnel falling in the above categories who require access to classified information will, of course, be subject to the appropriate investigative scope contained in § 154.16(b).

(p) *Others.* Requests for approval to conduct an investigation on other personnel, not provided for in § 154.18 (b) through (o) considered to fall within the general provisions of § 154.18(a) shall be submitted, detailing the justification therefor, for approval to the Deputy Under Secretary of Defense for Policy. Approval of such requests shall be contingent upon an assurance that appropriate review procedures exist and that adverse determinations will be made at no lower than major command level.

§ 154.19 Reinvestigation.

(a) *General.* DoD policy prohibits unauthorized and unnecessary investigations. There are, however, certain situations and requirements that necessitate reinvestigation of an individual who has already been investigated under the provisions of this part. It is the policy to limit reinvestigation of individuals to the scope contained in paragraph 5, Appendix A to meet overall security requirements. Reinvestigation, generally, is authorized only as follows:

(1) To prove or disprove an allegation relating to the criteria set forth in § 154.7 of this part with respect to an individual holding a security clearance or assigned to a position that requires a trustworthiness determination;

(2) To meet the periodic reinvestigation requirements of this part with respect to those security programs enumerated below; and

(3) Upon individual request, to assess the current eligibility of individuals who did not receive favorable adjudicative action after an initial investigation, if a potential clearance need exists and there are reasonable indications that the factors upon which the adverse determination was made no longer exists.

(b) *Allegations related to disqualification.* Whenever questionable behavior patterns develop, derogatory information is discovered, or inconsistencies arise related to the disqualification criteria outlined in § 154.7 that could have an adverse impact on an individual's security status, a Special Investigative Inquiry (SII), psychiatric, drug or alcohol evaluation, as appropriate, may be requested to resolve all relevant issues in doubt. If it is essential that additional relevant personal data is required from the investigative subject, and the subject fails to furnish the required data, the subject's existing security clearance or assignment to sensitive duties shall be terminated in accordance with § 154.56(b).

(c) *Access to Sensitive Compartmented Information (SCI).* Each individual having current access to SCI shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, Appendix A.

(d) *Critical-sensitive positions.* Each DoD civilian employee occupying a critical sensitive position shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, Appendix A.

(e) *Presidential support duties.* Each individual assigned Presidential Support duties shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, Appendix A.

(f) *NATO staff.* Each individual assigned to a NATO staff position requiring a COSMIC clearance shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, Appendix A. Those assigned to a NATO staff position requiring a NATO SECRET clearance shall be the subject of a new NAC conducted on a 5-year recurring basis.

(g) *Extraordinarily sensitive duties.* In extremely limited instances, extraordinary national security implications associated with certain SCI

duties may require very special compartmentation and other special security measures. In such instances, a Component SOIC may, with the approval of the Deputy Under Secretary of Defense for Policy, request PR's at intervals of less than 5 years as outlined in paragraph 5, Appendix A. Such requests shall include full justification and a recommendation as to the desired frequency. In reviewing such requests, the Deputy Under Secretary of Defense for Policy shall give due consideration to:

(1) The potential damage that might result from the individual's defection or abduction.

(2) The availability and probable effectiveness of means other than reinvestigation to evaluate factors concerning the individual's suitability for continued SCI access.

(h) *Foreign nationals employed by DoD organizations overseas.* Foreign nationals employed by DoD organizations overseas who have been granted a "Limited Access Authorization" pursuant to § 154.16(d) shall be the subject of a PR, as set forth in paragraph 5, Appendix A, conducted under the auspices of DIS by the appropriate military department or other U.S. Government investigative agency consistent with § 154.9(e) and Appendix I of this part.

(i) *Persons accessing very sensitive information classified Secret.* (1) Heads of DoD Components shall submit a request to the Deputy Under Secretary of Defense for Policy for approval to conduct periodic reinvestigations on persons holding Secret clearances who are exposed to very sensitive Secret information.

(2) Generally, the Deputy Under Secretary of Defense for Policy will only approve periodic reinvestigations of persons having access to Secret information if the unauthorized disclosure of the information in question could reasonably be expected to:

(i) Jeopardize human life or safety.

(ii) Result in the loss of unique or uniquely productive intelligence sources or methods vital to U.S. security.

(iii) Compromise technologies, plans, or procedures vital to the strategic advantage of the United States.

(3) Each individual accessing very sensitive Secret information who has been designated by an authority listed in paragraph A, Appendix E as requiring periodic reinvestigation, shall be the subject of a PR conducted on a 5-year recurring basis scoped as stated in paragraph 5, Appendix A.

(j) *Access to Top Secret information.* Each individual having current access to Top Secret information shall be the subject of a PR conducted on a 5-year recurring basis scoped as outlined in paragraph 5, Appendix A.

(k) *Personnel occupying computer positions designated ADP-1.* All DoD military, civilians, consultants, and contractor personnel occupying computer positions designated ADP-I, shall be the subject of a PR conducted on a 5-year recurring basis as set forth in paragraph 5, Appendix A.

§ 154.20 Authority to waive investigative requirements.

Authorized officials. Only an official designated in paragraph G, Appendix E, is empowered to waive the investigative requirements for appointment to a sensitive position, assignment to sensitive duties or access to classified information pending completion of the investigation required by this section. Such waiver shall be based upon certification in writing by the designated official that such action is necessary to the accomplishment of a DoD mission. A minor investigative element that has not been met should not preclude favorable.

Subpart D—Reciprocal Acceptance of Prior Investigations and Personnel Security Determinations

§ 154.23 General.

Previously conducted investigations and previously rendered personnel security determinations shall be accepted within DoD in accordance with the policy set forth below.

§ 154.24 Prior investigations conducted by DoD investigative organizations.

As long as there is no break in military service/civilian employment greater than 12 months, any previous personnel security investigation conducted by DoD investigative organizations that essentially is equivalent in scope to an investigation required by this part will be accepted without requesting additional investigation. There is no time limitation as to the acceptability of such investigations, subject to the provisions of §§ 154.8(h) and 154.25(b) of this part.

§ 154.25 Prior personnel security determinations made by DoD authorities.

(a) Adjudicative determinations for appointment in sensitive positions, assignment to sensitive duties or access to classified information (including those pertaining to SCI) made by designated DoD authorities will be mutually and reciprocally accepted by all DoD Components without requiring additional investigation, unless there has been a break in the individual's military service/civilian employment of greater than 12 months or unless derogatory information that occurred subsequent to the last prior security determination becomes known. A check of the DCII should be conducted to accomplish this task.

(b) Whenever a valid DoD security clearance or Special Access authorization (including one pertaining to SCI) is on record, Components shall not request DIS or other DoD investigative organizations to forward prior investigative files for review unless:

(1) Significant derogatory information or investigation completed subsequent to the date of last clearance or Special Access authorization, is known to the requester; or

(2) The individual concerned is being considered for a higher level clearance (e.g., Secret or Top Secret) or the individual does not have a Special Access authorization and is being considered for one; or

(3) There has been a break in the individual's military service/civilian employment of greater than 12 months subsequent to the issuance of a prior clearance.

(4) The most recent SCI access authorization of the individual concerned was based on a waiver.

(c) Requests for prior investigative files authorized by this part shall be made in writing, shall cite the specific justification for the request (i.e., upgrade of clearance, issue Special Access authorization, etc.), and shall include the date, level, and issuing organization of the individual's current or most recent security clearance or Special Access authorization.

(d) All requests for non-DoD investigative files, authorized under the criteria prescribed by paragraphs (a), (b)(1), (2), (3), and (4) and (c) of this section shall be:

(1) Submitted on DD Form 398-2 to DIS;

(2) Annotated as a "Single Agency Check" of whichever agency or agency developed the investigative file or to obtain the check of a single national agency.

(e) When further investigation is desired, in addition to an existing non-DoD investigative file, a DD Form 1879 will be submitted to DIS with the appropriate security forms attached. The submission of a Single Agency Check via DD Form 398-2 will be used to obtain an existing investigative file or check a single national agency.

(f) Whenever a civilian or military member transfers from one DoD activity to another, the losing organization's security office is responsible for advising the gaining organization of any

pending action to suspend, deny or revoke the individual's security clearance as well as any adverse information that may exist in security, personnel or other files. In such instances the clearance shall not be reissued until the questionable information has been adjudicated.

§ 154.26 Investigations conducted and clearances granted by other agencies of the Federal government.

(a) Whenever a prior investigation or personnel security determination (including clearance for access to information classified under Executive Order 12356 of another agency of the Federal Government meets the investigative scope and standards of this part, such investigation or clearance may be accepted for the investigative or clearance purposes of this part, provided that the employment with the Federal agency concerned has been continuous and there has been no break longer than 12 months since completion of the prior investigation, and further provided that inquiry with the agency discloses no reason why the clearance should not be accepted. If it is determined that the prior investigation does not meet the provisions of this paragraph, supplemental investigation shall be requested.

(b) A NACI conducted by OPM shall be accepted and considered equivalent to a DNACI for the purposes of this part.

(c) Department of Defense policy on reciprocal acceptance of clearances with the Nuclear Regulatory Commission and the Department of Energy is set forth in DoD Directive 5210.2.[1]

Subpart E—Requesting Personnel Security Investigations

§ 154.30 General.

Requests for personnel security investigations shall be limited to those required to accomplish the Defense mission. Such requests shall be submitted only by the authorities designated in § 154.31. These authorities shall be held responsible for determining if persons under their jurisdiction require a personnel security investigation. Proper planning must be effected to ensure that investigative requests are submitted sufficiently in advance to allow completion of the investigation before the time it is needed to grant the required clearance or otherwise make the necessary personnel security determination.

[1] See footnote 1 to § 154.2(c).

§ 154.31 Authorized requesters.

Requests for personnel security investigation shall be accepted only from the requesters designated below:

(a) *Military Departments.* (1) Army.

(i) Central Clearance Facility.

(ii) All activity commanders.

(iii) Chiefs of recruiting stations.

(2) Navy (including Marine Corps).

(i) Central Adjudicative Facility.

(ii) Commanders and commanding officers of organizations listed on the Standard Navy Distribution List.

(iii) Chiefs of recruiting stations.

(3) Air Force.

(i) Air Force Security Clearance Office.

(ii) Assistant Chief of Staff for Intelligence.

(iii) All activity commanders.

(iv) Chiefs of recruiting stations.

(b) Defense Agencies—Directors of Security and activity commanders.

(c) Organization of the Joint Chiefs of Staff—Chief, Security Division.

(d) Office of the Secretary of Defense—Director for Personnel and Security, Washington Headquarters Services.

(e) Commanders of Unified and Specified Commands or their designees.

(f) Such other requesters approved by the Deputy Under Secretary of Defense for Policy.

§ 154.32 Criteria for requesting investigations.

Authorized requesters shall use the tables set forth in Appendix C to determine the type of investigation that shall be requested to meet the investigative requirement of the specific position or duty concerned.

§ 154.33 Request procedures.

To insure efficient and effective completion of required investigations, all requests for personnel security investigations shall be prepared and forwarded in accordance with Appendix B and the investigative jurisdictional policies set forth in § 154.9.

§ 154.34 Priority requests.

To insure that personnel security investigations are conducted in an orderly and efficient manner, requests for priority for individual investigations or categories of investigations shall be kept to a minimum. DIS shall not assign priority to any personnel security investigation or categories of investigations without written approval of the Deputy Under Secretary of Defense for Policy.

§ 154.35 Personal data provided by the subject of the investigation.

(a) To conduct the required investigation, it is necessary that the investigative agency be provided certain relevant data concerning the subject of the investigation. The Privacy Act of 1974 requires that, to the greatest extent practicable, personal information shall be obtained directly from the subject individual when the information may result in adverse determinations affecting an individual's rights, benefits, and privileges under Federal programs.

(b) Accordingly, it is incumbent upon the subject of each personnel security investigation to provide the personal information required by this part. At a minimum, the individual shall complete the appropriate investigative forms, provide fingerprints of a quality acceptable to the FBI, and execute a signed release, as necessary, authorizing custodians of police, credit, education, employment, and medical and similar records, to provide relevant record information to the investigative agency. When the FBI returns a fingerprint card indicating that the quality of the fingerprints is not acceptable, an additional set of fingerprints will be obtained from the subject. In the event the FBI indicates that the additional fingerprints are also unacceptable, no further attempt to obtain more fingerprints need be made; this aspect of the investigation will then be processed on the basis of the name check of the FBI files. As an exception, a minimum of three attempts will be made for all Presidential Support cases, for SCI access nominations if the requester so indicates, and in those cases in which more than minor derogatory information exists. Each subject of a personnel security investigation conducted under the provisions of this part shall be furnished a Privacy Act Statement advising of the authority for obtaining the personal data, the principal purpose(s) for obtaining it, the routine uses, whether disclosure is mandatory or voluntary, the effect on the individual if it is not provided, and that subsequent use of the data may be employed as part of an aperiodic review process to evaluate continued eligibility for access to classified information.

(c) Failure to respond within the time limit prescribed by the requesting organization with the required security forms or refusal to provide or permit access to the relevant information required by this part shall result in termination of the individual's security clearance or assignment to sensitive duties utilizing the procedures of

§ 154.59 or further administrative processing of the investigative request.

Subpart F—Adjudication

§ 154.40 General.

(a) The standard which must be met for clearance or assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interests of national security.

(b) The principal objective of the DoD personnel security adjudicative function, consequently, is to assure selection of persons for sensitive positions who meet this standard. The adjudication process involves the effort to assess the probability of future behavior which could have an effect adverse to the national security. Since few, if any, situations allow for positive, conclusive evidence of certain future conduct, it is an attempt to judge whether the circumstances of a particular case, taking into consideration prior experience with similar cases, reasonably suggest a degree of probability of prejudicial behavior not consistent with the national security. It is invariably a subjective determination, considering the past but necessarily anticipating the future. Rarely is proof of trustworthiness and reliability or untrustworthiness and unreliability beyond all reasonable doubt.

(c) Establishing relevancy is one of the key objectives of the personnel security adjudicative process in evaluating investigative material. It involves neither the judgment of criminal guilt nor the determination of general suitability for a given position; rather, it is the assessment of a person s trustworthiness and fitness for a responsibility which could, if abused, have unacceptable consequences for the national security.

(d) While equity demands optimal uniformity in evaluating individual cases, assuring fair and consistent assessment of circumstances from one situation to the next, each case must be weighed on its own merits, taking into consideration all relevant facts, and prior experience in similar cases. All information of record, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, and overall significance. In all adjudications the protection of the national security shall be the paramount determinant.

§ 154.41 Central adjudication.

(a) To ensure uniform application of the requirement of this part and to ensure that DoD personnel security determinations are effected consistent with existing statutes and Executive orders, the head of each Military Department and Defense Agencies shall establish a single Central Adjudication Facility for his/her component. The function of such facility shall be limited to evaluating personnel security investigations and making personnel security determinations. The chief of each Central Adjudication Facility shall have the authority to act on behalf of the head of the Component concerned with respect to personnel security determinations. All information relevant to determining whether a person meets the appropriate personnel security standard prescribed by this part shall be reviewed and evaluated by personnel security specialists specifically designated by the head of the Component concerned, or designee.

(b) In view of the significance each adjudicative decision can have on a person s career and to ensure the maximum degree of fairness and equity in such actions, a minimum level of review shall be required for all clearance/access determinations related to the following categories of investigations:

(1) BI/SBI/PR/ENAC/SII:

(i) *Favorable:* Completely favorable investigations shall be reviewed and approved by an adjudicative official in the civilian grade of GS–7/9 or the military rank of O–3.

(ii) *Unfavorable:* Investigations that are not completely favorable shall undergo at least two levels of review by adjudicative officials, the second of which must be at the civilian grade of GS–11/12 or the military rank of O–4. When an unfavorable administrative action is contemplated under § 154.56(b), the letter of intent (LOI) to deny or revoke must be approved and signed by an adjudicative official at the civilian grade of GS–13/14 or the military rank of O–5. A final notification of unfavorable administrative action, subsequent to the issuance of the LOI, must be approved and signed at the civilian grade of GS–14/15 or the military rank of O–6.

(2) *NACI/DNACI/NAC/ENTNAC.*

(i) *Favorable:* A completely favorable investigation may be finally adjudicated after one level of review provided that the decisionmaking authority is at the civilian grade of GS–5/7 or the military rank of O–2.

(ii) *Unfavorable:* Investigations that are not completely favorable must be reviewed by an adjudicative official in the civilian grade of GS–7/9 or the military rank of O–3. When an unfavorable administrative action is contemplated under § 154.56(b), the letter of intent to deny/revoke must be signed by an adjudicative official at the civilian grade of GS–11/12 or the military rank of O–4. A final notification of unfavorable administrative action subsequent to the issuance of the LOI must be signed by an adjudicative official at the civilian grade of GS–13 or the military rank of O–5 or above.

(c) Exceptions to the above policy may only be granted by the Deputy Under Secretary of Defense for Policy.

§ 154.42 Evaluation of personnel security information.

(a) The criteria and adjudicative policy to be used in applying the principles at § 154.40 are set forth in § 154.7(a) and Appendix H of this part. The ultimate consideration in making a favorable personnel security determination is whether such determination is clearly consistent with the interests of national security and shall be an overall common sense evaluation based on all available information. Such a determination shall include consideration of the following factors:

(1) The nature and seriousness of the conduct;

(2) The circumstances surrounding the conduct;

(3) The frequency and recency of the conduct;

(4) The age of the individual;

(5) The voluntariness of participation; and

(6) The absence or presence of rehabilitation.

(b) Detailed adjudication policy guidance to assist adjudicators in determining whether a person is eligible for access to classified information or assignment to sensitive duties is contained in Appendix H. Adjudication policy for access to SCI is contained in DCID 1/14.

§ 154.43 Adjudicative record.

(a) Each clearance/access determination, whether favorable or unfavorable, shall be entered into the Defense Central Security Index (DCSI), a subelement of the Defense Central Index of Investigations (DCII). (Operational details regarding implementation of the DCSI shall be implemented in a forthcoming change to this part.)

(b) The rationale underlying each unfavorable administrative action shall be reduced to writing and is subject to

the provisions of 32 CFR Part 286 and 32 CFR Part 286a.

Subpart G—Issuing Clearance and Granting Access

§ 154.47 General.

(a) The issuance of a personnel security clearance (as well as the function of determining that an individual is eligible for access to Special Access program information, or is suitable for assignment to sensitive duties or such other duties that require a trustworthiness determination) is a function distinct from that involving the granting of access to classified information. Clearance determinations are made on the merits of the individual case with respect to the subject's suitability for security clearance. Access determinations are made solely on the basis of the individual's need for access to classified information in order to perform official duties. Except for suspension of access pending final adjudication of a personnel security clearance, access may not be finally denied for cause without applying the provisions of § 154.56(b).

(b) Only the authorities designated in paragraph A, Appendix E are authorized to grant, deny or revoke personnel security clearances or Special Access authorizations (other than SCI). Any commander or head of an organization may suspend access for cause when there exists information raising a serious question as to the individual's ability or intent to protect classified information, provided that the procedures set forth in § 154.55(b) of this part are complied.

(c) All commanders and heads of DoD organizations have the responsibility for determining those position functions in their jurisdiction that require access to classified information and the authority to grant access to incumbents of such positions who have been cleared under the provisions of this part.

§ 154.48 Issuing clearance.

(a) Authorities designated in paragraph A, Appendix E shall record the issuance, denial or revocation of a personnel security clearance in the DSCI (see § 154.43). A record of the clearance issued shall also be recorded in an individual's personnel/security file or official personnel folder, as appropriate.

(b) A personnel security clearance remains valid until the individual is separated from the Armed Forces, separated from DoD civilian employment, has no further official relationship with DoD, official action has been taken to deny, revoke or suspend the clearance or access, or regular access to the level of classified information for which the individual holds a clearance is no longer necessary in the normal course of his or her duties. If an individual resumes his or her affiliation with DoD no single break in the individual's relationship with DoD exists greater than 12 months, the need for regular access to classified information at or below the previous level recurs, and no record of an unfavorable administrative action exists, the appropriate clearance shall be reissued without further investigation or adjudication provided there has been no additional investigation or development of derogatory information.

(c) Personnel security clearances of DoD military personnel shall be granted denied or revoked only by the designated authority of the parent Military Department. Issuance, reissuance, denial, or revocation of a personnel security clearance by any DoD Component concerning personnel who have been determined to be eligible for clearance by another component is expressly prohibited. Investigations conducted on Army, Navy, and Air Force personnel by DIS will be returned only to the parent service of the subject for adjudication regardless of the source of the original request. The adjudicative authority will be responsible for expeditiously transmitting the results of the clearance determination. As an exception, the employing DoD Component may issue an interim clearance to personnel under their administrative jurisdiction pending a final eligibility determination by the individual's parent Component. Whenever an employing DoD Component issues an interim clearance to an individual from another Component, written notice of the action shall be provided to the parent Component.

(d) When a Defense agency, to include OJCS, initiates an SBI (or PR) for access to SCI on a military member, DIS will return the completed investigation to the appropriate Military Department adjudicative authority in accordance with paragraph (c) of this section for issuance (or reissuance) of the Top Secret clearance. Following the issuance of the security clearance, the military adjudicative authority will forward the investigative file to the Defense agency identified in the "Return Results To" block of the DD Form 1879. The receiving agency will then forward the completed SBI on to DIA for the SCI adjudication in accordance with DCID 1/14.

(e) The interim clearance shall be recorded in the DCSI (§ 154.43) by the parent DoD Component in the same manner as a final clearance.

§ 154.49 Granting access.

(a) Access to classified information shall be granted to persons whose official duties require such access and who have the appropriate personnel security clearance. Access determinations (other than for Special Access programs) are not an adjudicative function relating to an individual's suitability for such access. Rather they are decisions made by the commander that access is officially required.

(b) In the absence of derogatory information on the individual concerned, DoD commanders and organizational managers shall accept a personnel security clearance determination, issued by any DoD authority authorized by this part to issue personnel security clearances, as the basis for granting access, when access is required, without requesting additional investigation or investigative files.

(c) The access level of cleared individuals will also be entered into the DCSI, along with clearance eligibility status, as systems are developed and adopted which make such actions feasible.

§ 154.50 Administrative withdrawal.

As set forth in § 154.48 the personnel security clearance and access eligibility must be withdrawn when the events described therein occur. When regular access to a prescribed level of classified information is no longer required in the normal course of an individual's duties, the previously authorized access eligibility level must be administratively downgraded or withdrawn, as appropriate.

Subpart H—Unfavorable Administrative Actions

§ 154.55 Requirements.

(a) *General.* For purposes of this part, an unfavorable administrative action includes any adverse action which is taken as a result of a personnel security determination, as defined at § 154.3 and any unfavorable personnel security determination, as defined at § 154.3. This Subpart is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon, to create or enlarge the jurisdiction or review authority of any court or administrative tribunal, including the Merit Systems Protection Board.

(b) *Referral for action.* (1) Whenever derogatory information relating to the criteria and policy set forth in § 154.7(a) and Appendix H of this part is

developed or otherwise becomes available to any DoD element, it shall be referred by the most expeditious means to the commander or the security officer of the organization to which the individual is assigned for duty. The commander or security officer of the organization to which the subject of the information is assigned shall review the information in terms of its security significance and completeness. If further information is needed to confirm or disprove the allegations, additional investigation should be requested. The commander of the duty organization shall insure that the parent Component of the individual concerned is informed promptly concerning the derogatory information developed and any actions taken or anticipated with respect thereto. However, referral of derogatory information to the commander or security officer shall in no way affect or limit the responsibility of the central adjudication facility to continue to process the individual for denial or revocation of clearance or access to classified information, in accordance with § 154.56(b), if such action is warranted and supportable by the criteria and policy contained in § 154.7(a) and Appendix H. No unfavorable administrative action as defined in § 154.3 may be taken by the organization to which the individual is assigned for duty without affording the person the full range of protections contained in § 154.56(b) or, in the case of SCI, Annex B, DCID 1/14.

(2) The Director DIS shall establish appropriate alternative means whereby information with potentially serious security significance can be reported other than through DoD command or industrial organization channels. Such access shall include utilization of the DoD Inspector General "hotline" to receive such reports for appropriate follow-up by DIS. DoD Components and industry will assist DIS in publicizing the availability of appropriate reporting channels. Additionally, DoD Components will augment the system when and where necessary. Heads of DoD Components will be notified immediately to take action if appropriate.

(c) *Suspension.* The commander or head of the organization shall determine whether, on the basis of all the facts available upon receipt of the initial derogatory information, it is in the interests of national security to continue subject's security status unchanged or to take interim action to suspend subject's access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), if information exists which raises serious questions as to the individual's ability or intent to protect classified information, until a final determination is made by the appropriate authority designated in Appendix E. Every effort shall be made to resolve a suspension action as expeditiously as possible.

(d) *Final Unfavorable Administrative Actions.* The authority to make personnel security determinations that will result in an unfavorable administrative action is limited to those authorities designated in Appendix E, except that the authority to terminate the employment of a civilian employee of a military department or Defense agency is vested solely in the head of the DoD component concerned and in such other statutory official as may be designated. Action to terminate civilian employees of the Office of the Secretary of Defense and DoD Components, on the basis of criteria listed in § 154.7 (a) through (f), shall be coordinated with the Deputy Under Secretary of Defense for Policy prior to final action by the head of the DoD Component. DoD civilian employees or members of the Armed Forces shall not be removed from employment or separated from the Service under provisions of this part if removal or separation can be effected under OPM regulations or administrative (nonsecurity) regulations of the military departments. However, actions contemplated in this regard shall in no way affect or limit the responsibility of the central adjudication facility to continue for process the individual for denial or revocation of a security clearance, access to classified information on or assignment to a sensitive position if warranted and supportable by the criteria and standards contained in this part.

§ 154.56 Procedures.

(a) *General.* No final personnel security determination shall be made on a member of the Armed Forces, an employee of the Department of Defense, a consultant to the Department of Defense, or any other person affiliated with the Department of Defense without granting the individual concerned the procedural benefits set forth in § 154.56(b) when such determination results in an unfavorable administrative action (see § 154.55(a)). As an exception, Red Cross/United Service Organizations employees shall be afforded the procedures prescribed by 32 CFR Part 253.

(b) *Unfavorable administrative action procedures.* Except as provided for below, no unfavorable administrative action shall be taken under the authority of this part unless the person concerned has been given:

(1) A written statement of the reasons why the unfavorable administrative action is being taken. The statement shall be as comprehensive and detailed as the protection of sources afforded confidentiality under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) and national security permit. Prior to issuing a statement of reasons to a civilian employee for suspension or removal action, the issuing authority must comply with the provisions of Federal Personnel Manual, Chapter 732, Subchapter 1, paragraph 1-6b. The signature authority must be as provided for in § 154.41(b) (1)(ii) and (2)(ii).

(2) An opportunity to reply in writing to such authority as the head of the Component concerned may designate;

(3) A written response to any submission under subparagraph b. stating the final reasons therefor, which shall be as specific as privacy and national security considerations permit. The signature authority must be as provided for in § 154.41(b) (1)(ii) and (2)(ii). Such response shall be as prompt as individual circumstances permit, not to exceed 60 days from the date of receipt of the appeal submitted under paragraph (b)(2) of this section provided no additional investigative action is necessary. If a final response cannot be completed within the time frame allowed, the subject must be notified in writing of this fact, the reasons therefor, and the date a final response is expected, which shall not, in any case, exceed a total of 90 days from the date of receipt of the appeal under § 154.56(b).

(4) An opportunity to appeal to a higher level of authority designated by the Component concerned.

(c) *Exceptions to policy.* Notwithstanding § 154.56(b) or any other provision of this part, nothing in this part shall be deemed to limit or affect the responsibility and powers of the Secretary of Defense to find that a person is unsuitable for entrance or retention in the Armed Forces, or is ineligible for a security clearance or assignment to sensitive duties, if the national security so requires, pursuant to section 7532, Title 5, United States Code. Such authority may not be delegated and may be exercised only when it is determined that the procedures prescribed in § 154.56(b) are not appropriate. Such determination shall be conclusive.

§ 154.57 Reinstatement of civilian employees.

(a) *General.* Any person whose civilian employment in the Department of Defense is terminated under the provisions of this part shall not be reinstated or restored to duty or reemployed in the Department of Defense unless the Secretary of Defense, or the head of a DoD Component, finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of national security. Such a finding shall be made a part of the personnel security record.

(b) *Reinstatement benefits.* A DoD civilian employee whose employment has been suspended or terminated under the provisions of this part and who is reinstated or restored to duty under the provisions of section 3571 of Title 5, U.S. Code is entitled to benefits as provided for by section 3 of Pub. L. 89-380.

Subpart I—Continuing Security Responsibilities

§ 154.60 Evaluating continued security eligibility.

(a) *General.* A personnel security determination is an effort to assess the future trustworthiness of an individual in terms of the likelihood of the individual preserving the national security. Obviously it is not possible at a given point to establish with certainty that any human being will remain trustworthy. Accordingly the issuance of a personnel security clearance or the determination that a person is suitable for assignment to sensitive duties cannot be considered as a final personnel security action. Rather, there is the clear need to assure that, after the personnel security determination is reached, the individual's trustworthiness is a matter of continuing assessment. The responsibility for such assessment must be shared by the organizational commander or manager, the individual's supervisor and, to a large degree, the individual himself. Therefore, the heads of DoD Components shall establish and maintain a program designed to evaluate on a continuing basis the status of personnel under their jurisdiction with respect to security eligibility. This program should insure close coordination between security authorities and personnel, medical, legal and supervisory personnel to assure that all pertinent information available within a command is considered in the personnel security process.

(b) *Management responsibility.* (1) Commanders and heads of organizations shall insure that personnel assigned to sensitive duties (or other duties requiring a trustworthiness determination under the provisions of this part) are initially indoctrinated and periodically instructed thereafter on the national security implication of their duties and on their individual responsibilities.

(2) The heads of all DoD components are encouraged to develop programs designed to counsel and assist employees in sensitive positions who are experiencing problems in their personal lives with respect to such areas as financial, medical or emotional difficulties. Such initiatives should be designed to identify potential problem areas at an early stage so that any assistance rendered by the employing activity will have a reasonable chance of precluding long term, job-related security problems.

(c) *Supervisory responsibility.* Security programs shall be established to insure that supervisory personnel are familiarized with their special responsibilities in matters pertaining to personnel security with respect to personnel under their supervision. Such programs shall provide practical guidance as to indicators that may signal matters of personnel security concern. Specific instructions should be disseminated concerning reporting procedures to enable the appropriate authority to take timely corrective action to protect the interests of national security as well as to provide any necessary help to the individual concerned to correct any personal problem which may have a bearing upon the individual's continued eligibility for access.

(1) In conjunction with the submission of PRs stated in § 154.19, and paragraph 5, Appendix A, supervisors will be required to review an individual's DD Form 398 to ensure that no significant adverse information of which they are aware and that may have a bearing on subject's continued eligibility for access to classified information is omitted.

(2) If the supervisor is not aware of any significant adverse information that may have a bearing on the subject's continued eligibility for access, then the following statement must be documented, signed and dated, and forwarded to DIS with the investigative package.

I am aware of no information of the type contained at Appendix D, 32 CFR Part 154, relating to subject's trustworthiness, reliability, or loyalty that may reflect adversely on his/her ability to safeguard classified information.

(3) If the supervisor is aware of such significant adverse information, the following statement shall be documented, signed and dated and forwarded to DIS with the investigative package, and a written summary of the derogatory information forwarded to DIS with the investigative package:

I am aware of information of the type contained in Appendix D, 32 CFR Part 154, relating to subject's trustworthiness, reliability, or loyalty that may reflect adversely on his/her ability to safeguard classified information and have reported all relevant details to the appropriate security official(s).

(4) In conjunction with regularly scheduled fitness and performance reports of military and civilian personnel whose duties entail access to classified information, supervisors will include a comment in accordance with § 154.60(c) (2) and (3) as well as a comment regarding an employee's discharge of security responsibilities, pursuant to their Component guidance.

(d) *Individual responsibility.* (1) Individuals must familiarize themselves with pertinent security regulations that pertain to their assigned duties. Further, individuals must be aware of the standards of conduct required of persons holding positions of trust. In this connection, individuals must recognize and avoid the kind of personal behavior that would result in rendering one ineligible for continued assignment in a position of trust. In the final analysis, the ultimate responsibility for maintaining continued eligibility for a position of trust rests with the individual.

(2) Moreover, individuals having access to classified information must report promptly to their security office:

(i) Any form of contact, intentional or otherwise, with a citizen of a designated country, (Appendix G) unless occurring as a function of one's official duties.

(ii) Attempts by representatives or citizens of designated countries to cultivate friendships or to place one under obligation.

(iii) Attempts by representatives or citizens of foreign countries to:

(A) Cultivate a friendship to the extent of placing one under obligation that they would not normally be able to reciprocate, or by offering money payments or bribery to obtain information of actual or potential intelligence value.

(B) Obtain information of actual or potential intelligence value through observation, collection of documents, or by personal contact.

(C) Coerce by blackmail, by threats against or promises of assistance to relatives living under foreign control, especially those living in a designated country.

(iv) All personal foreign travel in advance.

(v) Any information of the type referred to in § 154.7 or Appendix H.

(e) *Co-worker responsibility.* Co-workers have an equal obligation to advise their supervisor or appropriate security official when they become aware of information with potentially serious security significance regarding someone with access to classified information or employed in a sensitive position.

§ 154.61 Security education.

(a) *General.* The effectiveness of an individual in meeting security responsibilities is proportional to the degree to which the individual understands them. Thus, an integral part of the DoD security program is the indoctrination of individuals on their security responsibilities. Moreover, such indoctrination is essential to the efficient functioning of the DoD personnel security program. Accordingly, heads of DoD Components shall establish procedures in accordance with this chapter whereby persons requiring access to classified information, or being assigned to positions that require the occupants to be determined trustworthy are periodically briefed as to their security responsibilities.

(b) *Initial briefing.* (1) All persons cleared for access to classified information or assigned to duties requiring a trustworthiness determination under this part shall be given an initial security briefing. The briefing shall be in accordance with the requirements of 32 CFR Part 159 and consist of the following elements:

(i) The specific security requirements of their particular job.

(ii) The techniques employed by foreign intelligence activities in attempting to obtain classified information and their responsibility for reporting such attempts.

(iii) The prohibition against disclosing classified information, by any means, to unauthorized persons or discussing or handling classified information in a manner that would make it accessible to unauthorized persons.

(iv) The penalties that may be imposed for security violations.

(2) If an individual declines to execute Standard Form 189, "Classified Information Nondisclosure Agreement, the DoD Component shall initiate action to deny or revoke the security clearance of such person in accordance with § 154.56(b).

(c) *Refresher briefing.* Programs shall be established to provide, at a minimum, annual security training for personnel having continued access to classified information. The elements outlined in 32 CFR Part 159 shall be tailored to fit the needs of experienced personnel.

(d) *Foreign travel briefing.* (1) DoD Components will establish appropriate internal procedures requiring all personnel possessing a DoD security clearance to report to their security office all personal foreign travel in advance of the travel being performed. When travel patterns, or the failure to report such travel, indicate the need for investigation, the matter will be referred to the appropriate counterintelligence investigative agency.

(2) Personnel having access to classified information shall be given a Foreign Travel Briefing by a counterintelligence agent, security specialist, security manager, or other qualified individual, as a defensive measure prior to travel to a designated country (Appendix G) in order to alert them to their possible exploitation by hostile intelligence services. These personnel will also be debriefed upon their return. The briefings will be administered under the following conditions:

(i) Travel to or through a designated country for any purpose.

(ii) Attendance at international, scientific, technical, engineering, or other professional meetings in the United States or in any country outside the United States when it can be anticipated that representative(s) of designated countries will participate or be in attendance.

(3) Individuals who travel frequently, or attend or host meetings of foreign visitors as described in paragraph (d)(2)(ii) of this section need not be briefed for each occasion, but shall be provided a thorough briefing at least once every 6 months and a general reminder of security responsibilities before each such activity.

(4) Records on such employees will be maintained for 5 years.

(e) *Termination briefing.* (1) Upon termination of employment administrative withdrawal of security clearance, or contemplated absence from duty or employment for 60 days or more, DoD military personnel and civilian employees shall be given a termination briefing, return all classified material, and execute a Security Termination Statement. This statement shall include:

(i) An acknowledgment that the individual has read the appropriate provisions of the Espionage Act, other criminal statutes, DoD Regulations applicable to the safeguarding of classified information to which the individual has had access, and understands the implications thereof;

(ii) A declaration that the individual no longer has any documents or material containing classified information in his or her possession;

(iii) An acknowledgment that the individual will not communicate or transmit classified information to any unauthorized person or agency; and

(iv) An acknowledgment that the individual will report without delay to the FBI or the DoD Component concerned any attempt by any unauthorized person to solicit classified information.

(2) When an individual refuses to execute a Security Termination Statement, that fact shall be reported immediately to the security manager of the cognizant organization concerned. In any such case, the individual involved shall be debriefed orally. The fact of a refusal to sign a Security Termination Statement shall be reported to the Director, Defense Investigative Service who shall assure that it is recorded in the Defense Central Index of Investigations.

(3) The Security Termination Statement shall be retained by the DoD Component that authorized the individual access to classified information for the period specified in the Component's records retention schedules, but for a minimum of 2 years after the individual is given a termination briefing.

(4) In addition to the provisions of paragraphs (e)(1), (e)(2), and (e)(3) of this section, DoD Components shall establish a central authority to be responsible for ensuring that Security Termination Statements are executed by senior personnel (general officers, flag officers and GS–16s and above). Failure on the part of such personnel to execute a Security Termination Statement shall be reported immediately to the Deputy Under Secretary of Defense for Policy.

Subpart J—Safeguarding Personnel Security Investigative Records

§ 154.65 General.

In recognition of the sensitivity of personnel security reports and records, particularly with regard to individual privacy, it is Department of Defense policy that such personal information shall be handled with the highest degree of discretion. Access to such information shall be afforded only for the purpose cited herein and to persons whose official duties require such information. Personnel security investigative reports may be used only for the purposes of determining

eligibility of DoD military and civilian personnel, contractor employees, and other persons affiliated with the Department of Defense, for access to classified information, assignment or retention in sensitive duties or other specifically designated duties requiring such investigation, or for law enforcement and counterintelligence investigations. Other uses are subject to the specific written authorization of the Deputy Under Secretary of Defense for Policy

§ 154.66 Responsibilities.

DoD authorities responsible for administering the DoD personnel security program and all DoD personnel authorized access to personnel security reports and records shall ensure that the use of such information is limited to that authorized by this part and that such reports and records are safeguarded as prescribed herein. The heads of DoD Components and the Deputy Under Secretary of Defense for Policy for the Office of the Secretary of Defense shall establish internal controls to ensure adequate safeguarding and limit access to and use of personnel security reports and records as required by §§ 154.67 and 154.68.

§ 154.67 Access restrictions.

Access to personnel security investigative reports and personnel security clearance determination information shall be authorized only in accordance with 32 CFR Parts 286 and 286a and with the following:

(a) DoD personnel security investigative reports shall be released outside of the DoD only with the specific approval of the investigative agency having authority over the control and disposition of the reports.

(b) Within DoD, access to personnel security investigative reports shall be limited to those designated DoD officials who require access in connection with specifically assigned personnel security duties, or other activities specifically identified under the provisions of § 154.65.

(c) Access by subjects of personnel security investigative reports shall be afforded in accordance with 32 CFR Part 286a.

(d) Access to personnel security clearance determination information shall be made available, other than provided for in paragraph (c) of this section, through security channels, only to DoD or other officials of the Federal Government who have an official need for such information.

§ 154.68 Safeguarding procedures.

Personnel security investigative reports and personnel security determination information shall be safeguarded as follows:

(a) Authorized requesters shall control and maintain accountability of all reports of investigation received.

(b) Reproduction, in whole or in part, of personnel security investigative reports by requesters shall be restricted to the minimum number of copies required for the performance of assigned duties.

(c) Personnel security investigative reports shall be stored in a vault, safe, or steel file cabinet having at least a lockbar and an approved three-position dial-type combination padlock or in a similarly protected area/container.

(d) Reports of DoD personnel security investigations shall be sealed in double envelopes or covers when transmitted by mail or when carried by persons not authorized access to such information. The inner cover shall bear a notation substantially as follows:

TO BE OPENED ONLY BY OFFICIALS DESIGNATED TO RECEIVE REPORTS OF PERSONNEL SECURITY INVESTIGATION

(e) An individual's status with respect to a personnel security clearance or a Special Access authorization is to be protected as provided for in 32 CFR Part 286.

§ 154.69 Records disposition.

(a) Personnel security investigative reports, to include OPM NACIs may be retained by DoD recipient organizations, only for the period necessary to complete the purpose for which it was originally requested. Such reports are considered to be the property of the investigating organization and are on loan to the recipient organization. All copies of such reports shall be destroyed within 90 days after completion of the required personnel security determination. Destruction shall be accomplished in the same manner as for classified information in accordance with 32 CFR Part 159.

(b) DoD record repositories authorized to file personnel security investigative reports shall destroy PSI reports of a favorable or of a minor derogatory nature 15 years after the date of the last action. That is, after the completion date of the investigation or the date on which the record was last released to an authorized user—whichever is later. Personnel security investigative reports resulting in an unfavorable administrative personnel action or court-martial or other investigations of a significant nature due to information contained in the investigation shall be destroyed 25 years after the date of the last action. Files in this latter category that are determined to be of possible historical value and those of widespread public or congressional interest may be offered to the National Archives after 15 years.

(c) Personnel security investigative reports on persons who are considered for affiliation with DoD will be destroyed after 1 year if the affiliation is not completed.

§ 154.70 Foreign source information.

Information that is classified by a foreign government is exempt from public disclosure under the Freedom of Information and Privacy Acts. Further, information provided by foreign governments requesting an express promise of confidentiality shall be released only in a manner that will not identify or allow unauthorized persons to identify the foreign agency concerned.

Subpart K—Program Management

§ 154.75 General.

To ensure uniform implementation of the DoD personnel security program throughout the Department, program responsibility shall be centralized at DoD Component level.

§ 154.76 Responsibilities.

(a) The Deputy Under Secretary of Defense for Policy shall have primary responsibility for providing guidance, oversight, development and approval for policy and procedures governing personnel security program matters within the Department:

(1) Provide program management through issuance of policy and operating guidance.

(2) Provide staff assistance to the DoD Components and defense agencies in resolving day-to-day security policy and operating problems.

(3) Conduct inspections of the DoD Components for implementation and compliance with DoD security policy and operating procedures.

(4) Provide policy, oversight, and guidance to the component adjudication functions.

(5) Approve, coordinate and oversee all DoD personnel security research initiatives and activities.

(b) The General Counsel shall ensure that the program is administered in a manner consistent with the laws; all proceedings are promptly initiated and expeditiously completed; and that the rights of individuals involved are protected, consistent with the interests of national security. The General Counsel shall also ensure that all relevant decisions of the courts and

legislative initiatives of the Congress are obtained on a continuing basis and that analysis of the foregoing is accomplished and disseminated to DoD personnel security program management authorities.

(c) The Heads of the Components shall ensure that:

(1) The DoD personnel security program is administered within their area of responsibility in a manner consistent with this part.

(2) A single authority within the office of the head of the DoD Component is assigned responsibility for administering the program within the Component.

(3) Information and recommendations are provided the Deputy Under Secretary of Defense for Policy and the General Counsel at their request concerning any aspect of the program.

§ 154.77 Reporting requirements.

Personnel security program management data will be developed and submitted by 1 December each year for the preceding fiscal year in a report to the Deputy Under Secretary of Defense for Policy. The information required below is essential for basic personnel security program management and in responding to requests from the Secretary of Defense and Congress. The report will cover the preceding fiscal year, broken out by clearance category, according to officer, enlisted, civilian or contractor status:

(a) Number of Top Secret, Secret and Confidential clearances issued;

(b) Number of Top Secret, Secret and Confidential clearances denied;

(c) Number of Top Secret, Secret and Confidential clearances revoked;

(d) Number of SCI access determinations issued;

(e) Number of SCI access determinations denied;

(f) Number of SCI access determinations revoked;

(g) Number of actions which resulted in nonappointment or non-selection to a sensitive position;

(h) Total number of personnel holding a clearance for Top Secret, Secret, Confidential and Sensitive Compartmented Information as of the end of the fiscal year.

(i) Number of Top Secret billets established § 154.13(e).

(j) Number of personnel adjudicating personnel security cases on a full or part time basis;

(k) Number of man years expended in adjudicating personnel security cases;

(l) Number of civilian positions designated sensitive, by designation criteria;

(m) The number of Limited Access Authorizations in effect (in accordance with § 154.16(d)).

This reporting requirement has been assigned Report Control Symbol DD-POL (A)1749.

§ 154.78 Inspections.

The heads of DoD Components shall assure that personnel security program matters are included in their administrative inspection programs.

Appendix A—Investigative Scope

This appendix prescribes the scope of the various types of personnel security investigations.

1. *National Agency Check (NAC).* Components of a NAC. At a minimum, the first three of the described agencies (DCII, FBI/HQ, and FBI/ID) below shall be included in each complete NAC; however, a NAC may also include a check of any or all of the other described agencies, if appropriate.

a. DCII records consist of an alphabetical index of personal names and impersonal titles that appear as subjects or incidentals in investigative documents held by the criminal, counterintelligence, fraud, and personnel security investigative activities of the three military departments, DIS, Defense Criminal Investigative Service (DCIS), and the National Security Agency. DCII records will be checked on all subjects of DoD investigations.

b. FBI/HQ has on file copies of investigations conducted by the FBI. The FBI/HQ check, included in every NAC, consists of a review of files for information of a security nature and that developed during applicant-type investigations.

c. An FBI/ID check, included in every NAC (but not ENTNAC), is based upon a technical fingerprint search that consists of a classification of the subject's fingerprints and comparison with fingerprint cards submitted by law enforcement activities. If the fingerprint card is not classifiable, a "name check only of these files is automatically conducted.

d. OPM. The files of OPM contain the results of investigations conducted by OPM under Executive Orders 9835 and 10450, those requested by the Nuclear Regulatory Commission (NRC), the Department of Energy (DOE) and those requested since August 1952 to serve as a basis for "Q" clearances. Prior to that date, "Q" clearance investigations were conducted by the FBI. A "Q" clearance is granted to individuals who require access to DOE information. In order to receive a "Q" clearance, a full field background investigation must be completed on the individual requiring access in accordance with the Atomic Energy Act of 1954. Also on file are the results of investigations on the operation of the Merit System, violations of the Veterans Preference Act, appeals of various types, fraud and collusion in Civil Service examinations and related matters, data on all Federal employment, and an index of all BIs on civilian employees or applicants completed by agencies of the Executive Branch of the U.S. Government. The OPM files may also contain information relative to U.S. citizens who are, or who were, employed by a United Nations organization or other public international organization such as the Organization of American States. OPM records are checked on all persons who are, or who have been, civilian employees of the U.S. Government; or U.S. citizens who are, or who have been, employed by a United Nations organization or other public international organization; and on those who have been granted security clearances by the NRC or DOE.

e. Immigration and Naturalization Service (I&NS). The files of I&NS contain (or show where filed) naturalization certificates, certificates of derivative citizenship, all military certificates of naturalization, repatriation files, petitions for naturalization and declaration of intention, visitors' visas, and records of aliens (including government officials and representatives of international organizations) admitted temporarily into the U.S. I&NS records are checked when the subject is:

(1) An alien in the U.S., or

(2) A naturalized citizen whose naturalization has not been verified, or

(3) An immigrant alien, or

(4) A U.S. citizen who receives derivative citizenship through the naturalization of one or both parents, provided that such citizenship has not been verified in a prior investigation.

f. State Department. The State Department maintains the following records:

(1) Security Division (S/D) files contain information pertinent to matters of security, violations of security, personnel investigations pertinent to that agency, and correspondence files from 1950 to date. These files are checked on all former State Department employees.

(2) Passport Division (P/D) shall be checked if subject indicates U.S. citizenship due to birth in a foreign country of American parents. This is a check of State Department Embassy files to determine if subject's birth was registered at the U.S. Embassy in the country where he was born. Verification of this registration is verification of citizenship.

g. Central Intelligence Agency (CIA). The files of CIA contain information on present and former employees, including members of the Office of Strategic Services (OSS), applicants for employment, foreign nationals, including immigrant aliens in the U.S., and U.S. citizens traveling outside the U.S. after July 1, 1946. These files shall be checked under the following guidelines.

Investigation	Criteria for CIA Checks
NAC, DNACI or ENTNAC.	Residence anywhere outside of the U.S. for year or more since age 18 except under the auspices of the U.S. Government; and, travel, education, residence, or employment since age 18 in any designated country (Appendix G).
BI	Same as NAC, DNACI, and ENTNAC requirements plus travel, residence, employment, and education outside the U.S. for more than a continuous 3-month period during the past 5 years, or since age 18, except when under the auspices of the Government.

Investigation	Criteria for CIA Checks
SBI	Same as BI requirements except the period of the investigation will cover the past 15 years, or since age 18. Also when subject's employment, education or residence has occurred overseas for a period of more than one year under the auspices of the U.S. Government, such checks will be made.

These files shall also be checked if subject has been an employee of CIA or when other sources indicate that CIA may have pertinent information.

h. Military Personnel Record Center files are maintained by separate departments of the Armed Forces, General Services Administration and the Reserve Records Centers. They consist of the Master Personnel Records of retired, separated, reserve, and active duty members of the Armed Force. These records shall be checked when the requester provides required identifying data indicating service during the last 15 years.

i. Treasury Department. The files of Treasury Department agencies (Secret Service, Internal Revenue Service, and Bureau of Customs) will be checked only when available information indicates that an agency of the Treasury Department may be reasonably expected to have pertinent information.

j. The files of other agencies such as the National Guard Bureau, the Defense Industrial Security Clearance Office (DISCO), etc., will be checked when pertinent to the purpose for which the investigation is being conducted.

2. *DoD National Agency Check plus Written Inquires (DNACI):*

a. *Scope:* The time period covered by the DNACI is limited to the most recent five (5) years, or since the 18th birthday, whichever is shorter, provided that the investigation covers at least the last two (2) full years of the subject's life, although it may be extended to the period necessary to resolve any questionable or derogatory information. No investigation will be conducted prior to an individual's 16th birthday. All DNACI investigation information will be entered on the DD Form 398-2 and FD-Form 258 and forwarded to the Defense Investigative Service (paragraph D, Appendix B).

b. *Components of a DNACI:*

(1) *NAC.* This is the same as described in paragraph 1, above.

(2) *Credit.* (a) A credit bureau check will be conducted to cover the 50 states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands, at all locations where subject has resided (including duty stations and home ports), been employed, or attended school for 6 months (cumulative) during the past five (5) years.

(b) When information developed reflects unfavorably upon a person's current credit reputation or financial responsibility, the investigation will be expanded as necessary.

(3) *Employment.*—(a) *Non-Federal Employment. (1)* Verify, via written inquiry, all employment within the period of investigation with a duration of six (6) months or more. Current employment will be checked regardless of duration.

(2) If all previous employments have been less than 6 months long, the most recent employment, in addition to the current, will be checked in all cases.

(3) Seasonal holiday, part-time and temporary employment need not be checked unless subparagraph 2 above applies.

(b) *Federal employment.* All Federal employment (to include military assignments) within the period of investigation will be verified by the requester through locally available records, and a statement reflecting that such checks have been favorably accomplished will be contained in the investigative request. Those that cannot be verified in this fashion will be accomplished via written inquiry by DIS (within the 50 United States, Puerto Rico, Guam, and the Virgin Islands).

3. *Background Investigation (BI).* The period of investigation for the BI is 5 years and applies to military, civilian, and contractor personnel.

a. *NAC.* See paragraph 1, above.

b. *Local Agency Checks (LAC).* Same as paragraph 4j, below, except period of coverage is five years.

c. *Credit checks.* Same as paragraph 4i, below.

d. *SUBJECT Interview (SI).* This is the principal component of a BI. In some instances an issue will arise after the primary SI and a secondary interview will be conducted. Interviews in the latter category are normally "issue" interviews that will be reported in the standard BI narrative format.

e. *Employment records.* Employment records will be checked at all places where employment references are interviewed with the exception of current Federal employment when the requester indicates that such employment has been verified with favorable results.

f. *Employment reference coverage.* A minimum of *three references, either supervisors or co-workers,* who have knowledge of the SUBJECT's activities in the work environment will be interviewed. At least one employment reference at the current place of employment will always be interviewed with the exception of an individual attending military basic training, or other military training schools lasting less than 90 days. However, if the SUBJECT has only been at the current employment for less than 6 months, it will be necessary to go not only to his or her current employment (for example, for one employment reference) but also to the preceding employment of at least 6 months for additional employment references. If the SUBJECT has not had prior employment of at least 6 months, interview(s) will be conducted at the most recent short-term employment in addition to the current employment.

g. *Developed and Listed Character References.* A minimum of three developed character references (DCR) whose combined association with the SUBJECT covers the entire period of investigation will be interviewed. If coverage cannot be obtained through the DCRs, listed character reference (LCR) will be contacted to obtain coverage.

h. *Unfavorable information.* Unfavorable information developed in the field will be expanded.

4. *Special Background Investigation (SBI)*— a. *Components of an SBI.* The period of investigation for an SBI is the last 15 years or since the 18th birthday, whichever is the shorter period, provided that the investigation covers at least the last 2 full years of the subject's life. No investigation will be conducted for the period prior to an individual's 16th birthday. Emphasis shall be placed on peer coverage whenever interviews are held with personal sources in making education, employment, and reference (including developed) contact.

b. *NAC.* In addition to conducting a NAC on the subject of the investigation, the following additional requirements apply.

(1) A DCII, FBI/ID name check only and FBI/HQ check shall be conducted on subject's current spouse or cohabitant. In addition, such other national agency checks as deemed appropriate based on information on the subject's SPH or PSQ shall be conducted.

(2) A check of FBI/HQ files on members of subject's immediate family who are aliens in the U.S. or immigrant aliens who are 18 years of age or older shall be conducted. As used throughout the part, members of subject's immediate family include the following:

(a) Current spouse.

(b) Adult children, 18 years of age or older, by birth, adoption, or marriage.

(c) Natural, adopted, foster, or stepparents.

(d) Guardians.

(e) Brothers and sisters either by birth, adoption, or remarriage of either parent.

(3) The files of CIA shall be reviewed on alien members of subject's immediate family who are 18 years of age or older, regardless of whether or not these persons reside in the U.S.

(4) I&NS files on members of subject's immediate family 18 years of age or older shall be reviewed when they are:

(a) Aliens in the U.S., or

(b) Naturalized U.S. citizens whose naturalization has not been verified in a prior investigation, or

(c) Immigrant aliens, or

(d) U.S. citizens born in a foreign country of American parent(s) or U.S. citizens who received derivative citizenship through the naturalization of one or both parents, provided that such citizenship has not been verified in a prior investigation.

c. *Birth.* Verify subject's date and place of birth (DPOB) through education, employment and/or other records. Verify through Bureau of Vital Statistics (BVS) records if not otherwise verified under d., below, or if a variance is developed.

d. *Citizenship.* Subject's citizenship status must be verified in all cases. U.S. citizens who are subjects of investigation will be required to produce documentation that will confirm their citizenship. Normally such documentation should be presented to the DoD Component concerned prior to the initiation of the request for investigation. When such documentation is not readily available, investigative action may be initiated with the understanding that the designated authority in the DoD Component will be provided with the documentation prior to the issuance of a clearance. DIS will

not check the BVS for native-born U.S. citizens except as indicated in 4.c. above. In the case of foreign-born U.S. citizens, DIS will check I&NS records. The citizenship status of all foreign-born members of subject's immediate family shall be verified. Additionally, when the investigation indicates that a member of subject's immediate family has not obtained U.S. citizenship after having been eligible for a considerable period of time, an attempt should be made to determine the reason. The documents listed below are acceptable for proof of U.S. citizenship for personnel security determination purposes:

(1) A birth certificate must be presented if the individual was born in the United States. To be acceptable, the certificate must show that the birth record was filed shortly after birth and must be certified with the registrar's signature and the raised, impressed, or multicolored seal of his office except for states or jurisdictions which, as a matter of policy, do not issue certificates with a raised or impressed seal. Uncertified copies of birth certificates are not acceptable.

(a) A delayed birth certificate (a record filed more than one year after the date of birth) is acceptable provided that it shows that the report of birth was supported by acceptable secondary evidence of birth as described in subparagraph (b), below.

(b) If such primary evidence is not obtainable, a notice from the registrar stating that no birth record exists should be submitted. The notice shall be accompanied by the best combination of secondary evidence obtainable. Such evidence may include a baptismal certificate, a certificate of circumcision, a hospital birth record, affidavits of persons having personal knowledge of the facts of the birth, or other documentary evidence such as early census, school, or family bible records, newspaper files and insurance papers. Secondary evidence should have been created as close to the time of birth as possible.

(c) All documents submitted as evidence of birth in the United States shall be original or certified documents. Uncertified copies are not acceptable.

(2) A certificate of naturalization shall be submitted if the individual claims citizenship by naturalization.

(3) A certificate of citizenship issued by the I&NS shall be submitted if citizenship was acquired by birth abroad to a U.S. citizen parent or parents.

(4) A Report of Birth Abroad of A Citizen of The United States of America (Form FS–240), a Certification of Birth (Form FS–545 or DS–1350), or a Certificate of Citizenship is acceptable if citizenship was acquired by birth abroad to a U.S. citizen parent or parents.

(5) A passport or one in which the individual was included will be accepted as proof of citizenship.

e. *Education.* (1) Verify graduation or attendance at institutions of higher learning in the U.S. within the last 15 years, if such attendance was not verified during a prior investigation.

(2) Attempts will be made to review records at overseas educational institutions when the subject resided overseas in excess of one year.

(3) Verify attendance or graduation at the last secondary school attended within the past 10 years if there was no attendance at an institution of higher learning within the period of investigation.

(4) Verification of attendance at military academies is only required when the subject failed to graduate.

f. *Employment.* (1) Non-Federal employment. Verify all employment within the period of investigation to include seasonal, holiday, Christmas, part-time, and temporary employment. Interview one supervisor and one co-worker at subject's current place of employment as well as at each prior place of employment during the past 10 years of six months duration or longer. The interview requirement for supervisors and co-workers does not apply to seasonal, holiday, Christmas, part-time, and temporary employment (4 months or less) unless there are unfavorable issues to resolve or the letter of inquiry provides insufficient information.

(2) *Federal employment.* All Federal employment will be verified within the period of investigation to include Christmas, seasonal temporary, summer hire, part-time, and holiday employment. Do not verify Federal employment through review of records if already verified by the requester. If Federal employment has not been verified by the requester, then subject's personnel file at his/her current place of employment will be reviewed. All previous Federal employment will be verified during this review. In the case of former Federal employees, records shall be examined at the Federal Records Center in St. Louis, Missouri. Interview one supervisor and one co-worker at all places of employment during the past 10 years if so employed for 6 months or more.

(3) *Military employment.* Military service for the last 15 years shall be verified. The subject's duty station, for the purpose of interview coverage, is considered as a place of employment. One supervisor and one co-worker shall be interviewed at subject's current duty station if subject has been stationed there for 6 months or more; additionally, a supervisor and a co-worker at subject's prior duty stations where assigned for 6 months or more during the past 10 years shall be interviewed.

(4) *Unemployment.* Subject's activities during all periods of unemployment in excess of 30 consecutive days, within the period of investigation, that are not otherwise accounted for shall be verified.

(5) When an individual has resided outside the U.S. continuously for over one year, attempts will be made to confirm overseas employments as well as conduct required interviews of a supervisor and co-worker.

g. *References.* Three developed character references who have sufficient knowledge of subject to comment on his background, suitability, and loyalty shall be interviewed personally. Efforts shall be made to interview developed references whose combined association with subject covers the full period of the investigation with particular emphasis on the last 5 years. Employment, education, and neighborhood references, in addition to the required ones, may be used as developed references provided that they have personal knowledge concerning the individual's character, discretion, and loyalty. Listed character references will be interviewed only when developed references are not available or when it is necessary to identify and locate additional developed character references or when it is necessary to verify subject's activities (e.g., unemployment).

h. *Neighborhood investigation.* Conduct a neighborhood investigation to verify each of subject's residences in the U.S. of a period of 6 months or more on a cumulative basis, during the past 5 years or during the period of investigation, whichever is shorter. During each neighborhood investigation, interview two neighbors who can verify subject's period of residence in that area and who were sufficiently acquainted to comment on subject's suitability for a position of trust. Neighborhood investigations will be expanded beyond this 5-year period only when there is unfavorable information to resolve in the investigation.

i. *Credit.* Conduct credit bureau check in the 50 states, the District of Columbia, Puerto Rico and overseas (where APO/FPO addresses are provided) at all places where subject has resided (including duty stations and home ports), been employed, or attended school for 6 months or more, on a cumulative basis, during the last 7 years or during the period of the investigation, whichever is shorter. When coverage by a credit bureau is not available, credit references located in that area will be interviewed. Financial responsibility, including unexplained affluence, will be stressed in all reference interviews.

j. *Local Agency Checks (LAC's).* LACs, including state central criminal history record repositories, will be conducted on subject at all places of residence to include duty stations and/or home ports, in the 50 states, the District of Columbia, and Puerto Rico, where residence occurred during the past 15 years or during the period of investigation, whichever is shorter. If subject's place of employment and/or education is serviced by a different law enforcement agency than that servicing the area of residence, LACs shall be conducted also in these areas.

k. *Foreign travel.* If subject has been employed, educated, traveled or resided outside of the U.S. for more than 90 days during the period of investigation, except under the auspices of the U.S. Government, additional record checks during the NAC shall be made in accordance with paragraph 1.f. of this Appendix. In addition, the following requirements apply:

(1) Foreign travel not under the auspices of the U.S. Government. When employment, education, or residence has occurred overseas for more than 90 days during the past 15 years or since age 18, which was not under the auspices of the U.S. Government, a check of records will be made at the Passport Office of the Department of State, the CIA, and other appropriate agencies. Efforts shall be made to develop sources, generally in the U.S., who knew the individual overseas to cover significant employment, education, or residence and to determine whether any lasting foreign contacts or connections were

established during this period. If the individual has worked or lived outside of the U.S. continuously for over one year, the investigation will be expanded to cover fully this period through the use of such investigative assets and checks of record sources as may be available to the U.S. Government in the foreign country in which the individual resided.

(2) Foreign travel under the auspices of the U.S. Government. When employment, education, or residence has occurred overseas for a period of more than one year, under the auspices of the U.S. Government, a record check will be made at the Passport Office of the Department of State, the CIA and other appropriate agencies. Efforts shall be made to develop sources (generally in the U.S.) who knew the individual overseas to cover significant employment, education, or residence and to determine whether any lasting foreign contacts or connections were established during this period. Additionally, the investigation will be expanded to cover fully this period through the use of such investigative assets and checks of record sources as may be available to the U.S. Government in the foreign country in which the individual resided.

l. *Foreign connections.* All foreign connections (friends, relatives, and/or business connections) of subject and immediate family in the U.S. or abroad, except where such association was the direct result of subject's official duties with the U.S. Government, shall be ascertained. Investigation shall be directed toward determining the significance of foreign connections on the part of subject and the immediate family, particularly where the association is or has been with persons whose origin was within a country whose national interests are inimical to those of the U.S. When subject or his spouse has close relatives residing in a Communist-controlled country, or subject has resided, visited, or traveled in such a country, not under U.S. Government auspices, the provisions of § 154.8(i)(3) of this part apply.

m. *Organizations.* Efforts will be made during reference interviews and record reviews to determine if subject and/or the immediate family has, or formerly had, membership in, affiliation with, sympathetic association towards, or participated in any foreign or domestic organization, association, movement, group, or combination of persons of the type described in § 154.7(a) through (d) of this part.

n. *Divorce.* Divorces, annulments, and legal separations of subject shall be verified only when there is reason to believe that the grounds for the action could reflect on subject's suitability for a position of trust.

o. *Military service.* All military service and types of discharge during the last 15 years shall be verified.

p. *Medical records.* Medical records shall not be reviewed unless:

(1) The requester indicates that subject's medical records were unavailable for review prior to submitting the request for investigation, or

(2) The requester indicates that unfavorable information is contained in subject's medical records, or

(3) The subject lists one or more of the following on the SPH or PSQ:

(a) A history of mental or nervous disorders,

(b) That subject is now or has been addicted to the use of habit-forming drugs such as narcotics or barbiturates or is now or has been a chronic user to excess of alcoholic beverages.

q. *Updating a previous investigation to SBI standards.* If a previous investigation does not substantially meet the minimum standards of an SBI or if it is more than 5 years old, a current investigation is required but may be limited to that necessary to bring the individual's file up to date in accordance with the investigative requirements of an SBI. Should new information be developed during the current investigation that bears unfavorably upon the individual's activities covered by the previous investigation, the current inquiries shall be expanded as necessary to develop full details of this new information.

5. *Periodic Reinvestigation (PR).* a. Each DoD military, civilian, consultant, and contractor employee (to include foreign nationals holding a limited access authorization) occupying a critical sensitive position, possessing a Top Secret clearance, or occupying a special access program position shall be the subject of a PR initiated 5 years from the date of completion of the last investigation. The PR shall cover the period of the last 5 years.

b. *Minimum investigative requirements.* A PR shall include the following minimum scope.

(1) *NAC.* A valid NAC on the SUBJECT will be conducted in all cases. Additionally, for positions requiring SCI access, checks of DCII, FBI/HQ, FBI/ID name check only, and other agencies deemed appropriate, will be conducted on the SUBJECT's current spouse or cohabitant, if not previously conducted. Additionally, NACs will be conducted on immediate family members, 18 years of age or older, who are aliens and/or immigrant aliens, if not previously accomplished.

(2) *Credit.* Credit bureau checks covering all places where the SUBJECT resided for 6 months or more, on a cumulative basis, during the period of investigation, in the 50 states, District of Columbia, Puerto Rico and overseas (where APO/FPO addresses are provided), will be conducted.

(3) *Subject interview.* The interview should cover the entire period of time since the last investigation, not just the last 5-year period. Significant information disclosed during the interview, which has been satisfactorily covered during a previous investigation, need not be explored again unless additional relevant information warrants further coverage. An SI is not required if one of the following conditions exists:

(a) The SUBJECT is aboard a deployed ship or in some remote area that would cause the interview to be excessively delayed.

(b) The SUBJECT is in an overseas location serviced by the State Department or the FBI.

(4) *Employment.* Current employment will be verified. Military and federal service records will not routinely be checked, if previously checked by the requester when PR was originally submitted. Also, employment records will be checked wherever employment interviews are conducted. Records need be checked only when they are locally available, unless unfavorable information has been detected.

(5) *Employment references.* Two supervisors or co-workers at the most recent place of employment or duty station of 6 months; if the current employment is less than 6 months employment reference interviews will be conducted at the next prior place of employment, which was at least a 6-month duration.

(6) *Developed Character References (DCRs).* Two developed character references who are knowledgeable of the SUBJECT will be interviewed. Developed character references who were previously interviewed will only be reinterviewed when other developed references are not available.

(7) *Local Agency Checks (LACs).* DIS will conduct local agency checks on the SUBJECT at all places of residence, employment, and education during the period of investigation, regardless of duration, including overseas locations.

(8) *Select scoping.* When the facts of the case warrant, additional select scoping will be accomplished, as necessary, to fully develop or resolve an issue.

Appendix B—Request Procedures

A. *General.* To conserve investigative resources and to insure that personnel security investigations are limited to those essential to current operations and are clearly authorized by DoD policies, organizations requesting investigations must assure that continuing command attention is given to the investigative request process.

In this connection, it is particularly important that the provision of Executive Order 12356 requiring strict limitations on the dissemination of official information and material be closely adhered to and that investigations requested for issuing clearances are limited to those instances in which an individual has a clear need for access to classified information. Similarly, investigations required to determine eligibility for appointment or retention in DoD, in either a civilian or military capacity, must not be requested in frequency or scope exceeding that provided for in this part.

In view of the foregoing, the following guidelines have been developed to simplify and facilitate the investigative request process:

1. Limit requests for investigation to those that are essential to current operations and clearly authorized by DoD policies and attempt to utilize individuals who, under the provisions of this part, have already met the security standard;

2. Assure that military personnel on whom investigative requests are initiated will have sufficient time remaining in service after completion of the investigation to warrant conducting it;

3. Insure that request forms and prescribed documentation are properly executed in accordance with instructions;

4. Dispatch the request directly to the DIS Personnel Investigations Center;

5. Promptly notify the DIS Personnel Investigations Center if the investigation is no longer needed (notify OPM if a NACI is no longer needed); and

6. Limit access through strict need-to-know, thereby requiring fewer investigations.

In summary, close observance of the above-cited guidelines will allow the DIS to operate more efficiently and permit more effective, timely, and responsive service in accomplishing investigations.

B. *National Agency Check (NAC).* When a NAC is requested an original only of the DD Form 398–2 (National Agency Check Request) and a completed FD 258 (Applicant Fingerprint Card) are required. If the request is for an ENTNANC, an original only of the DD Form 398–2 and a completed DD Form 2280 (Armed Forces Fingerprint Card) are required. Those forms should be sent directly to: Personnel Investigation Center, Defense Investigative Service, P.O. Box 1083, Baltimore, Maryland 21203.

C. *National Agency Check plus written Inquiries (NACI).* When a NACI is requested, an original and one copy of the SF 85 (Data for Nonsensitive or Noncritical-sensitive Position), an SF 171 (Personal Qualifications Statement), and an SF 87 (U.S. Civil Service Commission Fingerprint Chart) shall be sent directly to: Office of Personnel Management, Bureau of Personnel Investigations, NACI Center, Boyers, Pennsylvania 16018.

The notation "ALL REFERENCES" shall be stamped immediately above the title at the top of the Standard Form 85.

D. *DoD National Agency Check with Inquiries (DNACI).* 1. When a DNACI is requested, one copy of DD Form 1879, an original and two copies of the DD Form 398–2 (National Agency Check Request), two copies of FD 258 (Fingerprint Card), and an original of DD Form 2221 (Authority for Release of Information and Records) shall be sent directly to: Personnel Investigations Center, Defense Investigative Service, P.O. Box 1083, Baltimore, Maryland 21203.

2. The DD Form 398–2 must be completed to cover the most recent five year period. All information, to include items relative to residences and employment, must be complete and accurate to avoid delays in processing.

E. *Special Background Investigation (SBI)/ Background Investigation (BI).* 1. When requesting a BI or SBI, one copy of DD Form 1879 (Request for Personnel Security Investigation), an original and four copies of DD Form 398 (Statement of Personnel History), two copies of FD 258, and an original of DD Form 2221 (Authority for Release of Information and Records) shall be sent directly to the: Personnel Investigations Center, Defense Investigative Service, P.O. Box 454, Baltimore, Maryland 21203.

2. For the BI and SBI, the DD Form 398 must be completed to cover the most recent five and 15 year period, respectively, or since the 18th birthday, whichever is shorter.

F *Periodic Reinvestigation (PR).* 1. PRs shall be requested only in such cases as are authorized by § 154.19 (a) through (k) of this part.

a. For a PR requested in accordance with § 154.19 (a) and (k) and the DD Form 1879 must be accompanied by the following documents:

(1) Original and four copies of DD Form 398.

(2) Two copies of FD–258.

(3) Original copy of DD Form 2221.

b. In processing PRs, previous investigative reports will not be requested by the requesting organization, unless significant derogatory or adverse information, postdating the most recent favorable adjudication, is developed during the course of reviewing other locally available records. In the latter instance, requests for previous investigative reports may only be made if it is determined by the requesting organization that the derogatory information is so significant that a review of previous investigative reports is necessary for current adjudicative determinations.

2. No abbreviated version of DD Form 398 may be submitted in connection with a PR.

3. The PR request shall be sent to the address in paragraph E.1.

G. *Additional investigation to resolve derogatory or adverse information.* 1. Requests for additional investigation required to resolve derogatory or adverse information shall be submitted by DD Form 1879 (Request for Personnel Security Investigation) to the: Defense Investigative Service, P.O. Box 454, Baltimore, Maryland 21203.

Such requests shall set forth the basis for the additional investigation and describe the specific matter to be substantiated or disproved.

2. The request should be accompanied by an original and four copies of the DD Form 398, where appropriate, two copies of FD–258 and an original copy of DD Form 2221, unless such documentation was submitted within the last 12 months to DIS as part of a NAC or other personnel security investigation. If pertinent, the results of a recently completed NAC, NACI, or other related investigative reports available should also accompany the request.

H. *Obtaining results of prior investigations.* Requesters requiring verification of a specified type of personnel security investigation, and/or requiring copies of prior investigations conducted by the DIS shall submit requests by letter or message to: Defense Investigative Service Investigative Files Division, P.O. Box 1211, Baltimore, Maryland 21203, Message Address: DIS PIC BALTIMORE MD/ /D0640.

The request will include subject's name, grade, social security number, date and place of birth, and DIS case control number if known.

I. *Requesting postadjudication cases.* 1. Requests pertaining to issues arising after adjudication of an investigation (postadjudication cases) shall be addressed to DIS on a DD Form 1879 accompanied by a DD Form 398, where appropriate.

2. All requests for initial investigations will be submitted to PIC regardless of their urgency. If, however, there is an urgent need for a postadjudication investigation, or the mailing of a request to PIC for initiation of a postadjudication case would prejudice timely pursuit of investigative action, the DD Form 1879 may be directed for initiation, in CONUS, to the nearest DIS Field Office, and in overseas locations, to the military investigative service element supporting the requester (Appendix I). The field element (either DIS or the military investigative agency) will subsequently forward either the DD Form 1879 or completed investigation to PIC.

3. A fully executed DD Form 1879 and appropriate supporting documents may not be immediately available. Further, a case that is based on sensitive security issues may be compromised by a request that the subject submit a DD Form 398. A brief explanation should appear on DD Form 1879s which does not include complete supporting documentation.

J. *Requests involving contractor employees.* To preclude duplicative investigative requests and double handling of contractor employee cases involving access to classified information, all requests for investigation of contractor personnel must be submitted, using authorized industrial security clearance forms, for processing through the Defense Industrial Security Clearance Office, except for programs in which specific approval has been obtained from the Deputy Under Secretary of Defense for Policy to utilize other procedures.

K. *Responsibility for proper documentation of requests.* The official signing the request for investigation shall be responsible for insuring that all documentation is completed in accordance with these instructions.

Appendix C—Tables for Requesting Investigations

GUIDE FOR REQUESTING BACKGROUND INVESTIGATIONS (BI) (TABLE 1)

A If the individual is a:	B And duties require:	C Then a BI is required before:
U.S. national military member, civilian, consultant, or contractor employee.	Top Secret clearance	Granting final clearance.
U.S. national civilian employee	Assignment to a "Critical" sensitive position	Assignment to the position.
U.S. national military member, DoD civilian or contractor employee.	Occupying a "critical" position in the Nuclear Weapon Personnel Reliability Program (PRP).	Occupying a "critical" position.

GUIDE FOR REQUESTING BACKGROUND INVESTIGATIONS (BI) (TABLE 1)—Continued

A If the individual is a:	B And duties require:	C Then a BI is required before:
U.S. national military member or civilian employee	Granting, denying clearances	Performing clearance functions.
U.S. national military member or civilian employee	Membership on security screening, hearing, or review board.	Appointment to the board.
Immigrant alien	Limited access to Secret or Confidential information	Issuing limited access authorization (Note 1).
Non-U.S. national employee excluding immigrant alien	Limited access to Secret or Confidential information	Issuing limited access authorization.
Non-U.S. national nominee military education and orientation program (from a country listed at Appendix G).	Education and orientation for of military personnel	Before performing duties.
U.S. national military member DoD civilian or contractor employee.	Assignment to a category two Presidential Support position.	Assignment.
U.S. national military member, DoD civilian or contractor employee assigned to NATO.	Access to NATO COSMIC information	Access may be granted.

Note 1.—BI will cover a 10 year scope.

GUIDE FOR REQUESTING SPECIAL BACKGROUND INVESTIGATIONS (SBI) (TABLE 2)

A If the individual is a:	B And duties require:	C Then a SBI is required before:
U.S. national military member, DoD civilian, consultant, or contractor employee.	Access to SCI	Granting Access.
	Assisgnment to a category one Presidential Support position.	Assignment.
	Access to SIOP-ESI	Granting access.
	Assignment to the National Security Agency	Assignment.
	Access to other Special Access programs approved under § 154.17(g).	Granting access.
	Assignment to personnel security, counterintelligence, or criminal investigative or direct investigative support duties.	Assignment.

GUIDE FOR REQUESTING PERIODIC REINVESTIGATIONS (PR) (TABLE 3)

A If the individual is a:	B And duties require:	C Then a PR is required before:
U.S. national military member, DoD civilian, consultant, or contractor employee.	Access to SCI	5 years from date of last SBI/BI or PR.
	Top Secret Clearance	5 years from date of last SBI/BI or PR.
	Access to NATO COSMIC	5 years from date of last SBI/BI or PR.
	Assignment to Presidential Support activities	5 years from date of last SBI/BI or PR.
U.S. national civilian employee	Assignment to a "Critical" sensitive position	5 years from last SBI/BI or PR.
Non-U.S. national employee	Current limited access authorization to Secret or Confidential information.	5 years from last SBI/BI or PR.

GUIDE FOR REQUESTING DOD NATIONAL AGENCY CHECK WITH INQUIRIES (DNACI) OR NACI (TABLE 4)

A If the individual is a:	B And duties require:	C Then DNACI/NACI is required
U.S. national military member or contractor	Secret clearance	Before granting clearance (note 1).
	Interim Secret Clearance	May be automatically issued (note 2).
U.S. national civilian employee or consultant	Secret clearance	Before granting clearance.
	Interim Secret Clearance	May be automatically issued (note 3).
	Appointment to "Non Critical" sensitive position	Before appointment.
U.S. national military member, DoD civilian or contractor employee.	Occupying a "controlled" position in the Nuclear Weapon PRR.	Before assignment.
Applicant for appointment as a commissioned officer	Commission in the Award Forces	Before appointment (after appointment for health professionals, chaplains, and attorneys, under conditions authorized by §154.15(d) of this part).
Naval Academy Midshipman, Military Academy Cadet, or Air Force Academy Cadet.	Enrollment	To be initiated 90 days after entry.
Reserve Officer Training Corps Cadet of Midshipman	Entry to advanced course or College Scholarship Program.	Then a DNACI is required to be initiated 90 days after entry.

Note 1.—First term enlistees shall require an ENTNAC.
Note 2.—Provided DD Form 398-2 is favorably reviewed, local records check favorably accomplished, and DNACI initiated.
Note 3.—Provided an authority designated in Appendix E finds delay in such appointment would be harmful to national security; favorable review of DD Form 398-2; NACI initiated; favorable local records check accomplished. Table 5.

GUIDE FOR REQUESTING NATIONAL AGENCY CHECKS (NAC) (TABLE 5)

A If the individual is a:	B And duties require:	C Then a NAC is required:
A first-term enlistee	Retention in the Armed Forces (including National Guard and Reserve).	To be initiated NLT three work days after entry (note 1).
Prior service member reentering military service after break in Federal employment exceeding 1 year.	Retention in the Armed Forces (including National Guard and Reserve).	To be initiated NLT three work days after reentry.
Nominee for military education and orientation program.	Education and orientation of military personnel	Before performing duties (note 2).
U.S. national military, DoD civilian, or contractor employee.	Access to restricted areas, sensitive information, or equipment as defined in §154.18(b).	Before authorizing entry.
Nonappropriated fund instrumentality (NAFI) civilian employee.	Appointment as NAFI custodian	Before appointment.
	Accountability for non appropriated funds	Before completion of probationary period.
	Fiscal responsibility as determined by NAFI custodian	Before completion of probationary period.
	Other "positions of trust"	Before appointment.
Persons requiring access to chemical agents	Access to or security of chemical agents	Before assignment.
U.S. national, civilian employee nominee for customs inspection duties.	Wavier under provisions of §154.18(d)	Before appointment (note 3).
Red Cross/United States Organization personnel	Assignment with the Armed Forces overseas	Before assignment (See note 4 for foreign national personnel).
U.S. national	DoD building pass	Prior to issuance.
Foreign national employed overseas	No access to classified information	Prior to employment (note 4).

Note 1.—Request ENTNAC only.
Note 2.—Except where personnel whose country of origin is a country listed at Appendix G, a BI will be required (See §154.18(1)).
Note 3.—A NAC not over 5 years old suffices unless there has been a break in employment over 12 months. Then a current NAC is required.
Note 4.—In such cases, the NAC shall consist of: (a) Host government law enforcement and security agency record checks at the city, state (province), and national level, and (b) DCII.

Appendix D—Reporting of Nonderogatory Cases

Background Investigation (BI) and Special Background Investigation (SBI) shall be considered as devoid of significant adverse information unless they contain information listed below:

1. Incidents, infractions, offenses, charges, citations, arrests, suspicion or allegations of illegal use or abuse of drugs or alcohol, theft or dishonesty, unreliability, irresponsibility, immaturity, instability or recklessness, the use of force, violence or weapons or actions that indicate disregard for the law due to multiplicity of minor infractions.

2. All indications of moral turpitude, heterosexual promiscuity, aberrant, deviant, or bizarre sexual conduct or behavior, transvestitism, transsexualism, indecent exposure; rape, contributing to the delinquency of a minor, child molestation, wife-swapping, window-peeping, and similar situations from whatever source. Unlisted full-time employment or education; full-time education or employment that cannot be verified by any reference or record source or that contains indications of falsified

education or employment experience. Records or testimony of employment, education, or military service where the individual was involved in serious offenses or incidents that would reflect adversely on the honesty, reliability, trustworthiness, or stability of the individual.

3. Foreign travel, education, visits, correspondence, relatives, or contact with persons from or living in a designated country (Appendix G).

4. Mental, nervous, emotional, psychological, psychiatric, or character disorders/behavior or treatment reported or alleged from any source.

5. Excessive indebtedness, bad checks, financial difficulties or irresponsibility, unexplained affluence, bankruptcy, or evidence of living beyond the individual's means.

6. Any other significant information relating to the criteria included in paragraphs (a) through (q) of § 154.7 or Appendix H of this part.

Appendix E—Personnel Security Determination Authorities

A. *Officials authorized to grant, deny or revoke personnel security clearances (Top Secret, Secret, and Confidential):*

1. Secretary of Defense and/or designee
2. Secretary of the Army and/or designee
3. Secretary of the Navy and/or designee
4. Secretary of the Air Force and/or designee
5. Chairman, Joint Chiefs of Staff and/or designee
6. Directors of the Defense Agencies and/or designee
7. Commanders of the Unified and Specified Commands and/or designee

B. *Officials authorized to grant Limited Access Authorizations:*

1. Secretaries of the Military Departments and/or designee
2. Director, Washington Headquarters Service for OSD and/or designee
3. Chairman, JCS and/or designee
4. Directors of the Defense Agencies and/or designee
5. Commanders, Unified and Specified Commands and/or designee

C. *Officials authorized to grant access to SCI:*

Director, NSA—for NSA

Director, DIA—for OSD, OJCS, and Defense Agencies

Senior Officers of the Intelligence Community of the Army, Navy, and Air Force—for their respective Military Departments, or their single designee.

D. Officials authorized to certify personnel under their jurisdiction for access to Restricted Data (to include Critical Nuclear Weapon Design Information): see enclosure to DoD Directive 5210.2.

E. Officials authorized to approve personnel for assignment to Presidential Support activities: The Executive Secretary to the Secretary and Deputy Secretary of Defense or designee.

F *Officials authorized to grant access to SIOP-ESI:*

1. Director of Strategic Target Planning
2. Director, Joint Staff, OJCS
3. Chief of Staff, U.S. Army
4. Chief of Naval Operations
5. Chief of Staff, U.S. Air Force
6. Commandant of the Marine Corps
7. Commanders of Unified and Specified Commands
8. The authority to grant access delegated above may be further delegated in writing by the above officials to the appropriate subordinates.

G. *Officials authorized to designate sensitive positions:*

1. Heads of DoD Components or their designees for critical-sensitive positions.

2. Organizational commanders for noncritical-sensitive positions.

H. *Nonappropriated Fund Positions of Trust:*

Officials authorized to designate nonappropriated fund positions of trust: Heads of DoD Components and/or their designees.

Appendix F—Guidelines for Conducting Prenomination Personal Interviews

A. *Purpose.* The purpose of the personal interview is to assist in determining the acceptability of an individual for nomination and further processing for a position requiring an SBI.

B. *Scope.* Questions asked during the course of a personal interview must have a relevance to a security determination. Care must be taken not to inject improper matters into the personal interview. For example, religious beliefs and affiliations, beliefs and opinions regarding racial matters, political beliefs and affiliations of a nonsubversive nature, opinions regarding the constitutionality of legislative policies, and affiliations with labor unions and fraternal organizations are not proper subjects for inquiry. Department of Defense representatives conducting personal interviews should always be prepared to explain the relevance of their inquiries. Adverse inferences shall not be drawn from the refusal of a person to answer questions the relevance of which has not been established.

C. *The interviewer.* Except as prescribed in paragraph B. above, persons conducting personal interviews normally will have broad latitude in performing this essential and important function and, therefore, a high premium must necessarily be placed upon the exercise of good judgment and common sense. To insure that personal interviews are conducted in a manner that does not violate lawful civil and private rights or discourage lawful political activity in any of its forms, or intimidate free expression, it is necessary that interviewers have a keen and well-developed awareness of and respect for the rights of interviewees. Interviewers shall never offer an opinion as to the relevance or significance of information provided by the interviewee to eligibility for access to SCI. If explanation in this regard is required, the interviewer will indicate that the sole function of the interview is to obtain information and that the determination of relevance or significance to the individual's eligibility will be made by other designated officials.

D. *Interview procedures.* 1. The Head of the DoD Component concerned shall establish uniform procedures for conducting the interview that are designed to elicit information relevant to making a determination of whether the interviewee, on the basis of the interview and other locally available information (DD 398, Personnel Security Investigation Questionnaire, personnel records, security file, etc.), is considered acceptable for nomination and further processing.

2. Such procedures shall be structured to insure the interviewee his full rights under the Constitution of the United States, the Privacy Act of 1974 and other applicable statutes and regulations.

E. *Protection of interview results.* All information developed during the course of the interview shall be maintained in personnel security channels and made available only to those authorities who have a need-to-know in connection with the processing of an individual's nomination for duties requiring access to SCI or those who need access to information either to conduct the required SBI or to adjudicate the matter of the interviewee's eligibility for access to SCI, or as otherwise authorized by Executive order or statute.

F. *Acceptability determination.* 1. The determination of the interviewee's acceptability for nomination for duties requiring access to sensitive information shall be made by the commander, or designee, of the DoD organization that is considering nominating the interviewee for such duties.

2. Criteria guidelines contained in DCID 1/14 upon which the acceptability for nomination determination is to be based shall be provided to commanders of DoD organizations who may nominate individuals for access to SCI and shall be consistent with those established by the Senior Officer of the Intelligence Community of the Component concerned with respect to acceptability for nomination to duties requiring access to SCI.

Appendix G—List of Designated Countries[1]

Country or area	Approximate control date
Afghanistan	April 1978.
Albania	January 1946.
Angola	November 1975.
Berlin (Soviet Sector)	April 1946.
Bulgaria	October 1946.
Cambodia (Kampuchea)	April 1975.
Cuba	December 1960.
Czechoslovakia	February 1948.
Estonia	June 1940.
Ethiopia	September 1974.
German Democratic Republic (East Germany).	April 1946.
Hungarian People's Republic (Hungary).	June 1947.
Iran	February 1978.
Iraq	July 1958.
Democratic People's Republic of Korea (North Korea).	September 1945.
Laos	June 1977.
Latvia	June 1940.
Libyan Arab Republic	September 1969.
Mongolian People's Republic (Outer Mongolia).	
Nicaragua	July 1979.
Poland	February 1947.
Rumania	December 1947.
Southern Yemen	June 1969.
Syria	February 1958.

[1] See Appendix C, DoD C-5102.21-M-1.

Country or area	Approximate control date
Union of Soviet Socialist Republics	October 1922.
Democratic Republic of Vietnam (North Vietnam).	December 1946.
South Vietnam	April 1975.
Yugoslavia	November 1945.
Kurile Islands and South Sakhalin (Karafuto).	September 1945.

Appendix H—Adjudication Policy

General. The following adjudication policy has been developed to assist DoD adjudicators in making determinations with respect to an individual's eligibility for employment or retention in sensitive duties or eligibility for access to classified information. Adjudication policy relative to access to sensitive compartmented information is contained in DCID 1/14.

While reasonable consistency in reaching adjudicative determinations is desirable, the nature and complexities of human behavior preclude the development of a single set of guidelines or policies that is equally applicable in every personnel security case. Accordingly, the following adjudication policy is not intended to be interpreted as inflexible rules of procedure. The following policy requires dependence on the adjudicator s sound judgment, mature thinking, and careful analysis as each case must be weighed on its own merits, taking into consideration all relevant circumstances, and prior experience in similar cases as well as the guidelines contained in the adjudication policy, which have been compiled from common experience in personnel security determinations.

Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis being placed on the seriousness, recency, frequency and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future. The listed "Disqualifying Factors" and "Mitigating Factors in this set of Adjudication Policies reflect the consideration of those factors of seriousness, recency, frequency, motivation, etc., to common situations and types of behavior encountered in personnel security adjudications, and should be followed whenever an individual case can be measured against this policy guidance. Common sense may occasionally necessitate deviations from this policy guidance, but such deviations should not be frequently made and must be carefully explained and documented.

The "Disqualifying Factors" provided herein establish some of the types of serious conduct under the criteria that can justify a determination to deny or revoke an individual's eligibility for access to classified information, or appointment to, or retention in sensitive duties. The "Mitigating Factors" establish some of the types of circumstances that may mitigate the conduct listed under the "Disqualifying Factors" Any determination must include a consideration of both the conduct listed under "Disqualifying Factors" and any circumstances listed under the appropriate or corresponding "Mitigating Factors"

The adjudication policy is subdivided into sections appropriate to each of the criteria provided in § 154.7 of this part, except § 154.7(i) for which conduct under any of the "Disqualifying Factors" of the adjudication policy or any other types of conduct may be appropriately included, if it meets the definition of § 154.7(i).

In all adjudications, the protection of the national security shall be the paramount determinant. In the last analysis, a final decision in each case must be arrived at by applying the standard that the issuance of the clearance or assignment to the sensitive position is "clearly consistent with the interests of national security.

Loyalty

(See § 154.7 (a) through (d)).

Basis: Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts threat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act. Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or with an espionage or other secret agent or similar representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means. Advocacy or use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means. Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organization, association, movement, group or combination of persons (hereafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Furnishing a representative of a foreign government information or data which could damage the national security of the United States.

2. Membership in an organization that has been characterized by the Department of Justice as one which meets the criteria in the above cited "Basis.

3. Knowing participation in acts that involve force or violence or threats of force or violence to prevent others from exercising their rights under the Constitution or to overthrow or alter the form of government of the United States or of any State.

4. Monetary contributions, service, or other support of the organization defined in "Basis above, with the intent of furthering the unlawful objectives of the organization.

5. Participation, support, aid, comfort or sympathetic association with persons, groups, organizations involved in terrorist activities, threats, or acts.

6. Evidence of continuing sympathy with the unlawful aims and objectives of such an organization, as defined in the "Basis" above.

7 Holding a position of major doctrinal or managerial influence in an organization as defined in the "Basis" above.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Lack of knowledge or understanding of the unlawful aims of the organization.

2. Affiliation or activity occurred during adolescent/young adult years (17–25), more than 5 years has passed since affiliation was severed, and affiliation was due to immaturity.

3. Affiliation for less than a year out of curiosity or academic interest.

4. Sympathy or support limited to the lawful objectives of the organization.

Foreign Preference

(See § 154.7(f)).

Basis: Performing or attempting to one's perform duties, acceptance and active maintenance of dual citizenship, or other acts conducted in a manner which serve or which could be expected to serve the interests of another government in preference to the interests of the United States.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. The active maintenance of dual citizenship, by one or more of the following:

a. Possession of a passport issued by a foreign nation and use of this passport to obtain legal entry into any sovereign state in preference to use of a U.S. passport.

b. Military service in the armed forces of a foreign nation or the willingness to comply with an obligation to so serve, or the willingness to bear arms at any time in the future on behalf of the foreign state.

c. Exercise or acceptance of rights, privileges or benefits offered by the foreign state to its citizens, (e.g., voting in a foreign election; receipt of honors or titles; financial compensation due to employment/retirement, educational or medical or other social welfare benefits), in preference to those of the United States.

d. Travel to or residence in the foreign state for the purpose of fulfilling citizenship requirements or obligations.

e. Maintenance of dual citizenship to protect financial interests, to include property ownership, or employment or inheritance rights in the foreign state.

f. Registration for military service or registration with a foreign office, embassy or consulate to obtain benefits.

2. Employment as an agent or other official representative of a foreign government, or seeking or holding political office in a foreign state.

3. Use of a U.S. Government position of trust or responsibility to influence decisions

in order to serve the interests of another government in preference to those of the United States.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Claim of dual citizenship is with a foreign country whose interests are not inimical to those of the United States and is based solely on applicant's or applicant's parent(s)' birth, the applicant has not actively maintained citizenship in the last ten years and indicates he or she will not in the future act so as to pursue this claim.

2. Military service while a U.S. citizen was in the armed forces of a state whose interests are not inimical to those of the United States and such service was officially sanctioned by United States authorities.

3. Employment is as a consultant only and services provided is of the type sanctioned by the United States Government.

Security Responsibility Safeguards

(See § 154.7 (g) and (e)).

Basis: Disregard of public law, Statutes, Executive Orders or Regulations, including violation of security regulations or practices, or unauthorized disclosure to any person of classified information, or of other information, disclosure of which is prohibited by Statute, Executive Order or Regulation.

Disqualifying Factors: (behavior falls within one or more of the following categories):

1. Deliberate or reckless disregard of security regulations, public law, statutes or Executive Orders which could have resulted in the loss or compromise of classified information.

2. Deliberate or reckless violations of security regulations, including, but not limited to, taking classified information home or carrying classified data while in a travel status without proper authorization, intentionally copying classified documents in order to obsure classification markings, disseminating classified information to cleared personnel who have no "need to know" or disclosing classified information, or other information, disclosure of which is prohibited by Statute, Executive Order or Regulation, to persons who are not cleared or authorized to receive it.

3. Pattern of negligent conduct in handling or storing classified documents.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Violation of security procedures was directly caused or significantly contributed to by an improper or inadequate security briefing, provided the individual reasonably relied on such briefing in good faith.

2. Individual is personally responsible for a large volume of classified information and the violation was merely administrative in nature.

3. Security violation was merely an isolated incident not involving deliberate or reckless violation of security policies, practices or procedures.

Criminal Conduct

(See § 154.7(h)).

Basis: Criminal or dishonest conduct.

When it is determined that an applicant for a security clearance, or a person holding a clearance, has engaged in conduct which would constitute a felony under the laws of the United States, the clearance of such person shall be denied or revoked unless it is determined that there are compelling reasons to grant or continue such clearance. Compelling reasons can only be shown by clear and convincing evidence of the following:

(a) The felonious conduct (1) did not involve an exceptionally grave offense; (2) was an isolated episode; and (3) the individual has demonstrated trustworthiness and respect for the law over an extended period since the offense occurred; or

(b) The felonious conduct (1) did not involve an exceptionally grave offense; (2) was an isolated episode; (3) was due to the immaturity of the individual at the time it occurred; and (4) the individual has demonstrated maturity, trustworthiness, and respect for the law since that time; or

(c) In cases where the individual has committed felonious conduct but was not convicted of a felony, there are extenuating circumstances which mitigate the seriousness of the conduct such that it does not reflect a lack of trustworthiness or respect for the law.

The above criteria supersede all criteria previously used to adjudicate criminal conduct involving commission of felonies under the Laws of the United States. Involvement in criminal activities which does not constitute a felony under the laws of the United States shall be evaluated in accordance with the criteria set forth below. (For purposes of this paragraph, the term "felony" means any crime punishable by imprisonment for more than a year. The term "exceptionally grave offense" includes crimes against the Federal Government, its instrumentalities, officers, employees or agents; or involves dishonesty, fraud; bribery or false statement; or involves breach of trust or fiduciary duty; or involves serious threat to life or public safety.)

Disqualifying Factors: (behavior falls within one or more of the following categories):

1. Criminal conduct involving:

a. Commission of a state felony.

b. Force, coercion, or intimidation.

c. Firearms, explosives, or other weapons.

d. Dishonesty or false statements, e.g. fraud, theft, embezzlement, falsification of documents or statements.

e. Obstruction or corruption of government functions.

f. Deprivation of civil rights.

g. Violence against persons.

2. Criminal conduct punishable by confinement for one year or more.

3. An established pattern of criminal conduct, whether the individual was convicted or not.

4. Failure to complete a rehabilitation program resulting from disposition of a criminal proceeding or violation of probation, even if the violation did not result in formal revocation of probation. Rehabilitation should not be considered a success or failure while the individual is still on parole/probation.

5. Criminal conduct that is so recent in time as to preclude a determination that recurrence is unlikely.

6. Close and continuing association with persons known to the individual to be involved in criminal activities.

7 Criminal conduct indicative of a serious mental aberration, lack of remorse, or insufficient probability of rehabilitative success, (e.g., spouse or child abuse).

8. Disposition:

a. Conviction.

b. Disposition on a legal issue not going to the merits of the crime.

c. Arrest or indictment pending trial when there is evidence that the individual engaged in the criminal conduct for which arrested or indicted.

9. Arrest record. In evaluating an arrest record, information that indicates that the individual was acquitted, that the charges were dropped or the subject of a "stet" or "nolle prosequi" that the record was expunged, or that the cause was dismissed due to error not going to the merits, does not negate the security significance of the underlying conduct. Personnel security determinations are to be made on the basis of all available information concerning a person's conduct and actions rather than the legal outcome of a criminal proceeding.

Mitigating Factors: (circumstances which may mitigate disqualifying information):

1. Immaturity attributable to the age of the individual at the time of the offense.

2. Extenuating circumstances surrounding the offense.

3. Circumstances indicating that the actual offense was less serious than the offense charged.

4. Isolated nature of the conduct.

5. Conduct occurring only in the distant past (such as more than 5 years ago) in the absence of subsequent criminal conduct.

6. Transitory conditions directly or significantly contributing to the conduct (such as divorce action, death in family, severe provocation) in the absence of subsequent criminal conduct.

Mental or Emotional Disorders

(See § 154.7(j)).

Basis: Any behavior or illness, including any mental condition, which, in the opinion of competent medical authority, may cause a defect in judgment or reliability with due regard to the transient or continuing effect of the illness and the medical findings in such case.

Disqualifying Factors: (behavior or condition falls within one or more of the following categories):

1. Diagnosis by competent medical authority (board certified psychiatrist or clinical psychologist) that the individual has an illness or mental condition which may result in a significant defect in judgment or reliability.

2. Conduct or personality traits that are bizarre or reflect abnormal behavior or instability even though there has been no history of mental illness or treatment, but which nevertheless, in the opinion of competent medical authority, may cause a defect in judgment or reliability.

3. A diagnosis by competent medical authority that the individual suffers from mental or intellectual incompetence or

mental retardation to a degree significant enough to establish or suggest that the individual could not recognize, understand or comprehend the necessity of security regulations, or procedures, or that judgment or reliability are significantly impaired, or that the individual could be influenced or swayed to act contrary to the national security.

4. Diagnosis by competent medical authority that an illness or condition that had affected judgment or reliability may recur even though the individual currently manifests no symptoms, or symptoms currently are reduced or in remission.

5. Failure to take prescribed medication or participate in treatment (including follow-up treatment or aftercare), or otherwise failing to follow medical advice relating to treatment of the illness or mental condition.

Mitigating Factors: (circumstances which may mitigate disqualifying information):

1. Diagnosis by competent medical authority that an individual's previous mental or emotional illness or condition that did cause significant defect in judgment or reliability is cured and has no probability of recurrence, or such a minimal probability of recurrence as to reasonably estimate there will be none.

2. The contributing factors or circumstances which caused the bizarre conduct or traits, abnormal behavior, or defect in judgment and reliability have been eliminated or rectified, there is a corresponding alleviation of the individual's condition and the contributing factors or circumstances are not expected to recur.

3. Evidence of the individual's continued reliable use of prescribed medication for a period of at least two years, without recurrence and testimony by competent medical authority that continued maintenance of prescribed medication is medically practical and likely to preclude recurrence of the illness or condition affecting judgment or reliability.

4. There has been no evidence of a psychotic condition, a serious or disabling neurotic disorder, or a serious character or personality disorder for the past 10 years.

Foreign Connections/Vulnerobilitv To Blackmail or Coercion

(See paragraph § 154.7(k)).

Basis: Vulnerability to coercion, influence, or pressure that may cause conduct contrary to the national interest. This may be (1) the presence of immediate family members or other persons to whom the applicant is bonded by affection or obligation in a nation (or areas under its domination) whose interests may be inimical to those of the United States, or (2) any other circumstances that could cause the applicant to be vulnerable.

Disqualifying Factors: (behavior falls within one or more of the following categories):

1. Indications that the individual now is being blackmailed, pressured or coerced by any individual, group, association, organization or government.

2. Indications that a vulnerable individual actually has been targeted and/or approached for possible blackmail, coercion or pressure by any individual, group, association, organization or government.

3. Indications that the individual has acted to increase the vulnerability for future possible blackmail, coercion or pressure by any individual, group, association, organization or governments, especially by or in a country designated hostile to the United States (See Appendix G). Indicators include, but are not limited to the following:

a. Failure to report to security officials any evidence, indication or suspicion that mail to relatives has been opened, unusually delayed or tampered with in any way, or that telephone calls have been monitored.

b. An increase in curiosity or official or quasi-official inquiries about the individual to relatives in the country where they reside occasioned by the receipt of mail, packages, telephone calls or visits from the individual.

c. Contact with, or visits by officials to the individual while visiting relatives in another country, to learn more about the individual, or the individual's employment or residence, etc.

d. Unreported attempts to obtain classified or other sensitive information or data by representatives of a foreign country.

4. Conduct or actions by the individual while visiting in a country hostile to the United States that increase the individual's vulnerability to be targeted for possible blackmail, coercion or pressure. These include, but are not limited to the following:

a. Violation of any laws of the foreign country where relatives reside during visits or through mailing letters or packages, (e.g., smuggling, currency exchange violations, unauthorized mailings, violations of postal regulations of the country, or any criminal conduct, including traffic violations) which may call the attention of officials to the individual.

b. Frequent and regular visits, correspondence, or telephone contact with relatives in the country where they reside, increasing the likelihood of official notice.

c. Failure to report to security officials those inquiries by friends or relatives for more than a normal level of curiosity concerning the individual's employment, sensitive duties, military service or access to classified information.

d. Repeated telephone or written requests to the foreign government officials for official favors, permits, visas, travel permission, or similar requests which increase the likelihood of official notice.

e. Reckless conduct, open or public misbehavior or commission of acts contrary to local customs or laws, or which violate the mores of the foreign country and increase the likelihood of official notice.

f. Falsification of documents, lying to officials, harassing or taunting officials or otherwise acting to cause an increase in the likelihood of official notice or to increase the individual's vulnerability because personal freedom could be jeopardized.

g. Commission of any illicit sexual act, drug purchase or use, drunkenness or similar conduct which increases the likelihood of official notice, or which increases the individual's vulnerability because personal freedom could be jeopardized.

5. Conduct or actions by the individual that increase the individual's vulnerability to possible coercion, blackmail or pressure, regardless of the country in which it occurred, including, but not limited to the following:

a. Concealment or attempts to conceal from an employer prior unfavorable employment history, criminal conduct, mental or emotional disorders or treatment, drug or alcohol use, sexual preference, or sexual misconduct described under that section below, or fraudulent credentials or qualifications for employment.

b. Concealment or attempts to conceal from immediate family members, or close associates, supervisors or coworkers, criminal conduct, mental or emotional disorders or treatment, drug or alcohol abuse, sexual preference, or sexual misconduct described under that section below.

Mitigating Factors (circumstances which may mitigate disqualifying infomration):

1. The individual:

a. Receives no financial assistance from and provides no financial assistance to persons or organizations in the designated country.

b. Has been in the United States for at least 5 years since becoming a U.S. citizen without significant contact with persons or organizations from the designated country (each year of active service in the United States military may be counted).

c. Has close ties of affection to immediate family members in the United States.

d. Has adapted to the life-style in the United States, established substantive financial or other associations with U.S. enterprises or community activities.

e. Prefers the way of life and form of government in the U.S. over the other country.

f. Is willing to defend the U.S. against all threats including the designated country in question.

g. Has not divulged the degree of association with the U.S. government or access to classified information to individuals in the designated country in question.

h. Has not been contacted or approached by anyone or any organization from a designated country to provide information or favors, or to otherwise act for a person or organization in the designated country in question.

i. Has promptly reported to proper authorities all attempted contacts, requests or threats from persons or organizations from the designated country.

j. The individual is aware of the possible vulnerability to attempts of blackmail or coercion and has taken positive steps to reduce or eliminate such vulnerability.

Financial Matters

(See § 154.7(1)).

Basis: Excessive indebtedness, recurring financial difficulties, or unexplained affluence.

Disqualifying Factors: (behavior falls within one or more of the following categories):

1. History of bad debts, garnishments, liens, repossessions, unfavorable judgments, delinquent or uncollectable accounts or debts

written off by creditors as uncollectable losses with little or no apparent or voluntary effort by the individual to pay amounts owed.

2. Bankruptcy:

a. Due to financial irresponsibility, or

b. With continuing financial irresponsibility thereafter.

3. Indebtedness aggravated or caused by gambling, alcohol, drug abuse, or other factors indicating poor judgement or financial irresponsibility.

4. A history or pattern of living beyond the person's financial means or ability to pay, a lifestyle reflecting irresponsible expenditures that exceed income or assets, or a history or pattern of writing checks not covered by sufficient funds or on closed accounts.

5. Indication of deceit or deception in obtaining credit or bank accounts, misappropriation of funds, income tax evasion, embezzlement, fraud, or attempts to evade lawful creditors.

6. Indifference to or disregard of financial obligations or indebtedness or intention not to meet or satisfy lawful financial obligations or when present expenses exceed net income.

7 Unexplained affluence or income derived from illegal gambling, drug trafficking or other criminal or nefarious means.

8. Significant unexplained increase in an individual's net worth.

Mitigating Factors: (circumstances which may mitigate disqualifying information):

1. Scheduled program or systematic efforts demonstrated over a period of time (generally one year) to satisfy creditors, to acknowledge debts and arrange for reduced payments, entry into debt-consolidation program or seeking the advice and assistance of financial counselors or court supervised payment program.

2. Change to a more responsible lifestyle, reduction of credit card accounts, and favorable change in financial habits over a period of time (generally one year).

3. Stable employment record and favorable financial references.

4. Unforeseen circumstances beyond the individual's control (e.g. a major or catastrophic illness or surgery, accidental loss of property or assets not covered by insurance, decrease or cutoff of income, indebtedness resulting from court judgments not due to the individual's financial mismanagement), provided the individual demonstrates efforts to respond to the indebtedness in a reasonable and responsible fashion.

5. Indebtedness due to failure of legitimate business efforts or business-related bankruptcy without evidence of fault or financial irresponsibility on the part of the individual, irresponsible mismanagement of an individual's funds by another who had fiduciary control or access to them without the individual's knowledge, or loss of assets as a victim of fraud or deceit, provided the individual demonstrates efforts to respond to the indebtedness in a reasonable and responsible fashion.

6. Any significant increase in net worth was due to legitimate business interests, inheritance or similar legal explanation.

Alcohol Abuse

(See paragraph § 154.7(m)).

Basis: Habitual or episodic use of intoxicants to excess.

Disqualifying Factors: (behavior falls within one or more of the following categories):

1. Habitual or episodic consumption of alcohol to the point of impairment or intoxication.

2. Alcohol-related incidents such as traffic violations, fighting, child or spouse abuse, non-traffic violation or other criminal incidents related to alcohol use.

3. Deterioration of the individual's health or physical or mental condition due to alcohol use or abuse.

4. Drinking on the job, reporting for work in an intoxicated or "hungover" condition, tardiness or absences caused by or related to alcohol abuse, and impairment or intoxication occurring during, and immediately following, luncheon breaks.

5. Refusal or failure to accept counseling or professional help for alcohol abuse or alcoholism.

6. Refusal or failure to follow medical advice relating to alcohol abuse treatment or to abstain from alcohol use despite medical or professional advice.

7 Refusal or failure to significantly decrease consumption of alcohol or to change life-style and habits which contributed to past alcohol related difficulties.

8. Indications of financial or other irresponsibility or unreliability caused by alcohol abuse, or discussing sensitive or classified information while drinking.

9. Failure to cooperate in or successfully complete a prescribed regimen of an alcohol abuse rehabilitation program.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Successfully completed an alcohol awareness program following two or less alcohol-related incidents and has significantly reduced alcohol consumption, and made positive changes in life-style and improvement in job reliability.

2. Successfully completed an alcohol rehabilitation program after three or more alcohol-related incidents, has significantly reduced or eliminated alcohol consumption in accordance with medical or professional advice, regularly attended Alcoholics Anonymous or similar support organization for approximately one year after rehabilitation, and abstained from the use of alcohol for that period of time.

3. Whenever one of the situations listed below occurs, the individual must have successfully completed an alcohol rehabilitation or detoxification program and totally abstained from alcohol for a period of approximately two years:

a. The individual has had one previously failed rehabilitation program and subsequent alcohol abuse or alcohol related incidents.

b. The individual has been diagnosed by competent medical or health authority as an alcoholic, alcoholic dependent or chronic abuser of alcohol.

4. Whenever the individual has had repeated unsuccessful rehabilitation efforts and has continued drinking or has been involved in additional alcohol related incidents then the individual must have successfully completed an alcohol rehabilitation or detoxification program, totally abstained from alcohol for a period of at least three years and maintained regular and frequent participation in meetings of Alcoholics Anonymous or similar organizations.

5. If an individual's alcohol abuse was surfaced solely as a result of self referral to an alcohol abuse program and there have been no precipitating factors such as alcohol related arrests or incidents action will not normally be taken to suspend or revoke security clearance solely on the self referral for treatment.

Drug Abuse

(See § 154.7(n)).

Basis: Illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis, or other dangerous drug.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Abuse of cannabis only, not in combination with any other substance.

a. Experimental abuse, defined as an average of once every two months or less, but no more than six times.

b. Occasional abuse, defined as an average of not more than once a month.

c. Frequent abuse, defined as an average of not more than once a week.

d. Regular abuse, defined as an average of more than once a week.

e. Compulsive use, habitual use, physical or psychological dependency, or use once a day or more on the average.

2. Abuse of any narcotic, psychoactive substance or dangerous drug (to include prescription drugs), either alone, or in combination with another or cannabis, as follows:

a. Experimental abuse, defined as an average of once every two months or less, but no more than six times.

b. Occasional abuse, defined as an average of not more than once a month.

c. Frequent abuse, defined as an average of not more than once a week.

d. Regular abuse, defined as an average of more than once a week.

e. Compulsive use, habitual use, physical or psychological dependency, or use on an average of once a day or more on the average.

3. Involvement to any degree in the unauthorized trafficking, cultivation, processing, manufacture, sale, or distribution of any narcotic, dangerous drug, or cannabis or assistance to those involved in such acts whether or not the individual was arrested for such activity.

4. Involvement with narcotics, dangerous drugs or cannabis under the following conditions whether or not the individual engages in personal use:

a. Possession.

b. Possession of a substantial amount, more than could reasonably be expected for personal use.

c. Possession of drug paraphernalia for cultivating, manufacturing or distributing (e.g., possession of gram scales, smoking devices, needles for injecting intravenously,

empty capsules or other drug production chemical paraphernalia.

d. Possession of personal drug paraphernalia such as needles for injecting, smoking devices and equipment, etc.

5. Information that the individual intends to continue to use (regardless of frequency) any narcotic, dangerous drug or cannabis. Note.—There is no corresponding Mitigating Factor for this Disqualifying Factor because it is DoD policy that, as a general rule, if any individual expresses or implies any intent to continue use of any narcotic, dangerous drug, or other controlled substance, including marijuana and hashish, without a prescription, in any amount and regardless of frequency, it is to be considered contrary to the national interest and the interests of national security to grant or allow retention of a security clearance for access to classified information for that individual.)

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Abuse of cannabis only, as follows: (Use this to assess Disqualifying Factor 1)

a. Experimental abuse, which occurred more than six months ago and the individual has demonstrated an intent not to use cannabis or any other narcotic, psychoactive substance or dangerous drug in the future.

b. Occasional abuse of cannabis, which occurred more than 12 months ago, and the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future.

c. Frequent abuse of cannabis occurred more than 18 months ago, and the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future.

d. Regular abuse of cannabis occurred more than two years ago, and the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future.

e. Compulsive, habitual use or physical or psychological dependency on cannabis occurred more than three years ago, the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future and has demonstrated a stable lifestyle, with no indication of physical or psychological dependence.

2. For abuse *other than* cannabis alone. Use is considered cumulative and each separate substance must not be considered separately. (Use this to assess Disqualifying Factor 2).

a. Experimental abuse occurred more than 12 months ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future and has successfully completed a drug rehabilitation program.

b. Occasional abuse occurred more than two years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle and satisfactory employment record and has successfully completed a drug rehabilitation program.

c. Frequent abuse occurred more than three years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle, including satisfactory employment record with no further indication of drug abuse, and has successfully completed a drug rehabilitation program.

d. Regular abuse occurred more than four years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle, including satisfactory employment record with no further indication of drug abuse, and has successfully completed a drug rehabilitation program.

e. Compulsive abuse occurred more than five years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle, including satisfactory employment record with no further indication of drug abuse, and has successfully completed a drug rehabilitation program.

3. Use this only to assess conduct under Disqualifying Factor 3.

a. Involvement in trafficking, cultivation, processing, manufacture, sale or distribution occurred more than five years ago, the individual has demonstrated an intent not to do so in the future, and has a stable lifestyle and satisfactory employment record and has not been involved in any other criminal activity.

b. Cultivation was for personnel use only, in a limited amount for a limited period and the individual has not been involved in similar activity or other criminal activity for more than three years and has demonstrated intent not to do so again in the future.

c. Illegal sale or distribution involved only the casual supply to friends of small amounts (not for profit or to finance a personal supply) and occurred on only a few occasions more than two years ago, and the individual has demonstrated an intent not to do so again in the future.

4. Use this only to assess conduct under Disqualifying Factor 4 in the corresponding subparagraphs.

a. No possession of drugs or other criminal activity in the last two years.

b. The individual has not possessed drugs in the last three years, has had no other criminal activity in the last three years and has demonstrated an intent not to be involved in such activity in the future.

c. The individual has not possessed drug paraphernalia used in processing, manufacture or distribution for the last five years, has had no other criminal activity in the last five years and has demonstrated an intent not to be involved in such activity in the future.

d. The individual has not possessed drug paraphernalia for personal use in the last year, has had no other criminal activity in the last two years and has demonstrated an intent not to be involved in such activity in the future.

1. *Narcotic.* Opium and opium derivatives or synethtic substitutes.

2. *Dangerous Drug.* Any of the nonnarcotic drugs which are habit forming or have a potential for abuse because of their stimulant, depressant or hallucinogenic effect.

3. *Cannabis.* The intoxicating products of the hemp plant, Cannabis Sativa, including but not limited to marijuana, hashish, and hashish oil.

Falsification

(See § 154.7(o)).

Basis: Any knowing and willful falsification, cover-up, concealment, misrepresentation, or omission of a material fact from any written or oral statement, document, form or other representation or device used by the Department of Defense or any other Federal agency.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Deliberate omission, concealment, falsification or misrepresentation of relevant and material facts including, but not limited to information concerning arrests, drug abuse or treatment, alcohol abuse or treatment, treatment for mental or emotional disorders, bankruptcy, military service information, organizational affiliations, financial problems, employment, foreign travel, or foreign connections from any Personnel Security Questionnaire, Personal History Statement or similar form used by any Federal agency to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance or access eligibility, or award fiduciary responsibilities.

2. Deliberately providing false or misleading information concerning any of the relevant and material matters listed above to an investigator, employer, supervisor, security official or other official representative in connection with application for security clearance or access to classified information or assignment to sensitive duties.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. The information was not relevant or material to reaching a security clearance or access determination.

2. The falsification was an isolated incident in the distant past (more than 5 years) and the individual subsequently had accurately provided correct information voluntarily during reapplication for clearance or access and there is no evidence of any other falsification misrepresentation or dishonest conduct by the individual.

3. The behavior was not willful.

4. The falsification was done unknowingly or without the individual's knowledge.

5. The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts of falsification.

6. Omission of material fact was caused by or significantly contributed to by improper or inadequate advice of authorized personnel, provided the individual reasonably relied on such improper or inadequate advice in good faith, and when the requirement subsequently was made known to the individual, the previously omitted information was promptly and fully provided.

Refusal to Answer

(See § 154.7(p)).

Basis: Failing or refusing to answer or to authorize others to answer questions or provide information required by a Congressional committee, court or agency in the course of an official inquiry whenever such answers or information concern relevant and material matters pertinent to an

evaluation of the individual's trustworthiness, reliability and judgment.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Failure or refusal to provide full, frank and truthful answers or to authorize others to do so, in connection with any application for security clearance or access, to include required non-disclosure and security termination agreements.

2. Failure or refusal to provide appropriate investigative forms, including release forms, for use by investigators in obtaining information from medical institutions, agencies or personal physicians, therapists, psychologists, psychiatrists, counselors, rehabilitation treatment, agencies or personnel; from police or criminal agencies, probation agencies or officers, financial institutions, employers, Federal or State agencies, professional associations or any other organizations as required as part of an investigation for security clearance, access, appointment or assignment to sensitive duties.

3. Failure or refusal to authorize others to provide relevant and material information necessary to reach a security clearance determination.

4. Failure or refusal to answer questions or provide information required by a Congressional committee, court or agency when such answers or information concern relevant and material matters pertinent to evaluating the individual's trustworthiness, reliability and judgment.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. The individual was unable to provide the information despite good faith and reasonable efforts to do so.

2. The individual was unaware of the necessity to provide the information requested or of the possible consequences of such refusal or failure to provide the information; and; upon being made aware of this requirement, fully, frankly and truthfully provided the requested information.

3. The individual sought and relied in good faith on information and advice from legal counsel or other officials that the individual was not required to provide the information requested, and, upon being made aware of the requirement, fully, frankly and truthfully provided the requested information.

Sexual Misconduct

(See § 154.7(q)).

Basis: Acts of sexual misconduct or perversion indicative of moral turpitude, poor judgment, or lack of regard for the laws of society.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. The conduct involves:

a. Acts performed or committed in open or public places.

b. Acts performed with a minor, or with animals.

c. Acts involving inducement, coercion, force, violence or intimidation of another person.

d. Prostitution, pandering or the commission of sexual acts for money or other remuneration or reward.

e. Sexual harassment.

f. Self mutilation, self punishment or degradation.

g. Conduct that involves spouse swapping, or group sex orgies.

h. Adultery that is recent, frequent and likely to continue and has an adverse effect on good order or discipline within the workplace (e.g., officer/enlisted, supervisor/subordinate, instructor/student).

i. Conduct determined to be criminal in the locale in which it occurred.

j. Deviant or perverted sexual behavior which may indicate a mental or personality disorder (e.g., transexualism, transvestism, exhibitionism, incest, child molestation, voyeurism, bestiality, or sodomy.)

2. The conduct has been recent.

3. The conduct increases the individual's vulnerability to blackmail, coercion or pressure.

4. Evidence that the applicant has intention or is likely to repeat the conduct in question.

Mitigating Factors (circumstances which may mitigate qualifying information):

1. Sexual misconduct occurred on an isolated basis during or preceding adolescence with no evidence of subsequent conduct of a similar nature, and clear indication that the individual has no intention of participating in such conduct in the future.

2. Sexual misconduct was isolated, occurred more than 3 years ago, and there is clear indication that the individual has no intention of participating in such conduct in the future.

3. The individual was a minor or was the victim of force, or violence by another.

4. The individual has successfully completed professional therapy, has been rehabilitated and diagnosed by competent medical authority that misconduct is not likely to recur.

5. Demonstration that the individual's sexual misconduct can no longer form the basis for vulnerability to blackmail, coercion or pressure.

Appendix I—Overseas Investigations

1. Purpose

The purpose of this appendix is to establish, within the framework of this part, 32 CFR Part 361 and Defense Investigative Service Manual 20-1, standardized procedures for the military investigative agencies to follow when they perform administrative and investigative functions on behalf of DIS at overseas locations.

2. Type Investigation

This part describes in detail Background Investigations (BI) which are conducted for Limited Access Authorizations and those Special Investigative Inquiries conducted for post-adjudicative purposes. Hereafter they are referred to as LAA and Post-adjudicative cases and are briefly described in paragraphs a and b below:

a. *Limited access authorization.* A level of access to classified defense information that may be granted to a non-U.S. citizen under certain conditions, one of which is that a BI must have been completed with satisfactory results. § 154.16(d) further describes LAA cases.

b. *Post-adjudication investigation.* A Personnel Security Investigation (PSI) predicated on new, adverse or questionable security, suitability or hostage information that arises and requires the application of investigation procedures subsequent to adjudicative action on a DoD-affiliated person's eligibility for continued access to classified information, assignment to or retention in sensitive duties or other designated duties requiring such investigation. While these cases are normally predicated on the surfacing of unfavorable information subsequent to favorable adjudication, they may also be opened when favorable information is offered to counter a previous unfavorable adjudication. § 154.9(c)(3) further describes these cases.

3. General

a. As a rule, investigative activity in most PSIs occurs in the U.S. even when the Subject is at an overseas location. Therefore, the submission of requests for investigation to the Personnel Investigation Center (PIC) at Baltimore is a required procedure as it ensures uniform application of DoD PSI policy and the efficient dispatch and coordination of leads.

b. When the purpose of the investigation is for an LAA or post-adjudication on a Subject overseas, much, if not all of the leads are at an overseas location. While these cases also may be submitted directly to PIC for action, there is an inherent delay in the mailing of the request, the exchange of leads and reports with PIC, and transmittal of the reports back to the requester. To avoid this delay, the military investigative agencies, when acting for DIS overseas in accordance with 32 CFR Part 361 may, with their Headquarters approval, accept these requests for investigations, initiate them and disseminate the results from the same level as they open, close, and disseminate their own cases. Usually this will greatly improve response time to the requester.

c. Under the procedures in paragraph b., above, DIS will not often be in a position to directly exercise its responsibility for control and direction until the case or lead is in progress or even completed; therefore, adherence to the policy stated in referenced documents, and as modified herein, is mandatory. When the policy of the military investigative agency is at variance with the above, the matter will be referred to the respective headquarters for resolution.

d. Since DIS is ultimately responsible for the personnel security product, it must be kept informed of all such matters referred to in this appendix. For instance, when the investigative agency overseas receives a DD Form 1879, Request for Personnel Security Investigation, which sets forth an issue outside DIS jurisdiction, it will reject the request, inform the requester of the reason and furnish an information copy of the DD Form 1879 and rejection letter to PIC. When the issue/jurisdiction is unclear to the investigative agency, the DD Form 1879 and the perceived jurisdictional question should be promptly forwarded to DIS for action and, if appropriate, to the component's headquarters for information. Questions on the interpretation of DIS or DoD policy and Directives pertaining to individual PSI cases

can usually be resolved through direct communications with PIC.

e. 32 CFR Part 361 establishes the supporting relationship of the military investigative agencies to DIS in overseas areas, and DIS provides these agencies with copies of relevant policy and interpretive guidance. For these reasons, the investigative agency vice the requester, is responsible for evaluating the request, processing it, collecting and evaluating the results within their jurisdiction for sufficiency, and forwarding the completed product to the appropriate activity.

f. The magnitude of operations at PIC requires that methods of handling LAA and post-adjudicative cases be consistent to the maximum extent possible. For this reason, the procedures for LAA cases are nearly identical to those for post-adjudicative cases. Briefly, the main exceptions are:

(1) The notification to PIC that a post-adjudication case has been opened will be by message, since an issue is present at the outset, whereas notification of an LAA case should normally be by mail.

(2) The scope of the LAA investigation is 10 years or since the person's 18th birthday, whichever is shortest, whereas the leads in a post-djudication case are limited to resolving the issue.

4. Jurisdiction

a. As set-forth in 32 CFR Part 361 DIS is responsible for conducting all DoD PSIs in the 50 states, District of Columbia, and Puerto Rico, and will request the military departments to accomplish investigative requirements elsewhere. The military investigative agencies in overseas locations routinely respond to personnel security investigative leads for DIS.

b. DIS jurisdiction also includes investigation of subversive affiliations, suitability information, and hostage situations when such inquiries are required for personnel security purposes; however, jurisdiction will rest with the military investigative agencies, FBI and/or civil authorities as appropriate when the alleged subversion or suitability issue represents a violation of law or, in the case of a hostage situation, there is an indication that the person concerned is actually being pressured, coerced, or influenced by interests inimical to the United States, or that hostile intelligence is taking action specifically directed against that person. Specific policy guidance on the applicability of these procedures and the jurisdictional considerations are stated in § 154.9.

5. Case Opening

a. A request for investigation must be submitted by using DD Form 1879 and accompanied by supporting documentation unless such documentation is not immediately available, or the obtaining of documentation would compromise a sensitive investigation. Upon receipt of the request, the military investigative component will identify the issue(s), scope the leads, and ensure that the proposed action is that which is authorized for DIS as delineated in this part, 32 CFR Part 361 and Defense Investigative Service Manual 201-1.

b. Upon such determination, the Component will prepare an Action Lead Sheet (ALS) which fully identifies the Subject and the scope of the case, and specifies precisely the leads which each investigative component (including DIS/PIC when appropriate) is to conduct.

c. Case opening procedures described above are identical for LAA and post-adjudication cases except with respect to notification of case opening to PIC:

(1) Post-adjudication Cases. These cases, because they involve an issue, are potentially sensitive and must be examined as early as possible by PIC for conformity to the latest DoD policy. Accordingly, the initial notification to PIC of case openings will always be by message. The message will contain at a minimum:

(a) Full identification of the subject;

(b) A narrative describing the allegation/facts in sufficient detail to support opening of the case; and

(c) A brief listing of the leads that are planned.

The DD Form 1879 and supporting documents, along with the agency's ALS, should be subsequently mailed to PIC.

(2) LAA Cases. The notification to PIC of case opening will normally be accomplished by mailing the DD Form 1879, DD Form 398 (Personal History Statement), a copy of the ALS, and any other supporting documents to PIC. Message notification to PIC in LAA cases will only be required if there is a security or suitability issue apparent in the DD Form 1879 or supporting documents.

(d) Beyond initial actions necessary to test allegation for investigative merit and jurisdiction, no further investigative action should commence until the notification of case opening to PIC has been dispatched.

(e) PIC will promptly respond to the notification of case opening by mail or message specifying any qualifying remarks along with a summary of previously existing data. PIC will also provide a DIS case control number (CCN). This number must be used by all components on all case related paperwork/reports.

(The investigating agency may assign its unique service CCN for interim internal control; however, the case will be processed, referenced, and entered into the DCII by the DIS case control number.) The first five digits of the DIS CCN will be the Julian date of the case opening when received at DIS.

6. Case Processing

a. The expected completion time for leads in LAA cases is 50 calendar days and for post-adjudication cases, 30 days, as computed from the date of receipt of the request. If conditions preclude completion in this time period, a pending report of the results to date, along with an estimated date of completion will be submitted to PIC.

b. Copies of all ALSs will be furnished to PIC. In addition, PIC will be promptly notified of any significant change in the scope of the case, or the development of an investigative issue.

c. The procedures for implementing the Privacy Act in PSI cases are set in DIS Manual 20-1-M 1. Any other restrictions on the release of information imposed by an overseas source or by regulations of the country where the inquiry takes place will be clearly stated in the report.

d. The report format for these cases will be that used by the military investigative agency.

e. Investigative action outside the jurisdictional area of an investigative component office may be directed elsewhere by ALS as needed in accordance with that agency's procedures and within the following geographical considerations:

(1) Leads will be sent to PIC if the investigative action is in the United States, District of Columbia, Puerto Rico, American Samoa, Bahama Islands, the U.S. Virgin Islands, and the following islands in the Pacific: Wake, Midway, Kwajalin, Johnston, Carolines, Marshalls, and Eniwetok.

(2) Leads to areas not listed above may be dispatched to other units of the investigative agency or even to another military agency's field units if there is an agreement or memorandum of understanding that provides for such action. For case accountability purposes, copies of such "lateral" leads must be sent to the PIC.

(3) Leads that cannot be dispatched as described in paragraph (2) above, and those that must be sent to a non-DoD investigative agency should be sent to PIC for disposition.

f. The Defense Investigative Manual calls for obtaining PIC approval before conducting a Subject interview on a post-adjudicative investigation. To avoid the delay that compliance with this procedure would create, a military investigative component may conduct the interview provided:

(1) All other investigative leads have been completed and reviewed.

(2) The CCN has been received, signifying DIS concurrence with the appropriateness of the investigation.

(3) Contrary instructions have not been received from the PIC.

(4) The interview is limited to the resolution of the relevant issues disclosed by the investigation.

g. Notwithstanding the provisions of paragraphs f.(1) through (4) of this Appendix, if time is of the essence due to imminent transfer of the subject, a subject interview may be conducted at the discretion of the investigative agency.

7. Case Responsibility LAA and PA

Paragraph 3, above, describes the advantages of timely handling which accrue when the military investigative components act for DIS overseas. These actions for DIS may, however, be limited by the component's staffing and resource limitations, especially since some cases require more administration and management than others. Post-adjudication case leads, for instance, will normally be within the geographical jurisdiction of the component that accepted the request for investigation; therefore, relatively little case management is required. In contrast, LAA cases may require leads world-wide, and, therefore, create more complex case management and administration, especially in the tracking, monitoring and reviewing of leads outside the component's geographical area. Accordingly,

an investigative component will accept the case from the requester, but only assign itself the appropriate leads within its own geographical jurisdiction and send the balance to PIC for appropriate disposition in accordance with the following:

a. The investigative agency will accept the request for investigation (thereby saving time otherwise lost in mailing to PIC) but limit its involvement in case management by extracting only those leads it will conduct or manage locally.

b. The agency should then prepare an ALS that shows clearly what leads it will cover and send PIC a copy of this ALS, along with the request for investigation and any other appropriate documentation. It must be clear in the ALS that PIC is to act on all those leads that the unit has not assigned to itself.

c. PIC, as case manager, will assume responsibility for the complete investigative package and, upon receipt of the last lead, will send the results to the appropriate activity.

d. The agency that accepted the case and assigned itself leads may send a copy of its report to the activity in the "Results to" block at the same time it sends the originals to PIC. If so, the letter of transmittal must inform the recipient that these reports are only a portion of the investigation, and that the balance will be forthcoming from PIC. Similarly, PIC must be informed of which investigative reports were disseminated. (This is normally done by sending PIC a copy of the letter of transmittal.)

8. Scope.

a. *LAA.* The scope of investigation is 10 years or from age 18, whichever is the shortest period.

b. Post-Adjudication Cases. There is no standard scope. The inquiries conducted will be limited to those necessary to resolve the issue(s).

9. Case Closing: LAA and PA

a. Whether the investigative component or PIC closes out an investigation, there are three key elements to consider:

(1) The investigative results must be reviewed for quality and conformance to policy.

(2) The results must be sent to the activity listed in the "Results to" block of the DD Form 1879.

(3) PIC must be informed whether or not any dissemination was made by the investigative agency and, if so, what reports were furnished.

b. Investigative results may also be sent to a requester on higher level activity that makes a statement of need for the results. In such instances, a copy of the letter requesting the results and the corresponding letter of transmittal must be sent to PIC for retention.

c. When an investigative agency disseminates reports for PIC, it may use the transmittal documents, letters, or cover sheets it customarily uses for its own cases.

d. The material that is to be provided to PIC will consist of: The originals of all reports, and all other case documentation, such as original statements, confidential source sheets, interview logs, requests for investigation, letters of transmittal to adjudicators/requesters, or communications with the requester, such as those that modify the scope of the investigation.

e. For DIS to fulfill its responsibilities under DoD 5220.22-R and the Privacy Act of 1974 all inquiries conducted in its behalf must be set forth in an ROI for the permanent file, whether the case is completed, terminated early, or referred to another agency.

10. Referral

A case may require premature closing at any time after receipt of the DD Form 1879 by the investigative component if the information accompanying the request, or that which is later developed, is outside DIS jurisdiction. For example, alleged violations of law, a counterintelligence matter, or actual coercion/influence in a hostage situation (see paragraph 4.b. of this Appendix) must be referred to the appropriate agency, and DIS involvement terminated. The requester will be informed by letter or indorsement to the DD Form 1879 of the information developed that, due to jurisdictional consideration, the case was referred to (fill in appropriate address) and that the DIS case is closed. The agency to which referral was made and PIC will be furnished with the results of all investigations conducted under DIS auspices. DIS, however, has an interest in the referral agency's actions and no information should be solicited from that agency.

Appendix J—ADP Position Categories and Criteria for Designating Positions

OMB Circular A-71 (and Transmittal Memo #1), July 1978 OMB Circular A-130, December 12, 1985, and FPM Letter 732, November 14, 1978 contain the criteria for designating positions under the existing categories used in the personnel security program for Federal civilian employees as well as the criteria for designating ADP and ADP related positions. This policy is outlined below:

ADP Position Categories

1. Critical-Sensitive Positions.

ADP-I positions. Those positions in which the incumbent is responsible for the planning, direction, and implementation of a computer security program; major responsibility for the direction, planning and design of a computer system, including the hardware and software; or, can access a system during the operation or maintenance in such a way, and with a relatively high risk for causing grave damage, or realize a significant personal gain.

2. Noncritical-Sensitive Positions

ADP-II positions. Those positions in which the incumbent is responsible for the direction, planning, design, operation, or maintenance of a computer system, and whose work is technically reviewed by a higher authority of the ADP-I category to insure the integrity of the system.

3. Nonsensitive Positions.

ADP-III positions. All other positions involved in computer activities.

In establishing the categories of positions, other factors may enter into the determination, permitting placement in higher or lower categories based on the agency's judgement as to the unique characteristics of the system or the safeguards protecting the system.

Criteria for Designating Positions

Three categories have been established for designating computer and computer-related positions—ADP-I, ADP-II, and ADP-III. Specific criteria for assigning positions to one of these categories is as follows:

Category	Criteria
ADP-I	Responsibility or the development and administration of agency computer security programs, and also including direction and control of risk analysis and/or threat assessment. Significant involvement in life-critical or mission-critical systems. Significant involvement in life-critical or mission-critical systems. Responsibility for the preparation or approval of data for input into a system which does not necessarily involve personal access to the system, but with relatively high risk for effecting grave damage or realizing significant personal gain. Relatively high risk assignments associated with or directly involving the accounting, disbursement, or authorization for disbursement from systems of (1) dollar amounts of $10 million per year or greater, or (2) lesser amounts if the activities of the individual are not subject to technical review by higher authority in the ADP-I category to ensure the integrity of the system. Positions involving *major* responsibility for the direction planning, design, testing, maintenance, operation, monitoring, and/or management of systems hardware and software. Other positions as designated by the agency head that involve relatively high risk for effecting grave damage or realizing significant personal gain.
ADP-II	Responsibility for systems design, operation, testing, maintenance, and/or monitoring that is carried out under technical review of higher authority in the ADP-I category; includes, but is not limited to: (1) access to and/or processing of proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts; (2) accounting; disbursement, or authorization for disbursement from systems of dollar amounts less than $10 million per year. Other positions are designated by the agency head that involve degree of access to a system that creates a significant potential for damage or personal gain less than that in ADP-I positions.
ADP-III	All other positions involved in Federal computer activities.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 1, 1987.

[FR Doc. 87-7616 Filed 4-7-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 628

Endowment Challenge Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Endowment Challenge Grant Program, formerly called the Endowment Grant Program. The regulatory changes conform the regulations to the changes made to the statute governing the Endowment Challenge Grant Program, Parts C and D of Title III of the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1986, Pub. L. 99-498.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the U.S. Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Caroline Gillin, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, DC 20026. Telephone (202) 732-3308.

SUPPLEMENTARY INFORMATION:

A. Background

The Endowment Challenge Grant Program is one of several programs authorized by Title III of the HEA and known collectively as the Institutional Aid Programs. Under the Endowment Challenge Grant Program, the Secretary awards grants to eligible institutions of higher education to enable them to establish or increase endowment funds. Grantees must match the Federal grant funds that they receive. The Federal grant and the institutional match are called the endowment fund corpus. Institutions must invest and may not spend the endowment fund corpus for a 20-year grant period. When the grant expires, the institution may use the endowment fund corpus for any educational purpose.

In general, a grantee may spend up to 50 percent of endowment fund income earned before the date of each proposed expenditure. Endowment fund income is an amount equal to the difference between the total value of the endowment fund and the endowment fund corpus. The total value of the endowment fund includes the endowment fund corpus plus appreciation (or minus depreciation, if applicable), cumulative interest and dividends. A grantee may use that 50 percent of endowment fund income to defray any expenses necessary to operate the institution. A grantee must invest the other 50 percent of endowment fund income for the entire grant period. When the grant expires, the grantee may use all the income for any educational purpose.

B. Explanation of Changes

The Higher Education Amendments of 1986, Public Law 99-498, amended the authorizing statute governing the Endowment Challenge Grant Program, Parts C and D of Title III of the HEA, in several areas. The Secretary is amending the regulations to conform the regulations to the amended statute.

These changes include—

Changing the name of the program to the Endowment Challenge Grant Program;

Deleting the requirement that an applicant for an endowment challenge grant submit a long-range development plan;

Adding a funding preference for recipients of Strengthening Historically Black Colleges and Universities Program grants;

Reducing the maximum grant in fiscal year 1987 to $250,000;

Adding a provision that allows the Secretary to award a grant that exceeds $1,000,000 if the appropriation for the program exceeds $10,000,000;

Adding a provision that permits a grantee of a more than $1,000,000 grant to match that grant on a one-to-two basis, i.e., one dollar of non-grant funds for every two dollars of grant funds; and

Removing appropriation set-asides for junior and community colleges and historically Black colleges and universities.

The Secretary is also correcting typographical and other technical errors.

C. Missing Item—Eligibility

Readers should note that the Secretary has not addressed the subject of institutional eligibility in these regulations, although the Higher Education Amendments of 1986 have changed the eligibility requirements for the Endowment Challenge Grant Program. In general, an institution is eligible to receive a grant under the Endowment Challenge Grant Program if it is eligible to receive a grant under the Strengthening Institutions Program or under the Strengthening Historically Black Colleges and Universities Program. Accordingly, the Secretary will issue regulations relating to eligibility for the Endowment Challenge Grant Program when he publishes regulations for the other two programs. The Secretary anticipates that the regulations will be published in the near future.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations only include technical corrections and provisions implementing mandatory statutory changes to the Endowment Challenge Grant Program required by the Higher Education Amendments of 1986, Pub. L. 99-498. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The changes made in these regulations will not create any additional burden on small institutions that will participate in the program.

Paperwork Reduction Act of 1980

The regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 628

Colleges and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031—Endowment Challenge Grant Program)

Dated: March 23, 1987

William J. Bennett,

Secretary of Education.

The Secretary amends Part 628 of Title 34 of the Code of Federal Regulations as follows:

PART 628—[AMENDED]

1. The authority citation for Part 628 is revised to read as follows:

Authority: 20 U.S.C. 1065a, unless otherwise noted.

2. In Part 628, all references to "Endowment Grant Program" are revised to read "Endowment Challenge Grant Program" and all references to "endowment grant" are revised to read "endowment challenge grant"

3. Section 628.1 is amended by revising the introductory text to read as follows:

§ 628.1 What are the purposes of the Endowment Challenge Grant Program?

The Endowment Challenge Grant Program provides endowment challenge grants, which must be matched, to eligible institutions of higher education to—

4. In § 628.5, paragraph (a)(1), the number "624.22" is removed.

5. In § 628.5, paragraph (b)(1)(i) is revised to read as follows:

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

(b)(1)

(i) The regulations in 34 CFR 74.61(h) or 74.62, as applicable.

6. In § 628.5, paragraph (b)(1)(iii), the phrase "(d) and (e)" is added after the number "75.217"

§ 628.6 [Amended]

7. In § 628.6, the definition of "Endowment fund income" is amended by changing the word "market" to "total"

8. Section 628.10 is revised to read as follows:

§ 628.10 What are the characteristics of an endowment challenge grant?

(a) Each endowment challenge grant awarded by the Secretary under this part—

(1) Except as provided in paragraph (b) of this section—

(i) Ranges from $50,000 to $250,000 in fiscal year 1987 and from $50,000 to $500,000 in subsequent fiscal years; and

(ii) Must be matched on a dollar-for-dollar basis;

(2) Must be invested by the institution; and

(3) Covers a period of 20 years.

(b) When funds appropriated for a fiscal year for the Endowment Challenge Grant Program exceed $10,000,000, the Secretary may award an endowment challenge grant to an institution in excess of $1,000,000, which may be matched with one dollar of matching funds for every two dollars of grant funds, if the institution—

(1) Requests an endowment challenge grant in excess of $1,000,000; and

(2) Deposits, in its endowment fund established under this part, matching funds equal to one-half of the amount of the grant.

(Authority: 20 U.S.C. 1065a)

§ 628.20 [Amended]

9. In § 628.20, paragraph (b) is removed, the designation (a) is removed, and paragraphs (a) (1) and (2) are redesignated as paragraphs (a) and (b).

§ 628.30 [Amended]

10. In § 628.30, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b). In redesignated paragraph (b), the phrase "(d) and (e)" is added between "34 CFR 75.217" and "of"

11. In § 628.32, paragraph (a) is revised to read as follows:

§ 628.32 What funding priorities does the Secretary use in evaluating an application for an endowment challenge grant?

(a) *Recipient of Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Special Needs Program grant.* (Total: 20 points) The Secretary gives 20 points to each applicant that, on October 1 of the fiscal year in which the applicant is applying for an endowment challenge grant, is a recipient of a development or planning grant under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Special Needs Program.

12. In § 628.32, paragraph (b)(1) is amended by adding the word "to" between the word "up" and the phrase "20 total points"

§ 628.33 [Removed]

13. Section 628.33 is removed.

14. In § 628.40, paragraphs (a) and (b) are revised to read as follows:

§ 628.40 What are the restrictions on the amount of an endowment challenge grant?

(a) For endowment challenge grants of up to $500,000—

(1) An institution must raise at least $50,000 in matching funds and qualify for at least a $50,000 grant under paragraph (c) of this section; and

(2) If an institution obtains at least $50,000 in matching funds and raises all the nongovernmental funds it proposes to raise in its application, the institution may receive a grant equal to the amount of matching funds it raised up to a maximum of $250,000 in fiscal year 1987 and $500,000 in subsequent fiscal years.

(b) For endowment challenge grants in excess of $1,000,000—

(1) An institution must raise at least $500,001 in matching funds and qualify for at least a $1,000,001 grant under paragraph (c) of this section; and

(2) If an institution obtains at least $500,001 in matching funds and raises all the nongovernmental funds it proposes to raise in its application, the institution may receive a grant equal to double the amount of matching funds it raised.

15. In § 628.41, paragraph (b)(1) is revised to read as follows:

§ 628.41 What are the obligations of an institution that the Secretary selects to receive an endowment challenge grant?

(b)

(1) Match, with cash or low-risk securities, the endowment challenge grant funds to be received under this part;

§ 628.45 [Amended]

16. In § 628.45, paragraph (c) is amended by changing the word "granting" to read "grant"

§ 628.46 [Amended]

17. In § 628.46, paragraph (a)(1) is amended by the changing the word "market" to read "total"

18. In § 628.47 paragraphs (d) and (e) are revised to read as follows:

§ 628.47 What shall a grantee record and report?

(d) Carry out the audit required in 34 CFR 74.61(h) or 74.62, as applicable;

(e) Provide to the Secretary a copy of the external or internal audit to be performed under 34 CFR 74.61(h) or 74.62, as applicable; and

§ 628.48 [Amended]

19. In § 628.48, paragraph (a)(1) is amended by adding the word "not" between the word "income" and the word "permitted"

[FR Doc 87-7779 Filed 4-7-87; 8:45 am]

BILLING CODE 4000-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Copayments for VA Health Care

AGENCY: Veterans Administration.

ACTION: Final regulations

SUMMARY: The VA (Veterans Administration) has amended its medical series regulations to conform with two technical changes to Title 38, United States Code, enacted with the passage of Title II of Pub. L. 99-576, the "Veterans' Benefits Improvement and Health-Care Authorization Act of 1986. Pub. L. 99-576 provides that all persons receiving disability compensation pursuant to 38 U.S.C. 351 are included in the highest VA health care eligibility category. The public law also limited the total copayments certain nonservice-connected veterans must agree to pay for VA health care equal to four times the inpatient Medicare deductible. Previous to this change it was possible that a veteran could pay an amount equal to five times the inpatient Medicare deductible due to a five-day billing cycle that remained after the initial four ninety-day billing cycles.

EFFECTIVE DATE: This regulation is effective April 7 1986. This date is the effective date specified in the statute.

FOR FURTHER INFORMATION CONTACT: Karen Walters, Chief, Policies and Procedures Division, Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2143.

SUPPLEMENTARY INFORMATION: Pub. L. 99-272, enacted April 7 1986, made major changes in VA health care eligibility. That law established three general categories of eligibility for care. Most persons in receipt of disability compensation pursuant to 38 U.S.C. 351 were inadvertently not included in the highest priority eligibility category. Pub. L. 99-576 changed the law to place those veterans in the highest eligibility category, retroactively to April 7 1986. Additionally, prior to enactment of the new public law, nonservice-connected veterans with incomes in excess of certain threshold amounts had to agree to pay a copayment no greater than the Medicare deductible during each of four 90-day billing cycles (360 days) and for the 5-day billing cycle at the end of any 365-calendar-day period. The new law limits total payments to an amount equal to no greater than four times the amount of the inpatient Medicare deductible during any 365-day-calendar period thus eliminating the additional 5-day billing cycle. These regulation changes implement those two new provisions of law.

Pursuant to 38 CFR 1.12 the VA finds that prior publication of these changes for public notice and comment is not required and is unnecessary. The VA has no discretion in this matter. Effective April 7 1986, the law placed those receiving compensation under 38 U.S.C. 351 in the highest priority category, and provided that a veteran may not be required to make copayments greater than four times the amount of the inpatient Medicare deductible for VA medical care or 365-calendar-day period. Consequently, a proposed notice will not be published. For this reason, these changes are also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, since they do not come within the term "rule" as defined in that Act.

Executive Order 12291: This amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions; have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants program, Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Veterans.

(Catalog of Federal Domestic Assistance Numbers are 64.009, 61.011, and 64.013)

Approved: March 5, 1987

Thomas K. Turnage,

Administrator.

PART 17—[AMENDED]

38 CFR 17 Medical, is amended as follows:

1. In §17.47 paragraph (a)(3) is revised to read as follows:

§ 17.47 Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.

(a)(3) A veteran who is in receipt of, or, but for a suspension pursuant to 38 U.S.C. 351 (or both such a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for such care is provided for in the judgment or settlement described in such section, for any disability; (Pub. L. 99-576)

2. In §17 48, paragraph (e)(1) introductory text is revised and new paragraph (e)(8) is added to read as follows:

§ 17.48 Considerations applicable in determinig eligibility for hospital, nursing home or domiciliary care.

(e)(1) A veteran who received hospital or nursing home care under 17.47(d) shall be liable to the U.S., for each 90 days of care in a 365-day period, for an amount equal to the lesser of:

(e)(8) A veteran who receives any combination of hospital, nursing home or outpatient care shall not be required to pay an amount greater than four times the amount of the inpatient Medicare deductible during any 365-day period. (Pub. L. 99-576, sec. 237)

[FR Doc. 87-7771 Filed 4-7-87; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL-3158-3]

Approval and Promulgation of Implementation Plans; Approval of the Pennsylvania I/M Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice approves the Pennsylvania Motor Vehicle Inspection and Maintenance Program (I/M). The proposed rulemaking for this action appeared in the **Federal Register** on April 16, 1986 (51 FR 12882). The comment period ended on May 16, 1986, and no comments were received. The Pennsylvania I/M Program commenced June 1, 1984, in the Philadelphia, Pittsburgh and Allentown-Bethlehem-Easton areas. It meets all EPA criteria for such programs as outlined in the January 22, 1981 **Federal Register** (46 FR 7186).

DATE: The rule will become effective on May 8, 1987

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107 Attn: Esther Steinberg.

Pennsylvania Department of Environmental Resources, P.O. Box 2063, Harrisburg, PA 17120, Attn: Gary Triplett, Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Eileen Glen (3AM11), PA/WV Section at the EPA, Region III address given above or telephone (215) 597-8379.

SUPPLEMENTARY INFORMATION: On April 16, 1986 (51 FR 12882) EPA proposed approval of the Pennsylvania I/M Program and established a 30-day comment period. No comments were received, so today EPA is approving the Pennsylvania I/M Program as a revision of the Pennsylvania State Implementation Plan. The Pennsylvania I/M Program commenced June 1, 1984, and is currently being implemented in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties and in portions of Beaver, Washington, Westmoreland, Allegheny, Lehigh and Northampton Counties. The portions of the Counties included in the program are identified by zip code. The zip code areas included in the program were published in the April 16, 1986 notice. In a letter of March 13, 1986, the Pennsylvania Department of Environmental Resources (DER) amended the list of zip code areas by adding the following zip codes: 15007 15129, 15025, 15039, and 15200-15299. Except for this change the program remains as it was described in the April 16, 1986 notice. More detailed information on the Pennsylvania I/M Program can be found in that notice.

At the request of EPA, Region III, EPA's Office of Mobile Sources (OMS) calculated the air quality benefit of the Pennsylvania I/M Program using the MOBILE3 emission factor model. MOBILE3 runs determined that the Pennsylvania I/M Program will achieve a reduction of 36.1% in hydrocarbon (HC) emissions and 60.5% in emissions of carbon monoxide (CO). These reductions are much greater than the Reasonably Available Control Technology (RACT) requirement for an I/M Program (a reduction of 23.3% HC and 34.4% CO). A January 27, 1986 memo, from OMS to EPA, Region III, which is attached to this rulemaking, gives a more detailed explanation of the MOBILE3 calculations.

Final Action

EPA approves the Pennsylvania I/M Program as a revision of the Pennsylvania State Implementation Plan.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 8, 1987 This action may not be challenged later in proceedings to enforce its requirements (See § 307(b)(2)).

List of Subjects in 40 CFR Part 52

Incorporation by reference, Air pollution control, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: February 11, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

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

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

2. Section 52.2020 is amended by adding paragraph (c)(66) to read as follows:

§ 52.2020 Identification of plan.

(c)

(66) A revision to the Pennsylvania State Implementation Plan adopting a Motor Vehicle Emissions Inspection and Maintenance Program submitted by the Secretary of the Pennsylvania Department of Environmental Resources on June 24, 1985 and an amendment submitted March 13, 1986 by the Chief, Division of Air Resource Management, Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources.

(i) Incorporation by Reference

(A) Title 75, sections 4703 (a) and (h) and 4706 of the Purdon's Pennsylvania Consolidated Statutes Annotated and Title 67 Pennsylvania Code §§ 175.41, 177.21, 177.31, 177.32, 177.35, 177.39 and 177.61.

(B) Bureau of Air Quality Control, Department of Environmental Resources, State Implementation Plan, Revision for Ozone for I/M, dated June 17 1985 and the letter to EPA, dated March 13, 1986.

[FR Doc. 87-3832 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP6F3405/R881; FRL-3181-4]

Pesticide Tolerance for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases the established tolerance for the residues of the herbicide 2-[1-(ethoxyimino)butyl]5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity sugar beet tops from 0.2 part per million (ppm) to 3.0 ppm. The regulation was requested by BASF Corp. and establishes the maximum permissible level for residues of the herbicide in or on the raw agricultural commodity.

EFFECTIVE DATE: April 8, 1987

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

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, Jefferson Davis Highway, Arlington, VA 22203, (703) 557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 18, 1987 (52 FR 8532), which announced that BASF Corp. had submitted pesticide petition 6F3405 to EPA proposing to amend 40 CFR 180.412 by increasing the established tolerance for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity sugar beet tops for 0.2 ppm to 3.0 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include several acute studies, a 6-month feeding study with dogs fed dosages of 0, 2.0, 20.0, and 200 milligrams per kilogram of body weight per day (mg/kg/day) with a no-observed-effect level (NOEL) of 2.0 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested (HDT)) and a systemic NOEL of 18 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT); a 2-generation reproduction study with rats fed 0, 2, 6, 18, and 54 mg/kg/day with no reproductive effects observed at 54 mg/kg/day (HDT) and a NOEL of 18 mg/kg/day; a teratology study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 250 mg/kg/day (HDT) and a maternal NOEL of 40 mg/kg/day; a teratology study in rabbits fed dosages of 0, 40, 160 and 480 mg/kg/day with a teratogenic NOEL of 160 mg/kg/day; and mutagenic studies including recombinant assays and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (negative at concentrations of chemical to 100 percent) and host-mediated assay (mouse) with *S. typhimurium* (negative at concentrations of chemical to 100 percent) and a host-mediated assay (mouse) with *S. typhimurium* negative at 2.5 grams per kilogram of body weight per day (mg/kg/day) of chemical.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 2.0 mg/kg/day and using a hundred-fold safety factor is calculated to be 0.02 mg/kg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.837 mg/day (1.5 kg). Published and pending tolerances utilize 69.75 percent of the ADI. The current action does not change the ADI or TMRC.

Data lacking are a repeat of a rate primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purposes of this tolerance. The nature of the residue is adequately understood for the purpose of establishing the tolerance. Adequate analytical methodology (gas chromatography using a sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry, and eggs will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are therefore set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: March 27 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

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

2. In § 180.412, by revising the entry for sugar beet, tops, to read as follows:

§ 180.412 2-[1-(Ethoxylmino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

Commodity	Parts per million
Sugar beet, tops	3.0

[FR Doc. 87-7521 Filed 4-7-87 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3094/R876; FRL-3183-1]

Pesticide Tolerance for Ethalfluralin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide ethalfluralin in or on the raw agricultural commodities peanuts, peanut hulls, eggs, milk, meat, meat byproducts (mbyp), and fat of cattle, goats, hogs, horses, poultry, and sheep. This regulation to establish the maximum permissible level for residues of ethalfluralin in or on these commodities was requested by Elanco Products Co.

EFFECTIVE DATE: Effective on April 8, 1987

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

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237 CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 18, 1984 (49 FR 29134), which announced that Elanco Products Co., a division of Eli Lilly Co., 740 South

Alabama St., Indianapolis, IN 46285, had submitted a pesticide petition (4F3094) to EPA proposing that 40 CFR 180.416 be amended by establishing tolerances for residues of the herbicide ethalfluralin [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine] in or on the agricultural commodities peanut hulls and nutmeat at 0.05 part per million (ppm).

EPA issued notices, published in the **Federal Register** of August 6, 1985 (50 FR 31773) and of March 26, 1986 (51 FR 10442), that Elanco Products Co. amended the petition by adding the agricultural commodities milk, meat, meat byproducts (including liver and kidney), and fat of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and subsequently by adding eggs, meat, meat byproducts and fat of poultry at 0.05 ppm.

There were no comments received in response to the notices of filing. Peanut nutmeat is being editorially changed to read peanuts.

The data submitted in the petition and other relevant material have been evaluated. The data considered include plant and animal metabolism studies; a 90-day rat-feeding study with a no-observed-effect level (NOEL) of 500 ppm (equivalent to 25 milligrams (mg)/kilogram (kg) of body weight (bwt)); a 90-day dog-feeding study with a NOEL of 27.5 mg/kg; a rabbit teratology study with a fetotoxic, maternal toxicity, and teratogenic NOEL of 75 mg/kg (the teratogenic effect level is 150 mg/kg with multiple anomalies observed in 2 fetuses out of 76 examined at this level (margin of safety (MOS) values are based on the NOEL of 75 mg/kg/day)); a rat teratology study with a developmental NOEL of 1,000 mg/kg/day (highest dose tested) and a maternal toxicity NOEL of 50 mg/kg/day; a 3-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg); a 1-year dog-feeding study with a NOEL of 4 mg/kg/day; a 2-year rat chronic feeding/oncogenicity study with a nonneoplastic NOEL of 750 ppm (37.5 mg/kg) and a significant increase in mammary gland fibroadenomas at 250 ppm (12.5 mg/kg) and 750 ppm (37.5 mg/kg) (this study is discussed further below); a 2-year mouse oncogenicity study with no observed oncogenic potential under the conditions of the study up to 1,500 ppm (225 mg/kg), the highest dose tested; a bacterial gene mutation (modified Ames test), positive; an Ames assay, positive; an *in vitro* unscheduled DNA synthesis (UDS) in rat hepatocytes, negative; an *in vitro* mouse lymphoma assay, negative; an *in vitro* study in Chinese Hamster Ovary (CHO) cells, positive.

The Agency has evaluated dietary exposure to ethalfluralin residues for the commodities proposed. Assuming 100 percent of the proposed crop is treated with ethalfluralin, that all livestock consume ethalfluralin from treated plant commodities, and with actual residue levels in the human diet of approximately 0.0008 ppm in eggs; and less than 0.004 ppm in peanuts, 0.003 ppm in milk and poultry; and 0.001 ppm in meat using the "one-hit" model, the upper limit on dietary oncogenic risk associated with those residue levels is calculated to be 4 incidences in a million ($4x10^{-6}$). Based on estimates of market penetration over several years following initial registration, the upper limit on dietary risk would be 2 incidences in a million [$2x10^{-6}$]. These are extremely conservative estimates; actual risk is likely to be several orders of magnitude lower. Previously established tolerances provide an upper limit on oncogenic risk associated with worst case dietary exposures of 1 incidence in 100,000 (10^{-5}). The exposure and risk assessment given above for peanuts is also worst case, since it assumes 100% crop treated and upper limits on meat and milk residues. The upper limit on total dietary oncogenic risk (from worst case exposure) is calculated to remain at 1 incidence in 100,000 (10^{-5}).

Based on a NOEL of 4 mg/kg/day in the 1-year dog study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.04 mg/kg/day with a maximum permissible intake (MPI) of 2.4 mg/day for a 60-kg person. The TMRC from existing tolerances for a 1.5 kg diet is calculated to be 0.0031 mg/day. The proposed tolerances will increase the TMRC by 0.0329 mg/day. The proposed and established tolerances utilize 1.5 percent of the ADI.

There are no regulatory actions pending against the registration of ethalfluralin. The metabolism of ethalfluralin in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, electron capture gas-liquid chromatography, is available in Pesticide Anlytical Manual, PAM Volume II, for enforcement purposes. The proposed tolerances are adquate to cover residues that would result in meat, milk, poultry, and eggs.

Based on the information cited above, the Agency has determined that establishing a tolerance for residues of the pesticide in or on the commodity will protect the public health. Therefore, a tolerance is established as set forth below.

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

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

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(e)))

List of Subjects in 40 CFR Part 180

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

Dated: March 31, 1987

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

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

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

2. Section 180.416 is amended in the table by adding and alphabetically inserting the raw agricultural commodities peanuts, peanut hulls, eggs, milk, meat, meat byproducts (mbyp), and fat of cattle, goats, hogs, horses, poultry, and sheep to read as follows:

§ 180.416 Ethalfluralin; tolerances for residues.

Commodities	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, mbyp	0.05
Eggs	0.05
Goats, fat	0.05
Goats, meat	0.05

Commodities	Parts per million
Goats, mbyp	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, mbyp	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses, mbyp	0.05
Milk	0.05
Peanuts	0.05
Peanuts hulls	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, mbyp	0.05

[FR Doc. 87-7739 Filed 4-7-87 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-1-FRL-3182-4]

Rhode Island; Schedule of Compliance for Modification of Rhode Island's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region I.

ACTION: Notice of Rhode Island's Compliance Schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Rhode Island to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Frank Battaglia, U.S. EPA, JFK Federal Building, Room 1903, Boston, MA 02203, (617) 223-1961.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Rhode Island

Rhode Island received final authorization of its hazardous waste program on January 31, 1986. See 51 FR 3780, January 30, 1986. Today EPA is publishing a compliance schedule for Rhode Island to obtain program revisions for the following Federal program requirement:

(1) Redefinition of Solid Waste—50 FR 614, January 4, 1985.

The State has agreed to obtain the needed program revisions according to the following schedule:

(1) Draft Regulations and Checklist submitted to EPA for review...April 3, 1987
(2) Draft Regulations submitted to RI Task Force for approval.....July 3, 1987
(3) RI publishes Public Notice of Proposed Regulations.....July 17 1987
(4) Public Hearing.....August 7 1987
(5) Regulations signed (assumes no significant public comments)...August 14, 1987
(6) Regulations effective (assumes no significant public comments)...September 6, 1987

Rhode Island expects to submit an application to EPA for authorization of the above mentioned program revisions by October 2, 1987

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 26, 1987.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 87-7738 Filed 4-7-87 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR PART 101-20

[FPMR AMENDMENT D-84]

Management of Buildings and Grounds

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation is a revision of the part of FPMR Subchapter D that governs the operation of, and the activities in Federal buildings. This regulation was developed by a subcommittee of the Interagency Advisory Committee on Regulatory Review and is designed to clarify the content, eliminate duplication, and remove obstacles to effective building management.

EFFECTIVE DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: James Steele (202-566-1563).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17 1981, because it is not likely to result in an annual effect on the economy of $100 million or more: a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-20

Fire prevention, Blind, Safety, Concessions, Crime, Federal buildings and facilities, Government property management, Security measures.

1. Part 101-20 is revised to read as follows:

PART 101-20—MANAGEMENT OF BUILDINGS AND GROUNDS

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101-20.000 Scope of part.
101-20.001 Authority.
101-20.002 Basic policy.
101-20.002-1 Government-owned buildings.
101-20.20.002-2 Leased buildings.
101-20.003 Definitions.

Subpart 101-20.1-Building Operations, Maintenance, Protection, and Alternations

101-20.101 Building systems.
101-20.102 Cleaning and maintenance.
101-20.103 Physical protection and building security.
101-20.103-1 Standard protection.
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101-20.104-1 Allocation and assignment of parking for official needs.
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101-20.104-3 Utilization of parking.
101-20.104-4 Guidelines for agency implementation.
101-20.105 Accident and fire prevention.
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101-20.105-2 Correction of hazardous conditions.
101-20.105-3 Smoking.
101-20.106 Reimbursable services.
101-20.106-1 Placing of orders for reimbursable alternations by occupant agencies.
101-20.106-2 Limitations on provision of reimbursable services by GSA.
101-20.107 Energy conservation.
101-20.108 Staggered hours of duty.
101-20.109 Concessions.

Subpart 101-20.2—Vending Facility Program for Blind Persons

101-20.200 Scope of subpart.
101-20.201 Policy.
101-20.202 Establishing vending facilities.
101-20.203 Application for permit.
101-20.204 Terms of permit.
101-20.205 Enforcement procedures.
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Subpart 101-20.3—Conduct on Federal Property

101-20.300 Applicability.
101-20.301 Inspection.
101-20.302 Admission to property.
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101-20.304 Conformity with signs and directions.
101-20.305 Disturbances.
101-20.306 Gambling.
101-20.307 Alcoholic beverages and narcotics.
101-20.308 Soliciting, vending, and debt collection.
101-20.309 Posting and distributing materials.
101-20.310 Photographs for news, advertising, or commercial purposes.
101-20.311 Dogs and other animals.
101-20.312 Vehicular and pedestrian traffic.
101-20.313 Weapons and explosives.
101-20.314 Nondiscrimination.
101-20.315 Penalties and other laws.

Subpart 101-20.4—Occasional use of Public Buildings

101-20.400 Scope of subpart.
101-20.401 Applications for permits.
101-20.402 Permits.
101-20.403 Disapproval of applications or cancellation of permits.
101-20.404 Appeals.
101-20.405 Schedules of use.
101-20.406 Hours of use.
101-20.407 Services and costs.
101-20.408 Conduct.
101-20.409 Non-affiliation with the Government.

Subpart 101-20.5—Sidewalk Installation, Repair, and Replacement

101-20.500 Scope of subpart.
101-20.501 Responsibilities.
101-20.502 Standards.

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

§ 101-20.000 Scope of part.

The regulations in this part prescribe policies and procedures for the management, operation, protection, and maintenance of Government-owned and leased buildings and grounds under the assignment responsibility of GSA.

§ 101-20.001 Authority.

This Part 101-20 implements the Act of July 1, 1898 (40 U.S.C. 285); the Act of April 28, 1902 (40 U.S.C. 19); the Act of March 1, 1919 (40 U.S.C. 1); the Act of June 23, 1923 (40 U.S.C. 281); the Act of May 27 1924 (D.C. Code, 1961 ed., 4-208); the Act of June 20, 1936 (20 U.S.C. 107 et seq.); the Act of December 10, 1941 (40 U.S.C. 291); the Act of May 14, 1948 (40 U.S.C. 130); the Act of June 1, 1948 (40 U.S.C. 318 et seq.); the Federal Property and Administrative Services Act of 1949 (63 Stat. 377 as amended); the Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note; 3 CFR); the Public Buildings Act of 1950 (73 Stat. 479) as amended; and the Public Buildings Amendments of 1972 (40 U.S.C. 602a).

§ 101-20.002 Basic policy.

It is the responsibility of GSA to provide or otherwise arrange for all services required to house occupant agencies. GSA shall provide fully service space equivalent to that furnished in commercial practice.

§ 101-20.002-1 Government-owned buildings.

(a) GSA will provide space alterations, repairs, and improvements sufficient to meet the mission requirements of occupant agencies, including mechanical and electrical systems which meet nationally recognized standards, within the limitations of available funding. When alterations are required, alterations which are essential for performance of agency missions or which improve the utilization rate shall be given priority over other alterations. Alterations solely for decorative or non-essential purposes shall be avoided.

(b) GSA will ensure that space assigned to agencies is safe and that employees and visitors are not exposed to unnecessary risks.

(c) Buildings will be cleaned and maintained at a service level equivalent to that normally furnished commercially in similar space.

(d) GSA will make every effort to provide or arrange for a reasonable amount of protective services to ensure the physical security of occupants and visitors, to safeguard the Government's property interests, and to maintain order.

(e) GSA shall ensure that physically handicapped persons will have ready access to space assigned to occupant agencies. GSA shall provide building standards and shall prescribe and enforce appropriate guidelines in accordance with applicable statutes, regulations and executive orders.

(f) GSA is responsible for ensuring the availability of parking spaces for officials needs. Parking priorities are as established in § 101-20.104.

(g) Services in addition to those normally provided in the commercial sector shall be arranged by GSA on a reimbursable basis, as provided in § 101-20.106.

(h) GSA may, by agreement with occupant agencies, delegate authority to perform specified functions with respect to the operation, maintenance or repair of GSA-assigned space.

(i) GSA will maintain a comprehensive energy management program to reduce energy consumption and costs in Federal buildings. GSA will apply energy-efficient and economical operating and maintenance procedures, will make cost-effective repairs and alterations, will incorporate design features which will minimize the life cycle cost of buildings, and will ensure continuity of services through contingency planning.

(j) Occupant agencies shall assist in the management of buildings by exercising economy in the use of utilities, by observing professional standards of neatness and cleanliness, and by taking all reasonable precautions to avoid the risk of accidents and fires. Occupant agencies shall also document and report to GSA any hazardous or unhealthy conditions in GSA-assigned space.

(k) Consultations with occupant agencies and their safety representatives will be held whenever substantial alterations or repairs are proposed to be undertaken, or when GSA proposes to make significant changes to the standard level of services. GSA will consider the comments of occupant agencies before final decisions are made. GSA will make every reasonable effort to involve representatives of occupant agencies in the planning for such proposed alterations, repairs, and changes in services.

(l) It is the general policy of GSA to provide space and systems which substantially conform to nationally recognized standards, when applicable. GSA may, however, adopt other standards for space and systems in Federally-controlled facilities in order to conform to diverse statutory requirements, to implement cost-reduction efforts, or to better effect overall Government objectives.

§ 101-20.002-2 Leased buildings.

(a) Standards for space and services in leased buildings will be equivalent to standards for Government-owned space. However, the scope of the functions performed by GSA will be modified to reflect the lessor's responsibilities for operations, maintenance and protection under the terms of the lease.

(b) Alterations, improvements and repairs in leased buildings shall be performed by GSA to the extent of the Government's responsibility under the lease. Such alterations shall not, however, exceed the limitations of the Economy Act (40 U.S.C. 278(a)) except as otherwise provided by law.

(c) Occupant agencies are not authorized to negotiate with lessors or to place orders for alterations or building services, except where such authority has been specifically delegated by GSA, and except as provided in § 101-20.106-2 regarding reimbursable services.

§ 101-20.003 Definitions

(a) Alteration" means remodeling, improving, extending, or making other changes to a facility, exclusive of maintenance repairs which are preventive in nature. The term includes planning, engineering, architectural work, and other similar actions.

(b) "Blanket work authorization" means an open-end agreement with an agency with an agreed upon maximum dollar ceiling where there is an on-going account for processing small requests for reimbursable services. The need for the service is clearly recognized, but exactly when the service must be rendered during the fiscal year is unclear.

(c) "Carpool" means a group of two or more people regularly using a motor vehicle for transportation to and from work on a continuing basis, regardless of their relationship to each other. The number of persons in a carpool will normally be the basis for priority of assignments.

(d) "Commercial activities," within the meaning of Subpart 101-20.4, are activities undertaken for the primary purpose of producing a profit for the benefit of an individual or organization organized for profit. (Activities where commercial aspects are incidental to the primary purpose of expression of ideas or advocacy of causes are not "commercial activities" for purposes of these regulations.)

(e) "Crime prevention assessments" are formal, on-site reviews which consist of a detailed survey, review, and analysis of an occupant agency's vulnerability to criminal activity. In addition to the normal process of a physical security survey, it involves an intensive review of an occupant's and/or building's operation and administrative procedures. It is designed to identify specific weaknesses and to recommend cost-effective, positive steps to Federal managers in dealing with criminal threats and occurrences.

(f) "Cultural activities" include, but are not limited to, films dramatics dances, and musical presentations, and fine art exhibits, whether or not these activities are intended to make a profit.

(g) The "Designated Official" is the highest ranking official of the primary occupant agency of a Federal facility; or, alternatively, a designee selected by mutual agreement of occupant agency officials.

(h) "Educational activities" mean activities such as (but not limited to) the operation of schools, libraries, day care centers, laboratories, and lecture or demonstration facilities.

(i) The term "emergency" includes bombings and bomb threats, civil disturbances, fires, explosions, electrical failures, loss of water pressure, chemical and gas leaks, medical emergencies, hurricanes, tornadoes, floods, and earthquakes. The term does not apply to civil defense matters such as potential or actual enemy attacks. Note: Civil defense emergencies are addressed by the Federal Emergency Management Agency.

(j) "Executive means a Government employee with management responsibilities which, in the judgment of the employing agency head or his/her designee, require preferential assignment of parking privileges.

(k) "Flame-resistant" means meeting performance standards as described by the National Fire Protection Association (NFPA Standard No. 701). Fabrics labeled with the Underwriters Laboratories Inc. classification marking for flammability are deemed to be flame-resistant for purposes of this regulation.

(l) "Foot-candle" is the illumination on a surface one square foot in area on which there is a uniformly distributed flux of one lumen, or the illuminance produced on a surface all points of which are at a distance of one foot from a directionally uniform point source of one candela.

(m) "GSA Regional Officer, within the meaning of Subpart 101-20.4, means the regional director of the Buildings Management Division of GSA designated to supervise the implementation of the Public Buildings Cooperative Use Act's occasional use provisions.

(n) "Handicapped employee" means an employee who has a severe, permanent impairment which for all practical purposes precludes the use of public transportation, or an employee who is unable to operate a car as a result of permanent impairment who is driven to work by another. Priority may require certification by an agency medical unit, including the Veterans Administration or the Public Health Service.

(o) "Indefinite quantity contract" (commonly referred to as "term contract") provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class.

(p) "Life cycle cost" is the total cost of owning, operating, and maintaining a building over its useful life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems; except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

(q) "Limited combustible" means rigid materials or assemblies which have fire hazard ratings not exceeding 25 for flame spread and 150 for smoke development when tested in accordance with the American Society for Testing and Materials, Test E 84, Surface Burning Characteristics of Building Materials.

(r) "Maintenance" means preservation by inspection, adjustment, lubrication, cleaning, and the making of minor repairs. "Ordinary maintenance" means routine recurring work which is incidental to everyday operations; "preventive maintenance" means work programmed at scheduled intervals.

(s) The term "nationally recognized standards" encompasses any standard or modification thereof which:

(1) Has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby those interested and affected by it have reached substantial agreement on its adoption, or

(2) Was formulated through consultation by appropriate Federal agencies in a manner which afforded an opportunity for diverse views to be considered.

(t) "Normally furnished commercially" means in conformance with the level of services provided by a commercial building operator for space of comparable quality, housing tenants with comparable requirements. Service

levels are based on the effort required to service space for a five-day week, one eight-hour shift schedule.

(u) "Occupant agency" means an organization which is assigned space in a facility under GSA's custody and control through the formal procedures outlined in Part 101–17 of the Federal Property Management Regulations.

(v) "Occupancy Emergency Organization" means the emergency response organization comprised of employees of Federal agencies designated to perform the requirements established by the Occupant Emergency Plan.

(w) "Occupant Emergency Plan" means procedures developed to protect life and property in a specific Federally-occupied space under stipulated emergency conditions.

(x) "Occupant Emergency Program" means a short-term emergency response program. It establishes procedures for safeguarding lives and property during emergencies in particular facilities.

(y) "Postal vehicle means a Government-owned vehicle used for the transportation of mail, or a privately owned vehicle used under contract for the transportation of mail.

(z) "Public area" means any area of a building under the control and custody of GSA which is ordinarily open to members of the public, including lobbies, courtyards, auditoriums, meeting rooms, and other such areas not assigned to a lessee or occupant agency.

(aa) "Recognized labor organization" means a labor organization recognized under Title VII of the Civil Service Reform Act of 1978 (Public Law 95–454) governing labor-management relations.

(bb) "Recreational activities" include, but are not limited to, the operations of gymnasiums and related facilities.

(cc) "Ridesharing" means the sharing of the commute to and from work by two or more people, on a continuing basis, regardless of their relationship to each other, in any mode of transportation including, but not limited to, carpools, vanpools, buspools and mass transit.

(dd) "Special space alterations are those alterations required by occupant agencies that are beyond those standard alterations provided by GSA under the SLUC system and are reimbursable from the requesting agency.

(ee) "State" means the fifty States, political subdivisions thereof, the District of Columbia, the Commonwealths of Puerto Rico and Guam, and the territories and possessions of the United States.

(ff) "Unit price agreement" provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services at a specified price, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the lessor by activities designated either specifically or by class.

(gg) "Unusual hours" means work hours that are frequently required to be varied and do not coincide with any regular work schedule. This category includes individuals who regularly or frequently work significantly more than 8 hours per day. Unusual hours does not include shift workers, those on alternate work schedules, and those granted exceptions to the normal work schedule (e.g., flex-time).

(hh) "Vanpool" means a group of at least 8 persons using a passenger van or a commuter bus designed to carry 10 or more passengers. Such a vehicle must be used for transportation to and from work in a single daily round trip. The number of persons in a vanpool will normally be the basis for priority of assignments.

(ii) "Zonal allocations" means the allocation of parking spaces on the basis of zones established by GSA in conjunction with occupant agencies. In metropolitan areas where this method is used, all agencies located in a designated zone will compete for available parking in accordance with instructions issued by GSA. In establishing this procedure, GSA will consult with all affected agencies.

Subpart 101-20.1—Building Operations, Maintenance, Protection, and Alterations

§ 101-20.101 Building systems.

(a) Structural features and mechanical and electrical systems in GSA-assigned space shall be adequate for the needs of occupant agencies. Such systems will comply with applicable GSA fire safety criteria and with standards prescribed under the Occupational Safety & Health Act (OSHA). GSA will take all measures necessary to comply with energy conservation objectives as promulgated by relevant statutes, regulations, and executive orders.

(b) No modification shall be made to buildings, or equipment which will exceed the building design loads or exceed the capacities of electrical, mechanical, and protection systems. No modifications which adversely alter the performance of building systems, or which create safety and health hazards, as determined by GSA safety and health representatives, shall be made.

(c) Occupant agencies shall obtain GSA approval for any modifications proposed to be made with their own forces. This approval requirement applies to the moving or installation of unusually heavy equipment, to electrical appliances such as heaters, refrigerators, and cooking equipment, and to employee-owned equipment.

(d) Occupant agencies shall conform to GSA accident and fire prevention policy, shall observe all OSHA requirements, and shall comply with applicable local safety regulations.

§ 101-20.102 Cleaning and maintenance.

GSA shall provide:

(a) Cleaning for all assigned space at a level equivalent to the cleaning furnished commercially for similar types of space.

(b) Maintenance of building systems for heating and cooling, and maintenance of plumbing, electrical, and elevator systems.

(c) Maintenance and repairs of exterior, grounds, sidewalks, driveways, and parking areas.

(d) Maintenance of building equipment such as directory boards, clock systems, window shades, door locks, and door title cards.

(e) Cyclic paintings of agency occupied space once every five years, and paintings of public areas once every three years, if needed.

(f) Maintenance of all safety and fire protection devices, equipment, and systems in a state of readiness in conformance with applicable laws, regulations, and standards.

(g) Maintenance of all food service activities in accordance with applicable U.S. Public Health Service standards and local regulations.

(h) Arrangements for raising and lowering the United States flags at appropriate times.

§ 101-20.103 Physical protection and building security.

§ 101-20.103-1 Standard protection.

For properties under its custody and control, GSA will provide standard protection services by:

(a) Responding to criminal occurrences, incidents, and lifethreatening events through the use of Federal Protective Officers and local law enforcement officers where a response agreement is in effect.

(b) Installing and maintaining perimeter security devices and systems if they are monitored to provide timely response by authorized personnel;

(c) Implementing crime prevention activities, including tenant awareness programs;

(d) Investigating crimes and violations of Federal statutes, recording and evaluating reports of criminal incidents,

and referring findings and evidence to appropriate enforcement agencies;

(e) Entering into cooperative agreements with local law enforcement agencies;

(f) Performing physical security surveys and providing security advisory services; or

(g) Coordinating a comprehensive Occupant Emergency Program.

(h) Periodically evaluating the effectiveness of protection services by in-depth inspections of procedures and records.

§ 101-20.103-2 Special protection.

The degree of protection beyond standard levels required by the nature of an agency's activities or by unusual public reaction to an agency's programs will be determined jointly by GSA and the occupant agency. Special protection will be provided on a reimbursable basis. The level of special protection will be determined on a facility-by-facility basis, after the conducting of appropriate security surveys and crime prevention assessments. In such determinations, GSA and occupant agencies will consider:

(a) The characteristics of the facility, including size, configuration, exterior lighting, and presence of physical barriers;

(b) The location of the facility and the history of criminal or disruptive incidents in the surrounding neighborhoods; and

(c) The reimbursable funding and resources available to GSA for provision of protective service.

(d) Tenant agency's mission.

§ 101-20.103-3 Responsibilities of occupant agencies.

Occupants of facilities under the custody and control of GSA shall:

(a) Cooperate to the fullest extent with all pertinent facility procedures and regulations;

(b) Promptly report all crimes and suspicious circumstances occurring on GSA-controlled property to the regional Law Enforcement Branch and other designated law enforcement agencies and then through internal agency channels;

(c) Provide training to employees regarding protection and responses to emergency situations; and

(d) Make recommendations for improving the effectiveness of protection in Federal facilities.

§ 101-20.103-4 Occupant Emergency Program.

(a) The Designated Official (as defined in § 101-20.003-7) is responsible for developing, implementing, and maintaining an Occupant Emergency Plan (as defined in § 101-20.003-23). The Designated Official's responsibilities include establishing, staffing, and training an Occupant Emergency Organization with agency employees. GSA shall assist in the establishment and maintenance of such plans and organizations.

(b) All occupant agencies of a facility shall fully cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization.

(c) GSA shall provide emergency program policy guidance, shall review plans and organizations annually, shall assist in training of personnel, and shall otherwise ensure proper administration of Occupant Emergency Programs (as defined in § 101-20.003-24). In leased space, GSA will solicit the assistance of the lessor in the establishment and implementation of plans.

(d) In accordance with established criteria, GSA shall assist the Occupant Emergency Organization (as defined in § 101-20.003-22) by providing technical personnel qualified in the operation of utility systems and protective equipment.

§ 101-20.103-5 Initiating action under Occupant Emergency Programs.

(a) The decision to activate the Occupant Emergency Organization shall be made by the Designated Official, or by the designated alternate official. Decisions to activate shall be based upon the best available information, including an understanding of local tensions, the sensitivity of target agency(ies), and previous experience with similar situations. Advice shall be solicited, when possible, from the GSA buildings manager, from the appropriate Federal Protective Service official, and from Federal, State, and local law enforcement agencies.

(b) When there is immediate danger to persons or property, such as fire, explosion, or the discovery of an explosive device (not including a bomb threat), occupants shall be evacuated or relocated in accordance with the plan without consultation. This shall be accomplished by sounding the fire alarm system or by other appropriate means.

(c) When there is advance notice of an emergency, the Designated Official shall initiate appropriate action according to the plan.

(d) After normal duty hours, the senior Federal official present shall represent the Designated Official or his/her alternates and shall initiate action to cope with emergencies in accordance with the plans.

§ 101-20.104 Parking facilities.

(a) Parking facilities shall be compatible with the character of neighborhoods and consistent with local planning requirements. They shall not adversely affect the use or appearance of property, and shall not create traffic hazards.

(b) As necessary or upon agency request, GSA may provide for the regulation and policing of parking facilities. GSA will consult with primary occupant agencies prior to implementing procedural changes. Such regulation and policing may include:

(1) The issuance of traffic rules and regulations;

(2) The installation of signs and markings for traffic control. (Signs and markings shall be in conformance with the Manual on Uniform Traffic Control Devices published by the Department of Transportation);

(3) The issuance of citations for parking violations; and

(4) The immobilization or removal of illegally parked vehicles.

(c) When the use of parking space is controlled as in paragraph (b) of this section, all privately owned vehicles other than those authorized to use designated visitor or service areas must display a parking permit. This requirement may be waived in parking facilities where the number of available space regularly exceeds the demand for such spaces.

(d) GSA may delegate the responsibility for management, regulation, and policing of parking facilities by agreement with occupant agencies or by contractual arrangements with lessors or parking management contractors. Where possible, existing contracts shall be amended or modified before renewal to conform with the policies of this regulation.

(e) Privately owned vehicles converted for propane carburetion will not be permitted in underground parking facilities unless the owner provides to the occupant agency and the GSA buildings manager the installer s certification that the installation methods and equipment meet the standards in National Fire Protection Association (NFPA) Standard No. 58.

§ 101-20.104-1 Allocation and assignment of parking for official needs.

GSA is responsible for ensuring the availability of parking spaces for official needs. GSA may, by mutual agreement, delegate allocation and assignment responsibilities to occupant agencies or boards, commissions, and similar groups. GSA and other agencies with assignment responsibilities shall

determine the appropriate number of spaces at each facility for official purposes; such determinations will be based upon submissions of information from occupant agencies regarding their needs. Parking spaces in controlled facilities shall first be reserved for official needs, in the following order of priority:

(a) At buildings containing U.S. Postal Service mailing operations, official postal vehicles.

(b) Government-owned vehicles used for criminal apprehension, firefighting, and other emergency functions.

(c) Privately owned vehicles of Federal judges appointed under Article III of the Constitution and of Members of Congress. (This priority does not extend to members of their staffs.)

(d) Other Government-owned and leased vehicles, including motor pool vehicles and vehicles assigned for general use.

(e) Service vehicles and vehicles of patrons and visitors. (Accommodations for handicapped visitors shall be provided when necessitated by agency program requirements. Agencies are encouraged to provide accommodations for handicapped visitors.)

§ 101-20.104-2 Allocations and assignment of employee parking spaces.

(a) Parking spaces not required for official needs may be used for employee parking.

(b) GSA (or other agencies having assignment responsibilities) will determine the total number of spaces available for employee parking. Normally, a separate determination will be made for each parking facility. In major metropolitan areas, however, GSA and occupant agencies may ascertain that zonal allocations would achieve more efficient use of space or equality in the availability of parking.

(c) Space available for employee parking will be allocated for occupant agency use on a equitable basis. Allocations may be made in proportion to each agency's share of building space, office space, or total employee population, as appropriate. In certain cases, GSA may allow a third party, such as a board composed of representatives of agencies sharing space, to determine proper reallocations among the agencies.

(d) Agencies shall in turn assign spaces to their employees, using the following order of priority:

(1) Severely handicapped employees. Justifications based on medical opinion may be required.

(2) Executive personnel and persons who work unusual hours.

(3) Vanpool/carpool vehicles.

(4) Privately owned vehicles of occupant agency employees which are regularly used for Government business at least 12 days per month and which qualify for reimbursement of mileage and travel expenses under Government travel regulations.

(5) Other privately owned vehicles of employees, on a space-available basis. (In locations where parking allocations are made on a zonal basis, GSA and affected agencies may cooperate to issue additional rules, as appropriate.)

§ 101-20.104-3 Utilization of parking.

(a) Agencies shall develop, implement, and maintain ridesharing programs. (Guidelines for the administration of ridesharing programs are contained in FPMR Amendment A-36.)

(b) GSA will take all feasible measures to improve the utilization of parking facilities. Such measures may include the conducting of surveys and studies, the periodic review of parking space allocations, the dissemination of parking information to agencies, the implementation of parking incentives which promote ridesharing, the use of stack parking practices where appropriate, and the employment of parking management contractors and concessionaires.

§ 101-20.104-4 Guidelines for agency implementation.

(a) In most instances, the assignment of individual reserved spaces should be minimized; this allows the number of permits to be overallocated and results in increased efficiency.

(b) In order to promote fuel conservation, reduce traffic congestion, reduce the demand for parking spaces, and reduce air pollution, agencies are encouraged to make available as many parking spaces as possible for the use of vanpools/carpools.

(c) Agency procedures for the assignment of parking spaces should be maintained in writing. Provisions for reviewing assignments, enforcing compliance with regulations, and enforcing penalties for misrepresentation on applications are also recommended.

(d) Occupant agencies should make every effort to schedule arrival and departure times for employees to facilitate ridesharing.

(e) Subject to the availability of satisfactory and secure space and facilities, agencies should reserve areas for the parking of bicycles and other two-wheeled vehicles. Bicycles should not be transported on elevators or via stairways; nor should they be parked in offices.

(f) Implementation of the provisions of this regulation may require consultation, as appropriate, with recognized labor organizations.

§ 101-20.105 Accident and fire prevention.

Standards for GSA-assigned space will conform to those presented by the Occupational Safety and Health Act (OSHA) of 1970 (Public Law 91-596); Executive Order 12196; 29 CFR Part 1960, and applicable GSA fire and safety criteria. Occupants and visitors will not be exposed to unnecessary risks. Safeguards which minimize personal harm, property damage, and impairment of Governmental operations, and which allow emergency forces to accomplish their missions effectively, will be provided. To the maximum extent feasible, GSA will provide space which meets or exceeds these objectives.

§ 101-20.105-1 Responsibilities of occupant agencies.

(a) Each occupant agency shall maintain a neat and orderly facility to minimize the risk of accidental injuries and fires. All exits, accesses to exits, and accesses to emergency equipment shall be kept clear at all times.

(b) Hazardous explosive or combustible materials shall not be brought into buildings unless authorized by appropriate agency officials and by GSA and unless protective arrangements determined necessary by GSA have been provided. All draperies, curtains, or other hanging materials shall be of non-combustible or flame-resistant fabric. Freestanding partitions and space dividers shall be limited combustible, and fabric coverings shall also be flame resistant.

(c) Occupant agencies shall cooperate with GSA to develop and maintain fire prevention programs. Such programs shall ensure the maximum safety of the occupants by:

(1) Training employees to use protective equipment and educating employees to take appropriate fire safety precautions in their work, including participating in at least one fire drill each year, and

(2) Ensuring that facilities are kept in the safest condition practicable, and conducting periodic inspections in accordance with Executive Order 12196 and 29 CFR Part 1960.

(d) Accidents resulting from building system or maintenance deficiencies which involve personal injury or property damage in GSA-assigned space will be reported immediately to the GSA buildings manager.

(e) Each occupant agency shall appoint a safety, health and fire

protection liaison to represent the occupant agency with GSA.

§ 101-20.105-2 Correction of hazardous conditions.

(a) GSA is responsible for correcting hazards associated with the condition of the space it assigns, including hazards related to building features, fixtures, and systems. GSA is also responsible for correcting hazards in common, joint, and public use spaces. Occupant agencies are responsible for correcting hazards associated with their use of assigned space, including those related to the operation of their program equipment.

(b) Hazardous conditions within the occupant agency's responsibility to correct shall be corrected within 30 workdays when possible. Imminently dangerous conditions shall be corrected immediately upon their discovery. If more than 30 workdays are required for correction, an abatement plan shall be prepared in accordance with 29 CFR Part 1960. Corrective alteration measures may be undertaken in accordance with § 101-20.106, Reimbursable services.

(c) Conditions within GSA's responsibility to correct shall be identified, documented and presented to the GSA buildings manager. Imminently dangerous conditions shall be corrected immediately upon their discovery. When an imminently dangerous condition as defined by 29 CFR 1960.28 exists, this report shall be made by telephone. Upon receipt of a properly documented report of hazardous conditions, GSA will promptly investigate, determine a plan to resolve the problems, and inform the occupant agency. Such reports shall state the hazardous condition and cite references to specific OSHA standards violated. In cases involving health problems, agencies shall provide to GSA an industrial hygienist's report of an investigation of the alleged problem, which must include a description of the problem, results of testing, and recommendations for correction. When resolution will take more than 30 workdays, GSA shall prepare an abatement plan in accordance with 29 CFR Part 1960, shall furnish this plan to the occupant agency for review and subsequent follow-up, and shall give priority to prompt abatement of the conditions.

§ 101-20.105-3 Smoking.

(a) Regulations for controlling smoking in GSA-controlled buildings and facilities, including leased space and delegated facilities, are set forth below. Smoking is defined as a lighted cigar, cigarette, pipe, or any other lit tobacco product. These regulations reflect the following considerations:

(1) In recognition of the increased health hazards of passive smoke on the non-smoker, smoking is to be held to an absolute minimum in areas where there are non-smokers.

(2) In recognition of the needs of smokers, smoking areas should be designated in Federal buildings which are convenient, do not negatively impact worker productivity, and do not impinge on the health of those who do not smoke.

(3) Agency heads are to be given the responsibility to determine which areas are to be smoking areas and which areas are to be non-smoking areas. In exercising this responsibility, agency heads are to give appropriate consideration to the views of the employees affected and/or their representatives and are to take fully into consideration the health issues involved.

Note—Agencies are encouraged to develop additional guidelines for internal use for action when violations of these regulations occur. Nothing in these regulations precludes an agency from establishing more stringent guidelines. For purposes of these regulations, general office space is defined as space occupied by personnel performing their daily work functions; this includes, but is not limited to: ADP areas, mail rooms, file rooms, duplication areas, court and jury rooms, office space, etc.

(b) Smoking is prohibited in the following areas:

(1) General office space, except as permitted under paragraph (c)(2)(iii) of this section;

(2) Auditoriums, classrooms, and conference rooms;

(3) Elevators ("No Smoking signs shall be posted in elevators and adequate receptacles shall be placed outside the entrances if designated as a smoking area);

(4) Corridors, lobbies, restrooms, and stairways, except as permitted under paragraph (c)(2)(iv) of this section;

(5) Medical care facilities such as medical clinics and units;

(6) Libraries; and

(7) Hazardous areas. Each agency shall post and enforce "No Smoking" rules in any location under its jurisdiction which involves flammable liquids, flammable gases, or flammable vapors, or in all other locations where there is a collection of readily ignitable, combustible materials.

(c) Designated smoking area shall be established as follows:

(1) Smoking areas in cafeterias.

(i) Each agency head shall establish "smoking areas in cafeterias.

(ii) The areas designated shall be based upon an estimate of the number of smoking and non-smoking patrons served. This may be adjusted on the basis of local experience. The designated "smoking" areas shall be identified by appropriate signs.

(2) "Designated smoking areas" established by agency heads.

(i) Agency heads shall establish "designated smoking areas" except those areas set forth under paragraph (b) of this section. Agency heads will be responsible for monitoring and controlling these areas, and for ensuring that "designated smoking areas" are identified by proper signs. Suitable, uniform signs reading "Designated Smoking Area shall be furnished and installed by the agency.

(ii) Agencies in multi-tenant buildings are encouraged to work together to identify "designated smoking areas"

(iii) Office space may be designated as a smoking area providing that the office space is configured so as to limit the involuntary exposure of non-smokers to secondhand smoke to a minimum; e.g., the office space involved must be large enough and sufficiently ventilated to provide separate smoking and non-smoking sections which protect the non-smokers against involuntary exposure to smoke.

(iv) An agency head may designate corridors, lobbies, or restrooms as smoking areas when it is not possible to designate a sufficient number of other smoking areas.

(d) Agencies are responsible for providing adequate ash-trays or receptacles in the designated smoking areas.

(e) Suitable, uniform signs reading "No Smoking Except in Designated Areas" shall be placed on or near entrance doors of buildings subject to these regulations. These signs shall be furnished and installed by the GSA Buildings Manager in buildings managed by GSA. It should not be necessary to display a sign in every room of each building.

(f) An agency is not required by this regulation to make any expenditures for structural or non-structural changes to accommodate the preferences of non-smoking employees.

(g) Prior to implementation of this regulation, where there is an exclusive representative for the employees, the agency shall meet its obligation under 5 U.S.C. Ch. 71. In all other cases, agencies should consult directly with employees.

(h) In accordance with the Federal Acquisition Regulation, Part 8, the mandatory source of supply for the purchase of the aforementioned signs is UNICOR, Federal Prison Industries, Inc. (FPI). Prior approval from FPI is required before using any other source of supply. Purchase Orders should be submitted to: UNICOR, Federal Prison Industries, Inc., 320 First Street, NW Washington, DC 20534, (202) 724–8239.

§ 101-20.106 Reimbursable services.

Services in addition to those standard level services prescribed in §§ 101–20.101 through 20.105 may be provided or arranged for by GSA on a reimbursable basis. Such services include:

(a) Specialized security services beyond standard levels, such as guarding, ingress-egress control, inspection of packages, directed security patrols, and other similar activities;

(b) Design, installation, maintenance, and operation of electronic systems such as intrusion-detection devices, duress-holdup alarms, and remote monitoring systems;

(c) Utilities for specialized equipment, or for times when space conditioning beyond standard levels is required;

(d) Construction and/or alterations necessary for installation of agency program equipment;

(e) Space adjustments requested by an occupant agency for its convenience in moving activities within its already assigned space;

(f) Janitorial and other services over and above standard levels;

(g) Space alterations beyond the standard level provided by GSA;

(h) Construction, installation, operation, maintenance, and repair of agency program equipment, and space adjustments required as a result of such installations;

(i) Services of motion picture operators and other technicians required in the use of auditoriums, conference rooms, and special agency equipment; and

(j) Office design, space planning, and office automation installation support and services.

§ 101-20.106-1 Placing of orders for reimbursable alterations by occupant agencies.

(a) Where GSA has indefinite quantity contracts and/or unit price agreements available for accomplishment of space alterations in Government owned and leased buildings, agencies should order against these contracts and agreements, except when it is not in the Government's best interest. Agencies wishing to use this authority shall submit names of their proposed ordering officials to the GSA buildings manager, who will submit them to the GSA contracting officer. The contracting officer shall designate in writing the ordering officials and will authorize the contractor to accept orders from the designated ordering officials. The GSA contracting officer shall advise the agencies' ordering officials in writing of their responsibilities, authorities, and limitations under these contracts and agreements.

(b) No individual order, or combination of orders for a single alteration project, shall exceed $25,000; and agencies shall not split orders so as to circumvent this limitation.

(c) For all orders placed against GSA contracts or agreements, agency ordering officials shall obtain prior written approval of the GSA buildings manager and provide a copy of the ordering document and final payment document to the GSA buildings manager. Agencies are responsible for inspecting and certifying satisfactory completion of the work, and for ensuring contractor compliance with contract provisions. The final payment document shall be supported by GSA Form 1142, Release of Claims; GSA Form 2419, Certification of Payments to Subcontractors and Suppliers; and certification that the work has been inspected and accepted.

(d) Agencies may not negotiate with contractors for items not specifically priced under indefinite quantity contracts and/or price agreements.

(e) Where no GSA contracts or agreements are in effect, an agency may contract directly for services up to maximum of $25,000 per project after obtaining written approval of the GSA buildings manager. Agencies contracting directly must provide the GSA buildings manager with complete documentation of the scope of work and contract specifications at the time of submission for approval. Each project shall include an initial, interim, and final review by the regional safety staff. If contracting for security systems, agencies must submit the design work to the regional Law Enforcement Branch for review and approval. Agencies shall be responsible for inspecting and certifying satisfactory completion of the ordered work. All work must conform to GSA fire and safety standards. As-built drawings must be submitted to the GSA buildings manager with 30 days of completion of the work.

§ 101-20.106-2 Limitations on provision of reimbursable services by GSA.

In order to reduce processing costs of documents and to improve efficiency of service delivery, requests for reimbursable work to be performed or arranged by GSA may be subject to the following requirements:

(a) Individual work authorizations (e.g., GSA Form 2957's) for which total expenses as estimated by GSA are less than $500 need not be processed by GSA, but may be returned to the requesting agency. Unless the work is related to security or required to correct an unhealthful or unsafe condition, occupant agencies may be required to hold all such requests until the reimbursable work in question can be aggregated into a single request for at least $500.

(b) The restrictions of paragraph (a) of this section are not mandatory, but may be applied by GSA when their application is in the best interests of the Government from the standpoint of cost effectiveness.

(c) The restrictions of paragraph (a) of this section do not apply to orders placed against existing blanket or open-end authorizations which exceed $500 and which show obligated and unused fund balances sufficient to perform the work.

(d) Agencies requesting reimbursable services are responsible for verifying and approving GSA estimates within 30 calendar days following submission of such estimates to the requester. Reimbursable work requests for which estimates have not been approved within 30 days will be canceled.

§ 101-20.107 Energy management.

Agencies shall comply with the energy conservation guidelines set forth in 10 CFR Part 436 (Federal Energy Management and Planning Programs) and shall observe the energy conservation policies cited herein.

(a) Agencies shall ensure that lights and equipment are turned off when not needed, that ventilation is not blocked or impeded, and that windows and other building accesses are closed during the heating and cooling seasons.

(b) Except where special circumstances exist, illumination levels shall be maintained as near as is practical to the following standards:

(1) 50 foot-candles at work station surfaces, measured at a height of 30 inches above floor level, during working hours (For visually difficult or critical tasks, additional lighting may be authorized by the GSA buildings manager or by agencies that have been given delegated authority to perform buildings management functions.);

(2) 30 foot-candles in work areas during working hours, measured at 30 inches above floor level;

(3) 10 foot-candles, but not less than 1 foot-candle nonwork areas, sufficient to ensure safety in non-work areas during working hours. (Normally this will require levels of 5 foot-candles at elevator boarding areas, minimum of 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, and 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, and 10 foot-candles in storage areas.); and

(4) Other lighting essential for safety and security purposes, including exit signs and exterior lights, shall be maintained.

(c) Within the limitations of the building systems, heating and cooling systems shall be operated in the most overall energy efficient and economical manner.

(1) Thermostats shall be set to maintain temperatures between 65 and 70 degrees Fahrenheit during the heating season and 76 and 80 degrees Fahrenheit during the cooling season. During non-working hours, heating temperatures shall be set no higher than 55 degrees Fahrenheit and air-conditioning will not be provided. Temperatures in warehouses, loading docks, inspection facilities, and other similar spaces subject to external traffic shall be adjusted lower than 65 degrees Fahrenheit depending upon the type of occupancy and activity.

(2) The locations used for measurement of temperatures to determine compliance will be representative of the spaces to be heated or cooled.

(3) Work stations which are the most adversely affected may be the basis for establishing the temperature levels throughout that portion of the building.

(4) Reheating, humidification, and simultaneous heating and cooling shall not be permitted.

(5) During extreme weather conditions, building systems shall be operated as necessary to protect the physical condition of the building.

(d) The operation of portable heaters, fans, and other such devices in Government-controlled space is prohibited unless authorized by the GSA buildings manager or by agencies that have been given delegated authority to perform buildings management functions.

(e) Within limitations of building systems, ventiliation will be provided in the most cost effective manner. During working hours, 5 cubic feet per minute, per persn, will be the minimum provided during periods of heating or cooling. Additional outside air above this minimum level can be provided to allow "free" cooling.

(f) Energy standards for existing buildings will be no less stringent than those prescribed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North American in ASHRAE/IES Standard 90A–1980 as amended by Department of Energy (DOE). These energy standards are applicable where they can be achieved through life cycle, cost effective actions.

(g) Exceptions to the foregoing policies may be necessary for specialized requirements of for agencies to accomplish their missions more effectively and efficently. Such exceptions may be granted by the GSA buildings manager or by agencies that have been given delegated authority to perform buildings management functions.

(h) Contracting officers shall ensure that all new lease contracts are in conformance with the policies prescribed in this § 101–20.116. Existing lease contracts shall be administered in accordance with these policies to the maximum extent feasible.

(i) Each agency shall report to the Department of Energy (DOE) the energy consumption in buildings, facilities, vehicles, and equipment under its control within 45 calendar days after the end of each quarter as specified in the DOE Federal Energy usage Report DOE F 6200.2 instructions. This report has been cleared in accordance with FPMR 101–11.11, Interagency Reports Management Program, and assigned interagency report control number 1492 DOE OU.

§ 101–20.108 Staggered hours of duty.

(a) The GSA Regional Administrator, National Capital Region, is responsible for putting into effect the policy of maintaining staggered duty hours in Metropolitan Washington, DC. For purposes of this regulation, "Metropolitan Washington" means the Washington Standard Metropolitan Statistical Area (SMSA) as defined by the Department of Commerce.

(b) Any agency planning a change in its schedule of duty hours which will affect 50 or more employees shall submit the changes to the GSA Regional Administrator, (WA) Washington, DC, 20407 for approval prior to implementation. The agency shall indicate the number of employees affected, the present and proposed hours of duty, and the reasons for the change in schedule. The agency shall also coordinate with the employees and their union(s) to determine the percentage of employees in favor of the proposed change.

(c) The GSA Regional Administrator, National Capital Region, shall coordinate the proposed change with appropriate authorities to ensure that the change will not create congestion or disruptions in traffic or transportation flow patterns.

(d) GSA and other Federal agencies may also consider the advisability of establishing staggered duty hours in areas outside Metropolitan Washington where major concentrations of Federal employees exist.

§ 101–20.109 Concessions.

(a) The provisions of this section do not apply to blind vending facilities operated under the Randolph-Sheppard Act (20 U.S.C. 107 et seq.); regulations governing this program are continued in Subpart 101–20.2.

(b) GSA is responsible for the planning, provision, and administration of essential concessions in buildings under its control. GSA will enter into and award concessions contracts, provide suitable space and facilities, if required, and administer applicable inspection and oversight functions. Officials of occupant agencies shall convey concerns to GSA and shall not instruct concessionaires regarding their operations.

(c) Subject to the availability of space, prior to establishing concessions, GSA will ensure that:

(1) The proposed concession will offer only essential services which are needed by employees, and which cannot be conveniently obtained from existing facilities, (Consultation will be held with occupant agencies.);

(2) The proposed concession will be established and operated in conformance with applicable policies, safety, health, and sanitation codes, laws, regulations, etc., and will not contravene the terms of any lease or other contractual arrangement;

(3) Sufficient funds are legally available to cover all costs for which the Government may be responsible; and

(4) All contracts will be financially self-supporting and not compete with nearby commercial enterprise.

Subpart 101–20.2—Vending Facility Program for Blind Persons

§ 101–20.200 Scope of subpart.

This subpart contains the policy and procedures for ensuring the priority of blind vendors in operating vending facilities on GSA-controlled property.

§ 101–20.201 Policy.

Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the

provisions of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) shall be given priority in the location and operating of vending facilities, including vending machines, on GSA-controlled property provided the location or operation of such facility would not adversely affect the interests of the United States. Blind vendors shall also be given priority on GSA-controlled property in the operation of cafeterias according to 34 CFR 395.33.

§ 101-20.202 Establishing vending facilities.

(a) GSA shall not acquire a building by ownership, rent, or lease, or occupy a building to be constructed, substantially altered, or renovated unless it is determined that such buildings contain or will contain a "satisfactory site" as defined in 34 CFR 395.1q, for the location and operating of a blind vending facility.

(b) In accordance with 34 CFR 395.31, GSA shall provide the appropriate State licensing agency with written notice of its intention to acquire or otherwise occupy such building. Providing notification shall be the responsibility of the Buildings Management Division, GSA.

§ 101-20.203 Application for permit.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of GSA.

§ 101-20.204 Terms of permit.

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with Title VI of the Civil Rights Act of 1964 and GSA regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas;

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to GSA; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services as are determined by the State licensing agency, in consultation with GSA to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the Director, Buildings Management Division, GSA, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; that costs of relocations initiated by the Director, Buildings Management Division, shall be paid by GSA; and that all plumbing, electrical, and mechanical costs related to the renovation of existing facilities shall be paid by GSA.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit. The State licensing agency shall be expected to perform under the same contractual arrangement applicable to commercial cafeteria operators.

§ 101-20.205 Enforcement procedures.

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the buildings manager.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be reported in writing to the State licensing agency supervisory personnel by the GSA regional office in an attempt to resolve the issue.

§ 101-20.206 Reports.

At the end of each fiscal year, GSA shall report to the Secretary of Education the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected, and the amount of such vending machine income disbursed to the State licensing agency in each State.

Subpart 101-20.3—Conduct on Federal Property

§ 101-20.300 Applicability.

These rules and regulations apply to all property under the charge and control of the General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations.

§ 101-20.301 Inspection.

Packages, briefcases, and other containers in the immediate possession of visitors, employees, or other persons arriving on, working at, visiting, or departing from Federal property, are subject to inspection. A full search of a person and any vehicle driven or occupied by the person may accompany an arrest.

§ 101-20.302 Admission to property.

Property shall be closed to the public during other than normal working hours. The closing of property will not apply to that space in those instances where the Government has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by Subpart 101-20.4. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Occupant Emergency Program after consultation with the buildings manager and the ranking representative of the Law Enforcement Branch responsible for protection of the facility or the area. This requirement does not preempt the

authority of the Chief, Law Enforcement Branch, or any other authorized GSA official to effect a security alert of a facility in accordance with GSA Order, Physical Security of Buildings Alert Guidelines (PBS 5930.16), dated February 20, 1976. This action shall be coordinated with the designated official. The designated official is defined in § 101-20.003-7 as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials. When property, or a portion thereof, is closed to the public, admission to this property, or a portion, will be restricted to authorized persons who shall register upon entry to the property and shall, when requested, display Government or other identifying credentials to the Federal Protective Officers or other authorized individuals when entering, leaving, or while on the property. Failure to comply with any of the above applicable provisions is a violation of these regulations.

§ 101-20.303 Preservation of property.

The improper disposal of rubbish on property; the willful destruction of or damage to property; the theft of property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from or at a building or the climbing upon statues, fountains, or any part of the building, is prohibited.

§ 101-20.304 Conformity with signs and directions.

Persons in and on property shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the lawful direction of Federal Protective Officers and other authorized individuals.

§ 101-20.305 Disturbances.

Any loitering, disorderly conduct, or other conduct on property which creates loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees; or which prevents the general public from obtaining the administrative services provided on the property in a timely manner, is prohibited.

§ 101-20.306 Gambling.

Participating in games for money or other personal property, or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on property is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.)

§ 101-20.307 Alcholic beverages and narcotics.

Operation of a motor vehicle while on the property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine is prohibited. The prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on property is prohibited except, upon occassions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing. The head of the responsible agency or his or her designee shall provide a copy of all exemptions granted to the buildings manager who shall inform the Federal Protective Officer, or other authorized officials, responsible for the security of the property.

§ 101-20.308 Soliciting, vending, and debt collection.

Soliciting alms, commercial or political soliciting, and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on GSA-controlled property is prohibited. This rule does not apply to—

(a) National or local drives for funds for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service, issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95-454); and

(d) Lessee, or it agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(a)(16)).

Public areas of GSA-Controlled property may be used for other activities permitted in accordance with Subpart 101-20-4.

§ 101-20.309 Posting and distributing materials.

Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property is prohibited, except as authorized in § 101-20.308 or when these displays are conducted as part of authorized Government activities. Distribution of materials, such as pamphlets, handbills, or flyers, is prohibited, except in the public areas of the property as defined in § 101-20.003-26, unless conducted as part of authorized Government activities. Any person or organization proposing to distribute materials in a public area under this section shall first obtain a permit from the building manager under Subpart 101-20.4 and shall conduct distribution in accordance with the provisions of Subpart 101-20.4. Failure to comply with those provisions is a violation of these regulations.

§ 101-20.310 Photographs for news, advertising, or commercial purposes.

Photographs may be taken in space occupied by a tenant agency only with the consent of the occupying agency concerned. Except where security regulations apply or a Federal court order or rule prohibits it, photographs for news purposes may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings. Subject to the foregoing prohibitions, photographs for advertising and commercial purposes may be taken only with written permission of an authorized official of the agency occupying the space where the photographs are to be taken.

§ 101-20.311 Dogs and other animals.

Dogs and other animals, except seeing eye dogs, other guide dogs, and animals used to guide or assist handicapped persons, shall not be brought upon property for other than official purposes.

§ 101-20.312 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles entering or while on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of Federal protective officers or other

authorized individuals and all posted traffic signs;

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on property is prohibited; and

(c) Except in emergencies, parking on property is not allowed without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owners risk and expense. This paragraph may be supplemented from time to time with the approval of the Regional Administrator by the issuance and posting of such specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part thereof. Proof that a motor vehicle was parked in violation of these regulations or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

§ 101-20.313 Weapons and explosives.

No person entering or while on property shall carry or possess firearms, other dangerous or deadly weapons, explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

§ 101-20.314 Nondiscrimination.

There shall be no discrimination by segregation or otherwise against any person or persons because of race, creed, sex, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on the property.

§ 101-20.315 Penalties and other laws.

Whoever shall be found guilty of violating any rule or regulation in this Subpart 101-20.3 while on any property under the charge and control of GSA is subject to a fine of not more than $500 or imprisonment of not more than 6 months, or both, [See 18 U.S.C. (Ch.1) (Sec.1)]. Nothing in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated.

Subpart 101-20.4—Occasional Use of Public Buildings

§ 101-20.400 Scope of subpart.

§§ 101-20.401 through 101-20.408 establish rules and regulations for the occasional use of public areas for cultural, educational and recreational activities as provided by the Public Buildings Cooperative Use Act of 1976 (Pub. L. 94-541).

§ 101-20.401 Applications for permits.

(a) Any person or organization desiring to use a public area shall file an application for permit with the GSA Buildings Manager. Such application shall be made on a form provided by GSA and shall be submitted in the manner specified by GSA.

(b) The following information is required:

(1) Full names, mailing addresses, and telephone numbers of the applicant, the organization sponoring the proposed activity, and the individual(s) responsible for supervising the activity;

(2) Documentation showing that the applicant has authority to represent the sponsoring organization;

(3) A description of the proposed activity, including the dates and times during which it is to be conducted and the number of persons to be involved.

(c) If the proposed activity constitutes a use of a public area for soliciting funds, the applicant shall also submit a signed statement that:

(1) The applicant is a representative of and will be soliciting funds for the sole benefit of, a religion or religious group; or

(2) The applicant's organization has received an official ruling of tax-exempt status from the Internal Revenue Service under 26 U.S.C. 501; or, alternatively, that an application for such a ruling is still in process.

§ 101-20.402 Permits.

(a) A permit shall be issued by GSA within 10 working days following its receipt of the completed applications. A permit shall not be issued for a period of time in excess of 30 calendar days, unless specifically approved by the regional officer. After the expiration of a permit, a new permit may be issued upon submission of a new application; in such a case, applicants may incorporate by reference all required information filed with the prior application.

(b) When more than one permit is requested for the same area and times, permits will be issued on a first-come, first-served basis.

(c) All permits involving demonstrations and activities which may lead to civil disturbances should be coordinated with the Chief, Law Enforcement Branch, before approval.

§ 101-20.403 Disapproval of applications or cancellation of permits.

(a) GSA shall disapprove any application or cancel an issued permit if:

(1) The applicant has failed to submit all information required under § 101-20.401, or has falsified such information;

(2) The proposed use is a commercial activity as defined in § 101-20.003-4;

(3) The proposed use interferes with access to the public area, disrupts official Government business, interferes with approved uses of the property by tenants or by the public, or damages any property;

(4) The proposed use is intended to influence or impede any pending judicial proceeding;

(5) The proposed use is obscene within the meaning of obscenity as defined in 18 U.S.C. 1461-65; or

(6) The proposed use is violative of the prohibition against political solicitations in 18 U.S.C. 607

(b) Upon disapproving an application or cancelling a permit; GSA shall promptly notify the applicant or permittee of the reasons for the action, and shall inform the applicant or permittee of his/her appeal rights under § 101-20.404.

§ 101-20.404 Appeals.

(a) A disapproval of application or cancellation of issued permits may be appealed to the GSA Regional Officer (as defined in § 101-20.003-13) within 5 calendar days of the notification of disapproval or cancellation. Notices of appeal must be made in writing.

(b) On appeal, the applicant or permittee and the GSA buildings manager shall have opportunity to orally state their positions on the issues. Written materials may also be submitted.

(c) The GSA Regional Officer shall affirm or reverse the GSA building manager's decision, based on the information submitted, within 10 calendar days of the date on which the Regional Officer received notification of the appeal. If the decision is not rendered within 10 days, the application will be considered to be approved or the permit validly issued. The Regional Officer will promptly notify the applicant or permittee and the buildings manager of the decision and the reasons therefor.

§ 101-20.405 Schedules of use.

Nothing in these regulations shall prevent GSA from reserving certain time periods for use of public areas for official Government business; from setting aside certain time periods for maintenance, repair, and construction; or from permitting a previously approved use for official Government business.

§ 101-20.406 Hours of use.

Public areas may be used during or after regular working hours of Federal agencies, provided that such uses will not interfere with Government business. When public areas are used by permittees after normal working hours, all adjacent areas not approved for such use shall be locked, barricaded, or identified by signs, as appropriate, to restrict permittees' activities to approved areas.

§ 101-20.407 Services and costs.

(a) *Costs.* The space to be provided under these regulations is furnished free of charge. Services normally provided at the building in question, such as security, cleaning, heating, ventilation, and air-conditioning, shall also be provided free of charge by GSA. The applicant shall be requested to reimburse GSA for services over and above those normally provided. If the applicant desires to provide services, such as security and cleaning, this request must be approved by the GSA Regional Officer. GSA may provide the services free of charge if the cost is insignificant and if it is in the public s interest.

(b) *Alterations.* Permittees shall make no alterations to public areas except with prior approval of GSA. Such approval shall not be given unless GSA determines that changes in a building should be made to encourage and aid in the proposed use. Permittees making alterations must make provisions to ensure the safety of users and the prevention of damage to property.

(c) Permittees are responsible for furnishing items such as tickets, audiovisual equipment, etc., which are necessary for the proposed use.

§ 101-20.408 Conduct.

(a) Permittees are subject to all rules and regulations governing conduct on Federal property as set forth in Subpart 101-20.3. In addition, a permittee shall:

(1) Not misrepresent his or her identity to the public;

(2) Not conduct any activities in a misleading or fraudulent manner;

(3) Not discriminate on the basis of race, creed, color, sex or national origin in conducting activities;

(4) Not distribute any item, nor post or otherwise affix any item, for which prior approval under § 101-20.401 has not been obtained;

(5) Not leave leaflets or other materials unattended on the property; and

(6) Not engage in activities which would interfere with the preferences afforded blind licenses under the Randolph-Sheppard Act (20 U.S.C. 107).

(b) Permittees engaging in the solicitation of funds as authorized by § 101-20.401 shall display identification badges while on Federal property. Each badge shall indicate the permittee's name, address, telephone number, and organization.

§ 101-20.409 Non-affiliation with the Government.

The General Services Administration reserves the right to advise the public through signs or announcements of the presence of any permittees and of their nonaffiliation with the Federal Government.

Subpart 101-20.5—Sidewalk Installation, Repair, and Replacement

§ 101-20.500 Scope of subpart.

This subpart contains the regulations governing the installation, repair, and replacement of sidewalks around buildings, installations, properties, or grounds under the control of executive agencies and owned by the United States within the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States, by reimbursement to a State or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, or the territory or possession of the United States. They are issued with the approval of the Director of the Office of Management and Budget.

§ 101-20.501 Responsibilities.

Upon prior consent of the property-holding agency, the State in which the property lies may perform or arrange for the installation, repair, and replacement of sidewalks, and obtain reimbursement therefor from the property-holding agency, or, if mutually agreed upon, the property-holding agency may contract or otherwise arrange for and pay directly for such installation, repair, and replacement.

§ 101-20.502 Standards.

Sidewalks shall be installed, repaired, or replaced with due consideration to the standards and specifications prescribed by the State or political subdivision thereof. However, where the property-holding agency determines that it is necessary, in order to achieve or retain architectural harmony with the surroundings, the property-holding agency may prescribe other standards and specifications.

Dated: October 23, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87-7694 Filed 4-7-87; 8:45 am]

BILLING CODE 6820-23-M

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41 CFR Part 101-28

[FPMR Temp. Reg. E-86]

Customer Supply Center Program; Revision of Mission Statement

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation revises the mission statement of customer supply centers (CSCs) and provides certain restrictions on the use of CSCs. These changes are necessary to limit the frequency and quantity of orders that customer agencies may place with CSCs so that the orders will not exceed the volume that CSCs are intended to handle. The regulation will result in customer agencies obtaining items of supply from the sources that are most cost-effective.

DATES: Effective date: March 23, 1987.

Expiration date: January 31, 1988.

Comments due on or before: June 1, 1987

ADDRESS: Comments should be addressed to: General Services Administration (FFY), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: General questions: Mr. John Boughton, Regulations and Policy Division (703-557-7525).

Specific technical questions: Mr. Roman Marciniak, Distribution Management Division (703-557-0800).

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society;

List of Subjects in 41 CFR Part 101-28

Government property management, Warehouses.

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

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter E to read as follows:

Federal Property Management Regulations. Temporary Regulation E-86

March 16, 1987

To: Heads of Federal agencies.

Subject: Customer supply center program.

1. *Purpose.* This regulation provides a revised mission statement for customer supply centers (CSCs) and provides for improved cost-effective use of CSCs.

2. *Effective date.* This regulation is effective March 23, 1987

3. *Expiration date.* This regulation expires January 31, 1988, unless sooner superseded or incorporated into the permanent regulations of GSA.

4. *Applicability.* This regulation applies to all executive agencies.

5. *Background.* A number of customer agency ordering points have been submitting orders for items, on a daily basis, that exceed the maximum order quantities (MOQs) established for those items. This practice contradicts the intended mission of this program which is to satisfy only small quantity (retail) needs, is costly for the ordering agency, and lessens the efficiency and effectiveness of the CSC program.

6. *Explanation of changes.* Subpart 101-28.3 is amended as indicated below.

a. Section 101-28.302 is revised to read as follows:

§ 101-28.302 Mission of customer supply centers.

CSCs are retail supply distribution outlets established by GSA to provide fast, efficient, and economical support for satisfying small quantity repetitive requirements for common-use items. CSCs are intended to support end-user activities only. Warehouses, stores, and stockrooms that are used to redistribute supplies are generally not considered to be end-users. CSCs are not authorized to provide supply support to activities which redistribute supplies through the mail or resale activities such as Department of the Navy servmarts and Department of the Army self-service supply centers. CSCs are authorized to issue stock to storerooms which maintain cupboard levels of supplies for redistribution to activities in the immediate area if CSC requirements on order size and frequently are met.

b. Section 101-28.306-3 is amended by adding paragraph (c) as follows:

§ 101-28.306-3 Limitations on use.

(c) Customer ordering points shall consolidate orders for one or more items placed with the CSCs in frequencies not to exceed one order per day and in quantities not to exceed the MOQ established for each item as indicated in the Customer Supply Center Catalog. Customer ordering points shall review the frequency of CSC orders and, whenever possible, consolidate several small orders into one large order within the limitations of the MOQ for each item. This will reduce administrative costs for ordering agencies and GSA. When exceptional item requirements exist (emergencies, disaster, immediate unforecasted needs, etc.), the individual CSC management may elect to exercise system override capabilities permitting exceptions to this policy. When normal item requirements exceed the CSC MOQ, customer ordering points shall use FEDSTRIP to obtain depot items (wholesale GSA stock) and their own agency of GSA's procurement offices to obtain Federal Supply Schedule and open market items. Each GSA region has a staff of customer service officers (CSOs) available to assist customers and answer questions regarding proper use of GSA Federal Supply Service programs. The staff of the Federal Supply Service Bureau in each GSA region can also answer questions regarding use of GSA Federal Supply Service programs.

7. *Agency comments and assistance.* Comments or inquiries concerning the effect or impact of this regulation should be submitted to the General Services Administration (FFY), Washington, DC 20406, not later than June 1, 1987 for consideration and possible incorporation into a permanent regulation.

8. *Effect on other directives.* This regulation supersedes the provisions of FPMR 101-28.302 and supplements the provisions of FPMR 101-28.306-3.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87-7708 Filed 4-7-87; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

Department of Defense Federal Acquisition Regulation Supplement; Availability of Contractor Records

AGENCY: Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: On 26 February 1987 the Defense Acquisition Regulatory Council issued a proposed rule (52 FR 5791) that proposes to add section 215.873, Availability of Contractor Records, and the related clause at 252.215-7001, Availability of Contractor Records, to the Department of Defense Federal Acquisition Regulation Supplement. However, section 943 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99-500) requires that these regulations be prescribed by 16 April 1987. This interim rule is issued in order to implement the requirements of section 943 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99-500) and is identical to the proposed rule of 26 February 1987. The expiration of the public comment period on 27 April 1987 for the proposed rule remains unchanged, and will also be used for the comment period of this interim rule. The comments received at the 27 April deadline will be used to amend this interim rule, if necessary.

DATES: Effective Date: Effective on all solicitations issued on or after 16 April 1987

Comment Date: Comments must be received on or before 27 April 1987. Please cite DAR Case 85-219 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7267

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements 10 U.S.C. 2406 as found in the FY 1987 DoD Authorization Act at section 943 and is the same as that issued in the **Federal Register** previously (52 FR 5791). This rule grants the Department access to records on certain contracts.

B. Determination to Issue an Interim Regulation

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary in order to implement Section 943 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99-500).

C. Regulatory Flexibility Act

This rule applies to the award of contracts requiring the submission of cost or pricing data, and most awards to small entities are made on a price competitive basis not requiring such data. It does not require contractors to collect or maintain additional data not already collected or maintained. The only potential additional administrative effort imposed is that contractors must retain any data collected or maintained until three years after final payment. This minimal burden does not appear to have a significant impact on a substantial number of small entities. Therefore, an initial regulatory

flexibility analysis has not been prepared. Comments from interested small businesses are invited.

D. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 215 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 215 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.873 is added to read as follows:

§ 215.873 Availability of contractor records.

In accordance with 10 U.S.C. 2406, the contracting officer shall include the clause at 252.215–7001, Availability of Contractor Records" in solicitations and contracts which—

(a) Require the submission and certification of cost or pricing data; and

(b) Are for the manufacture of end items for a major defense acquisition program, as defined in 10 U.S.C. 2432a.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215–7001 is added to read as follows:

§ 252.215–7001 Availability of contractor records.

As prescribed in 215.873, insert the following clause:

Availability of Contractor Records (APR 87)

(a) Upon request by the Contracting Officer, the Contractor shall make available, in a timely manner, to the Contracting Officer or to an authorized representative of the Contracting Officer (who is an employee of the United States or a member of the Armed Forces), records of the contract and of end items under the contract for:

(1) The proposed, negotiated and incurred costs and related profit or fee;

(2) Bills of materials; and

(3) Work measurement system data (and any revision to such data), including standard hours of work content. These work measurement system data are those generated from time standard setting, time monitoring and variance analysis, produced for such purposes as planning, cost estimating, and productivity improvement. This availability includes access to proposed and negotiated work measurement system data (and any revision to such data).

(b) Nothing in this clause shall require the Contractor to collect or maintain additional data not otherwise collected or maintained nor to maintain data in a form or manner different from that in which the Contractor maintains such data.

(c) Any data covered by this clause shall be available for review until three (3) years after final payment under this contract.

(End of clause)

[FR Doc. 87–7817 Filed 4–7–87; 8:45 am]

BILLING CODE 3810–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1043, and 1084

[Ex Parte No. MC–178 (Sub-No. 4)]

Implementation of Liability Risk Retention Act of 1986

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of Policy Statement.

SUMMARY: The Commission adopts this Policy Statement and gives notice that Risk Retention Groups established under the Liability Risk Retention Act of 1986, and licensed as Liability Insurance Companies under the laws of a state, qualify as insurance or surety companies defined at 49 CFR 1043.8. Accordingly, the Commission will accept Risk Retention Groups' filings of evidence of insurance or surety bonds and notices of cancellation. Risk Retention Groups, as with other insurance and surety companies, must comply with and must certify coverage on the Commission's prescribed forms as specified in 49 CFR 1043.7 and Part 1003, and comply with all other applicable regulations published at 49 CFR Part 1043 and Part 1084.

The Commission has determined that its existing rules and regulations allow the acceptance of filings by Risk Rentention Groups; therefore, new or revised rules are unnecessary and no comments are required.

DATE: The Policy Statement is effective on April 8, 1987

FOR FURTHER INFORMATION CONTACT:
Alice K. Ramsay (202) 275–0854
Heber P Hardy (202) 275–7148

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll-free (800) 424–5403.

Energy and Environmental Consideration

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

Regulatory Flexibility Analysis

The Commission is issuing a Policy Statement to implement the provisions of the liability Risk Retention Act of 1986, rather than promulgate new or revised regulations in 49 CFR 1043 and 1084. This action is fully in accordance with the objectives of the Regulatory Flexibility Act.

A substantial number of small entities will be affected by this action. However, we expect the economic impact to be beneficial. Motor carriers, brokers, and freight forwarders will now be able to meet their financial responsibility obligations to the Commission by participating in Risk Retention Groups and by having these groups file evidence of security on their behalf. We believe that this alternative will ameliorate some of the problems small entities are presently encountering because of their inability to obtain available and affordable insurance coverage from insurance and surety companies.

This action is taken under the authority of 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

Decided: March 31, 1987

By the Commission, Chairman Gradison Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–7725 Filed 4–7–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat for the Waccamaw Silverside

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Waccamaw silverside (*Menidia*

extensa) to be a threatened species and designates its critical habitat under provisions of the Endangered Species Act of 1973, as amended. The species is known only from Lake Waccamaw and the upper Waccamaw River in Columbus County, North Carolina. Recently completed research indicates nutrient loading has increased in lake Waccamaw. If this trend continues, habitat changes in the lake could jeopardize the survival of this species. Due to the species' limited distribution, its survival could also be threatened by any other factors that degrade water or habitat quality.

DATE: The effective date of this rule is May 8, 1987

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Nora Murdock at the above address (704/259–0321 or FTS 8/672–0321).

SUPPLEMENTARY INFORMATION:

Background

The Waccamaw silverside (*Menidia extensa*) is known only from Lake Waccamaw and the upper Waccamaw River in Columbus County, North Carolina. It was described by Hubbs and Raney (1946). This fish, also known as a "skipjack" or "glass minnow," inhabits open water throughout Lake Waccamaw, where schools are commonly found near the surface over shallow, dark-bottomed areas (Lee *et al.* 1980). The silverside has not been taken outside the lake, with the exception of the Waccamaw River immediately below the Lake Waccamaw dam during periods of very high water (Lindquist and Yarbrough 1982).

The Waccamaw silverside is a long (adults 2.5 inches) slender, almost transparent fish with a silvery stripe along each side. The eyes are large, and the jaw is sharply angled upward. Adults of the species feed on zooplankton. They are sexually mature at one year of age and spawn from April through June. Most silversides die shortly after spawning, but a few may survive a second winter. Since this fish is a short-lived species, it is subject to sudden extirpation should its habitat deteriorate to the point where reproduction fails. The silverside is an important prey species for large fishes in Lake Waccamaw (Lindquist and Yarbrough 1982).

Lake Waccamaw, the principal hibitat of the species, is considered unique. It is a registered North Carolina Natural Heritage Area and has been proposed as a National Natural Landmark. The lake and its drainage have a diverse fish fauna (56 species), including many popular game fish (Shute *et al.* 1981). Teulings and Cooper (1977) listed 17 species of plants and animals from in and around Lake Waccamaw, which were considered of special concern by biologists. Bailey (1977) commented that Lake Waccamaw apparently served as a minor center of evolutionary differentiation [for fish], and a rufuge for earlier forms. Fuller (1977) stated that "The Waccamaw basin in southeastern North Carolina and northeastern South Carolina supports more unique non-marine mollusks than any other locale in the state [North Carolina].

Lake Waccamaw has a surface area of approximately 8,934 acres and has an average depth of only 7.5 feet (Shute *et al.* 1981). Although it is fed by acidic swamp streams, the lake has a virtually neutral pH (Davis and Louder 1969, Porter 1985). Dr. Charles Yarbrough (Wingate College, personal communication 1984) characterized Lake Waccamaw as "an island of neutrality in an acid sea. This neutral condition, unusual among North Carolina's coastal plain lakes, is believed to be caused by the buffering effect of the calcareous Waccamaw Limestone formation, which underlies the lake and is exposed on the north shore (Frey 1951).

Studies of Lake Waccamaw and its fish and mussel fauna, funded through the North Carolina Wildlife Resources Commission (NCWRC), were conducted from 1979 through 1981 (Linquist and Yarbrough 1982, Porter 1985). Those studies and other research (Linquist 1981, Casterlin *et al.* 1986) indicate the lake is experiencing increases in nutrient loading. If this trend continues, the overall water quality will deteriorate, and the lake's ecosystem will be adversely altered. These changes will threaten Lake Waccamaw's fauna, including the silverside. In the proceedings of the 1975 Symposium on Endangered and Threatened Biota of North Carolina (Cooper 1977), the silverside is categorized as "endangered.

The Waccamaw silverside was included in a March 18, 1975, Notice of Review published in the **Federal Register** (40 FR 12297). In the **Federal Register** of December 30, 1977 (42 FR 65209), the Service proposed endangered status and critical habitat for this species. On March 30, 1978, the time period for receiving comments on the proposal was extended 90 days. Considerable opposition was expressed with regard to the proposal.

The NCWRC and the Governor of the State recommended that the proposal be postponed pending further studies of the lake and its fauna. The 1978 amendments to the Endangered Species Act required that proposals for listing species be withdrawn if the listing was not made final within two years of the proposal; accordingly, the proposal to list this species was withdrawn on January 24, 1980 (45 FR 5782).

On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that this fish, along with 147 other fishes, was being considered for possible addition to the List of Endangered and Threatened Wildlife. On June 22, 1984, the Service announced that a status review was being conducted on this species, as well as a second species of fish, the Waccamaw killifish (*Fundulus waccamensis*), and a mussel, the Waccamaw spike (*Elliptio waccamawensis*). By letter and through personal contacts, the Service solicited data on the status and location of the species and their habitat, current and planned activities that might adversely affect the species or their habitat, and possible impacts to Federal activities if critical habitat were designated.

A total of 23 replies was received by the Service in response to the status review. Two respondents opposed the listing of the species and indicated that they did not think these species were endangered or threatened. Two other respondents, while not opposing the listing, pointed out potentials for conflict with planned or ongoing activities. These potential conflicts included highway construction in the vicinity of the lake and aquatic weed control programs administered by the U.S. Army Corps of Engineers (COE). Twelve respondents indicated that they had no problem with the listing of these species and their critical habitat. Seven respondents supported the listing. Among those supporting the listing were the North Carolina Department of Natural Resources and Community Development (NCDNRCD), Consevation Council of North Carolina, North American Native Fishes Association, Southeastern Natural Resources Center, and the National Wildlife Federation.

During the status review process, information was obtained on the Waccamac killifish and the Waccamaw spike, which must be further evaluated before a decision can be made on proposing these species for listing. Therefore, the Service, after receiving sufficient new information through the 1984 status review, only proposed the Waccamaw silverside for threatened species status.

On November 7 1985, the Service published, in the **Federal Register** (50 FR 42320), a proposal to list the Waccamaw silverside as threatened and designate its critical habitat. That proposal provided information on the species' biology, status and threats, and the potential implications of the proposed designation of critical habitat. The proposal also solicited comments on the species and potential impacts of the proposed critical habitat designation.

Summary of Comments and Recommendations

In the November 7 1985, proposed rule (50 FR 46320) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice summarizing the proposed rule was published in the *Whiteville News Reporter* and in the *Wilmington Star News* on November 28, 1985, which invited general public comment. A public hearing was requested on the proposed rule by Thomas Elliott, Mayor, Town of Lake Waccamaw. In the January 16, 1986, **Federal Register** (51 FR 2409), the Service announced that a public hearing would be held February 12, 1986, and that the public comment period would be extended until February 22, 1986. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other parties were again contacted and requested to comment. A newspaper notice of the public hearing and comment period extension was published in the *Whiteville News Reporter* on January 20, 1986, and in the *Wilmington Star News* on February 9, 1986. A total of 41 comments were received, in addition to 18 oral comments presented at the public hearing. Multiple comments from a single individual expressing the same opinion were counted as one response. The comments and public hearing are discussed below:

The Service received 21 comments supporting the proposal or expressing no problems. Three comments received expressed no position on the issue. Six letters supporting the listing were received from local landowners. One suggested that the critical habitat designation be extended to include the entire watershed for Lake Waccamaw. The Service does not believe the entire watershed is critical habitat for the Waccamaw silverside because it is not essential to the conservation of the silverside. The Service considered this suggestion; however, the Waccamaw silverside does not occur in Big Creek or any of the other tributaries which flow into Lake Waccamaw. As Lake Waccamaw is being designated critical habitat, it will be protected under section 7 of the Act from any Federal activities which occur in the watershed and result in "adverse modification" to the lake. Therefore, the Service believes that adequate protection will be provided to the species by designating the lake and the lowermost portion of Big Creek as critical habitat.

Eight Federal agencies, including the U.S. Forest Service, the Economic Development Administration, the Federal Energy Regulatory Commission, Geological Survey, Nuclear Regulatory Commission, and the Department of the Air Force, indicated that they had no proposed projects in the area that would affect or be affected by the proposed listing or designation of critical habitat.

Comments supporting the proposal were received from the NCDNRCD, Division of Parks and Recreation. Two other divisions of the NCDNRCD, the Division of Soil and Water Conservation, and the Division of Forest Resources, responded that they had no problems with the proposed listing. The NCWRC commented in support of the proposal. Comments in support of the listing were also received from the American Society of Ichthyologists and Herpetologists, the Southeastern Fishes Council, the North American Native Fishes Association, the National Wildlife Federation, and the Conservation Council of North Carolina.

The North Carolina Natural Heritage Advisory Committee, composed of representatives of State, conservation, and scientific organizations appointed by the Secretary of the NCDNRCD, at a March 4, 1986, meeting, unanimously endorsed a resolution in support of the Service's proposed listing of the Waccamaw silverside and designation of its critical habitat.

The Vice President of Federal Paper Board, Incorporated, which maintains a commercial timber operation in the Lake Waccamaw area, commented that he had no problem accepting the proposal, as long as it would not result in termination of plans to expand U.S. Highways 74 and 76 located north of the lake. The Service has been in contact with the North Carolina Department of Transportation (NCDOT) and the Federal Highway Administration (FHWA) with regard to this project and, as discussed in detail below, does not foresee any conflicts between protection of the silverside and completion of the highway project as presently planned.

Four other comments were received which did not state a position supporting or opposing the proposal. Two of these were from local landowners, one of whom noted that populations of fish other than the silverside had declined in the lake over the past decade. The other suggested that the Fish and Wildlife Service participate in the local land use planning process. A third response, from the Lieutenant Governor of North Carolina, recommended that the Service discuss in detail the significance of the designations with local officials in and around the Town of Lake Waccamaw, as well as answer the questions which have been raised regarding the adequacy of the water quality management plan developed by town and State officials and the potential impact on the lake from development activities. The fourth response, from the NCDOT, stated that it "does not object to the listing of this or any other species from the standpoint of species/habitat preservation. The NCDOT has plans for widening U.S. Highway 74 where it currently crosses Friar Swamp just north of Lake Waccamaw, as well as a bridge replacement project for the N.C. Highway 211 bridge over a canal south of Bolton. The NCDOT was concerned that the additional environmental requirements of the Endangered Species Act, if the species were listed and its critical habitat designated, would result in delays of project completion dates, and therefore increased project costs.

In response to these questions and comments, the Service would welcome any opportunity to assist a local community in developing land management plans which would preserve or enhance the habitat of an endangered or threatened species. Over the past two years Service personnel have made repeated trips to Lake Waccamaw for the express purpose of discussing this proposal with local officials, explaining the ramifications, and answering questions. Several informal meetings have been held with Town Council members, presentations were given to the Lake Waccamaw Water Quality Committee, and many discussions held with local residents and government officials. In addition, a public hearing was held in February 1986. The listing of the Waccamaw silverside as a threatened species and the designation of its critical habitat will impose the requirements of section 7 of the Endangered Species Act upon any federally funded project which may affect the species or its critical habitat,

such as the proposed widening and relocation of U.S. Highway 74. However, it is our understanding that the existing highway route across Friar Swamp will be used as a basis for construction of the additional two lanes. Since the lake's water quality and its endemic species, including the silverside, obviously survived the construction of the first highway across the swamp, there does not presently appear to be any reason why widening the existing highway would threaten the silverside. The working philosophy behind the section 7 consultation process involves examining the project and its potential impacts a very early stage in development, so that impacts can be minimized or eliminated without unduly delaying project completion. The proposed highway improvement project will cross Friar Swamp approximately 2.5 miles upstream from the lake. The Service believes that, with careful planning and construction, there is no presently known reason why this project cannot be completed as presently planned, with no serious impacts to the silverside.

The Service received 13 letters and a petition with 180 signatures opposing the proposed listing of the Waccamaw silverside and designation of its critical habitat. The majority of the letters of opposition simply stated the opinions that no Federal "intervention" was necessary or desirable in local affairs, or that Federal money would be better spent on other environmental problems such as cleaning up toxic waste dumps. Issues raised by those opposing the listing that have not been previously discussed are addressed below:

Two respondents recommended that action on the listing be postponed until more data on water quality had been collected. Another argued that there was no evidence that adverse changes in the lake's water quality would be detrimental to the silverside. The Service believes that the data on hand is sufficient evidence to conclude that the Waccamaw silverside qualifies for threatened status. Creager *et al.* (1984) identified an unnatural trend toward nutrient enrichment of Lake Waccamaw from non-point sources and recommended that action be taken immediately to halt or reverse the trend. The Lake Waccamaw Water Quality Committee, composed of local citizens and State, Federal, and local government representatives, concurred and added that the long residence time of water in the lake (about eight months) means that the system cannot readily flush itself of problems that do occur. Based upon three years of data taken from Lake Waccamaw, Casterlin *et al.* (1986) concluded that the lake is now incipiently eutrophic, and that continued high rates of phosphorus input would bring the lake to a hyper-eutrophic state by the end of the century, resulting in extinction of endemic fishes and mollusks. A similar large shallow lake north of Lake Waccamaw (Phelps Lake) has, in recent years, undergone massive algal blooms and associated fish kills as a result of excessive nutrient loading; a closely related species of silverside (*M. beryllina*) which was present prior to the onset of the algal blooms, has not vanished from the lake (P Kornegay, NCWRC, personal communication 1986).

The Columbus County Commissioners passed a resolution opposing the listing of the fish and the designation of its critical habitat, stating that the county and the Town of Lake Waccamaw were capable of "preserving the quality of the lake without undue restrictions on the part of other levels of government." This resolution further stated that designation of Lake Waccamaw as a critical habitat would "unduly retard growth not only in the immediate area of the lake but also in the Big Creek watershed" and that "no effort has been initiated on the part of the Federal government to contact the Town of Lake Waccamaw and/or the County of Columbus to request land use planning or zoning as a method to address the issue of the lake's quality." The Service requested information on any economic impacts which might occur as a result of critical habitat designation, but no information on specific economic impacts was provided by anyone responding other than the NCDOT. Although the Commissioners' resolution stated that the nutrient loading problem could effectively be controlled at the local level, current data indicate that this has not occurred, since Casterlin *et al.* (1986) documented a substantial increase in orthophosphate concentrations and surface specific phosphorus loading rates as well as in the Palmer algal index for Lake Waccamaw since 1973. The Service has and will continue to work with the local governments.

The mayor of lake Waccamaw, representing the Town Council, commented in opposition to the listing. The Town Council also adopted a resolution opposing the proposed listing and designation of critical habitat. The mayor's response did not provide additional biological or economic data but challenged existing water quality data upon which the proposal to list the species was based. The Service concurs that extremely rapid increases in nutrient loading are not indicated by the available data; however, an unnatural trend toward eutrophication is documented in current data. While the town's commitment to prohibit intensive development within its zoning control is commendable, no authoritative statements can be made by local officials about the outlying areas of the Friar Swamp watershed, since they are not under the municipal control or ownership of the town. The actions of the Lake Waccamaw Water Quality Committee are also commendable and their continuance should help protect good water quality in the lake although we remain concerned that these actions will not halt the trend toward increased nutrient loading in the lake, *infra*. The Committee report (NCDNRCD 1984) recognized that the Lake represents a unique and sensitive ecosystem where increases over current levels of nutrient loading would result in serious problems which would be difficult to reverse. This report further stated that such problems could be caused by extensive residential and state park development, large-scale timber harvest, and increased agricultural operations if such activities were conducted without regard for water quality.

Although the mayor maintains that more water quality data is needed than is currently available, and states that the Town of Lake Waccamaw samples and analyzes water from the lake one to three times per week year-round, the data from these analyses has never been presented to the Service. When Service personnel contacted the mayor to request the data from this ongoing water sampling, the mayor indicated that the data obtained from this effort were not substantial. The recent paper by Casterlin *et al.* (1986) indicates that, while the lake is not currently eutrophic, a clear danger of eutrophication exists, and all available evidence indicates that non-point sources of pollution are gradually contributing to increased nutrient loading in the lake.

A public hearing was held February 12, 1986, at 7:30 p.m. at the Lake Waccamaw Boys Home, Lake Waccamaw, North Carolina. Approximately 190 individuals attended the public hearing. Eighteen comments were received at the hearing and only those issues raised that were not addressed in the previous discussion of the written comments are summarized below.

Eleven other comments were received opposing the proposal. The majority of these did not present additional information, but expressed general opposition to increased Federal

involvement in the local area. Four comments were made in support of the proposal, and three comments were made which expressed concerns or questions but stated no position on the issue. Those who spoke in support of the proposal stated their belief that the listing would benefit the lake and surrounding community by helping to assure good water quality, high property values, and protection from future Federal projects having adverse environmental impacts. Several also pointed out evidence of declining water quality, and expressed concern for the future of the large number of rare species inhabiting the lake.

Several questions were asked that have not been previously addressed. These were: 1. Will the listing of the silverside and designation of its critical habitat provide funding for extensive water quality monitoring? 2. Will the listing require paper companies to use forestry "Best Management Practices" when they harvest timber in the lake's watershed or require a specific cutting rotation? 3. Will the designation of critical habitat provide incentives for education of foresters and farmers in the watershed, provide grants for expansion of municipal water sewer systems, and provide expertise and labor to clean up nearby weed-choked canals where water quality is poor? 4. Will the designation provide a plan for minimizing hazardous chemical spills on U.S. Highways 74–76?

In response to these questions, the Service believes that one of the primary objectives for this species, once it is listed, will be to initiate a consistent program of water quality monitoring for the lake, which will accurately reflect serious problems and hopefully allow time to take remedial action before the entire lake is adversely affected. Under section 7 of the Act, the FHWA will be required to ensure that the construction of additional lanes for U.S. Highway 74 across Friar Swamp will not adversely modify Lake Waccamaw, nor likely jeopardize the continued existence of the Waccamaw silverside. Measures for minimizing potentials for hazardous chemical spills on Highway 74 through Friar Swamp will be incorporated into planning for the project as part of the section 7 consultation process. Funding for water quality monitoring is not automatically assured as a result of this listing and designation of critical habitat; however, the Service intends to seek ways of providing such monitoring. With regard to forestry management practices used by the commercial timber companies who own parts of Friar Swamp, the requirements of section 7 of the Endangered Species Act do not extend to private operations, where no Federal involvement exists. However, the Service will work toward an education effort for voluntary conservation efforts by private interests in the area which may be affecting the lake's water quality. The listing of this fish and designation of its critical habitat will not automatically provide grants to the Town of Lake Waccamaw for the purpose of extending its water and sewer systems; however, Federal agencies which administer such grants, such as the Environmental Protection Agency (EPA) and the Economic Development Administration, are required, as are all Federal agencies, to untilize their authorities for the purposes of conserving endangered and threatened species. Areas with listed species present which could benefit from such grants may therefore be given higher priority for available monies than other areas where endangered species did not exist. As for cleaning up weed-choked canals, these areas do not provide habitat for the silverside; therefore, since no effect upon the species exists, the Endangered Species Act would not be involved.

One person commented that the Service should not designate critical habitat since data are lacking to determine it. Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. After review and consideration of all the available data, the Service believes that the critical habitat for the Waccamaw silverside is prudent and determinable based upon currently available data, and is therefore proceeding with designation.

One person questioned the relationship of section 7 to Federal activities such as FHA loans, and expressed concern that the additional cost of "an environmental impact statement" would be added to the costs of housing construction at Lake Waccamaw. FHA loans and other Federal activities in the area will only fall under the requirements of section 7(a)(2) of the Act if there is a potential for them to affect this species or its critical habitat. It is difficult for the Service to conceive of a single house construction project, if properly planned and connected to the sewer system, which would have significant impacts on the water quality of the lake. Also, an environmental impact statement (EIS) is not automatically required in any case under the provisions of section 7 EIS's are required for certain projects by the National Environmental Policy Act, which is separate legislation unrelated to the Endangered Species Act. Under section 7(c) of the Endangered Species Act, Federal agencies are required to prepare a biological assessment to assess anticipated impacts if their proposals involve "major construction activities" (see 51 FR 19958; June 3, 1986) and listed species or critical habitat may be present in the action area. The majority of section 7 consultations do not involve major projects or require biological assessments. In any case, the responsibility for assessing the impacts of a proposed action on the species or critical habitat belongs to the Federal agency involved. In summary, any proposed activities, including housing construction, highway construction, and industrial development, are affected by the requirements of section 7 of the Endangered Species Act only if they involve activities which are Federally funded, authorized or carried out. Furthermore, the Service has an excellent record of cooperating with other Federal agencies and private individuals and local governments in resolving potential conflicts under section 7 early in the project planning stages, so projects are completed in most cases with minimal or no delays.

The mayor of Lake Waccamaw criticized the water quality studies of the lake for the wide variability in results of phosphate tests (0 to 0.11 mg/l) and for the fact that the final 12 testing periods of the study were used to "negate opinions formed with all the previous testing. The Service concedes that the mayor's allegation of wide variability in test results is correct. However, in the final analysis of data presented in Casterlin *et al.* (1986), this variability was taken into account by the use of measures of central tendencies for comparison. These comparisons show that the orthophosphate concentrations in Lake Waccamaw quadrupled between 1973 and the 1979 to 1981 testing period. As for the mayor's contention that final results contradicted the results of preliminary reports in this study, the picture is clarified by the following quote from the 1980 preliminary report (Lindquist and Yarbrough 1982):

> We now can suggest that the general water quality appears to be good however there are some changes in one or two water quality parameters that might pose a problem if they are trends. We believe that the third year of sampling will strongly suggest whether there is a general decline in the quality of these features or whether the

differences simply represent normal fluctuations.

The final year of sampling did indeed indicate that these were trends toward declining water quality as reported in Casterlin *et al.* (1986).

The mayor further criticized the existing data on water quality in Lake Waccamaw by stating that the algal index did not show any change from 1973, and that this was "reinforced by the Secchi Disk depth remaining the same. Given variability of individual nitrogen analysis values, the change reported from a 1973 mean of 0.12 mg/l is not a significant change. The Service does not accept the mayor s contention that the Palmer algal index did not show any change from 1973. Casterlin *et al.* (1986) cited Morris *et al.* (1977) as reporting the Palmer algal index for Lake Waccamaw in 1973 being no higher than 4. The latest calculations of this index (1979 to 1981) indicate that the Palmer algal index for the lake is now 19, indicating probable evidence of high levels of organic pollution (Casterlin *et al.* 1986). Index values of 20 or higher constitute strong evidence of high levels of organic pollution. The Secchi Disk depth reading is a measure of water transparency and is not related to the algal index. Although the change in *summer* concentrations of nitrates does not appear significant at first glance, the *overall* increase of nitrate concentrations and loading rates for Lake Waccamaw between 1973 and 1981 were significant. As reported in Casterlin *et al.* (1986), overall nitrate concentrations in the lake increased by almost 50 percent, and the nitrogen loading rate (milligrams per square meter per year) increased from 2,800 to 3,700 during the same period. Vollenweider (1968) stated that a body of water is "in danger with regard to its trophic level" when springtime concentrations of inorganic nitrogen compounds exceed 200 to 300 mg/m3. The mean springtime (February to April) nitrate concentrations in Lake Waccamaw during the 1979 to 1981 sampling period, was 324.7 mg/m3 (Casterlin *et al.* 1986), which clearly exceeds Vollenweider's maximum level. Vollenweider further suggested maximum permissible surface specific nitrogen loading rates for lakes up to 5 meters in depth of not more than 1,000 mg/m2 per year; values exceeding 2,000 mg/m2 represented "dangerous" loading for lakes of this depth. As stated in Casterlin *et al.* (1986), the nitrogen loading of Lake Waccamaw was within this "dangerous" range in 1973 as well as in 1981, which makes the subject of significant increases between these two periods irrelevant. Based on Vollenweider's standards, the lake was already in trouble in 1973, and the small additional increase in these values six to eight years later maintain the lake's status in this range.

The mayor further stated: "The only reasonable conclusion is that it will take more testing periods over a much longer time to determine a trend of change. The inescapable conclusion is: any predictions of imminent danger to the Waccamaw silverside by rapidly increasing nutrient loading and destruction of its habitat must be based on conjecture, philosophical views, or reasons other than the scientific data at hand. The Service does not agree that more testing periods over a much longer time are necessary now to determine a trend of change in Lake Waccamaw's water quality. The existing data, as interpreted by Casterlin *et al.* (1986), indicate that phosphate concentrations and loading rates in the lake more than tripled in the years between 1973 and 1981. They further state that "continued high rates of phosphorus input (organic pollution) will likely bring the lake to a hyper-eutrophic state. by the end of the century. This represents evidence of more than just a trend. It documents the classification of the lake at present as "incipiently eutrophic" as defined in standard technical terms. The Service is not predicting "imminent danger to the Waccamaw silverside by rapidly increasing nutrient loading and destruction of its habitat" this is reflected in the designation of the species as threatened rather then endangered. The Service believes that if water quality in Lake Waccamaw remains at least as good as it was when the last water quality measurements were taken in 1981, the silverside's continued survival will be assured. However, if the tend shown by the data presented in Casterlin *et al.* (1986) continues at the same rate in succeeding years, there is a clear danger of eutrophication and a lessening of the silverside's chances for survival in the wild. Although the mayor challenged the validity of existing water quality data, no additional data or information was brought forth. Therefore, the Service believes that, based on a careful analysis of all the currently existing commercial and scientific evidence, that the Waccamaw silverside merits designation as a threatened species and that Lake Waccamaw should be designated as its critical habitat.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Waccamaw silverside should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.)* and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Waccamaw silverside (*Menidia extensa*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The water quality of Lake Waccamaw, the only known habitat of the Waccamaw silverside, is a major concern. Since the publication of the proposed rule, a paper containing the most recent update of water quality data collected from lake Waccamaw has been published (Casterlin *et al.* 1986). The conclusions of this study were that the Palmer index value (an assessment of the lake's trophic status based on presence of various pollution-tolerant genera of algae) for the lake in 1981 was indicative of high levels of organic pollution. This conclusion was further supported by three years of physicochemical measurements which documented excessive phosphorus loading. Furthermore, both orthophosphate concentrations and the surface specific phosphorus loading rates, in addition to the Palmer index, have increased substantially since 1973 when the lake was classified as "mesotrophic" by a national eutrophication survey (NTIS 1973). This trend, as well as the sensitive, unusual nature of this shallow lake, has led some researchers to state that a clear danger of eutrophication exists and any increase in nutrient loading could tip the uneasy balance" and threaten the existence of the silverside and other endemic species (Lindquist and Yarbrough 1982). Casterlin *et al.* (1986) state that Lake Waccamaw is now incipiently euthrophic, and continued high rates of phosphorus input "will likely bring the lake to a hyper-eutrophic state characterized by massive algal blooms by the end of the century. The lake's environmental quality and its fauna could also be threatened by habitat alteration resulting from development and land use in Lake Waccamaw and its watershed (expecially Big Creek) if these activities are not planned and implemented with protection of Lake Waccamaw's ecosystem in mind. The short life cycle of the fish (one to two years) and its

dependence on the unique habitat conditions present in Lake Waccamaw make it extremely vulnerable to any significant change in its environment. The species is potentially threatened by a proposed highway project across the lake's watershed which involves expanding the existing two-lane U.S. Highway 74 to a four-lane facility. The Waccamaw silverside could be adversely affected if the project were completed without consideration of potential impacts on the water quality of Lake Waccamaw. The effect on the fish and its habitat would depend upon the nature of the construction and the resultant modifications to stream flows, silt loads, water temperatures, and pH.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence that overutilization is or will be a problem for this species. The silverside population numbers in the millions. In addition, the one- to two-year life cycle of the fish results in a virtually complete turnover of the population every year. Therefore, the taking of individuals for bait and for scientific purposes is not a threat to this species.

C. *Disease or predation.* Currently, there is no evidence of threats to this species from disease or predation. Although the silverside is one of the principal forage species for Lake Waccamaw's game fish, the high population levels of the silverside and the presence of other prey species in large numbers are sufficient to sustain this predation pressure without the species being threatened.

A recent application by the Waccamaw Siouan Development Association for a permit to propagate hybrid bass at several sites in the Lake Waccamaw watershed was initially denied by the NCWRC. Upon further review, the permit was granted on condition that extra measures were installed to prevent escape of fish from the rearing ponds. Escape of non-native predators from such a project into the system could upset the existing predator-prey relationships in the lake to the detriment of the Waccamaw silverside and other fishes now present in the Lake.

D. *The inadequacy of existing regulatory mechanisms.* Lake Waccamaw is the property of the State of North Carolina. The NCDNRCD's Division of Parks and Recreation administers the lake by authority given in North Carolina General Statute, Chapter 113, Section 35, and Subchapter 120 of the State Lakes Regulations. Through the above statute and implementing regulations, the North Carolina Parks Department reviews and issues special use permits for scientific research, educational, and noncommercial activities on the lake. By the same authority, the Parks Department regulates commercial activities, construction of piers, boat docks, drainage ditches, and similar activities on the lake. The NCWRC, by authority given in North Carolina General Statute, Chapter 113, regulates the taking of the Waccamaw silverside and issues collection licenses for the taking of nongame species as provided in sections 272.4 and 292. Although these statutes provide protection to individual fish, they do not afford protection for the habitat upon which the species depend. Scientific or commercial collecting do not pose threats to the species that would require Federal regulation (see "Special Rules" section of this rule). However, additional protection will be provided the species and its habitat by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species or its critical habitat.

E. *Other natural or manmade factors affecting the species' continued existence.* The Waccamaw silverside has a very short life cycle, usually dying shortly after spawning as a one-year-old. Therefore, if a year class of the silverside fails to reproduce in any one year, the species could be lost. The continued increase in nutrient loading could result in serious deterioration of water quality which, even on a short-term basis, could precipitate the extinction of this fish.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Waccamaw silverside as a threatened species with special rules to allow take in certain instances permitted under State law. There is only one known population of this species and at present its population level and environmental conditions in its habitat are adequate to justify threatened status. However, if, as expected, present nutrient loading continues to increase and the lake's habitat and water quality deteriorate, the species is likely to become endangered in the foreseeable future. It should be pointed out that actual loss of habitat and decline in the population is not required to list a species as threatened. Reasons for the critical habitat designation are discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the Waccamaw silverside to include Lake Waccamaw (8,934 acres), and Big Creek from its mouth at the head of Lake Waccamaw upstream approximately 0.4 mile to where the creek is crossed by County Road 1947 in Columbus County, North Carolina (see "Regulations Promulgation" section of this proposal for a precise description of critical habitat). The good water quality of Big Creek and Lake Waccamaw is one of the most important factors in the continued survival of this species. The clean sand bottom of the lake is used by the fish during spawning.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities that presently occur within the proposed critical habitat include, in part, fishing, swimming, water skiing, boating, scientific research, and nature study. These activities do not appear to be adversely impacting the area. Other activities that do or could occur in the watershed of Lake Waccamaw and could impact the critical habitat include, in part, indiscriminate logging, land use changes, stream alterations such as channelization or impoundment, bridge and road construction, improper pesticide/herbicide application, and point and nonpoint discharges.

There are also activities with Federal involvement that do or could occur and that may be affected by designating critical habitat. These activities include, in part, construction and/or upgrading of waste treatment systems, stream alterations, bridge and road construction

(including the proposed expansion/relocation of U.S. Highway 74 from west of Hallsboro to east of Bolton), filling of wetlands, discharges of municipal and industrial wastes, and State park acquisition and development. Some of these activities could degrade the water and substrate quality of Lake Waccamaw by increasing siltation and/or nutrient loading, or by altering water temperature and pH, if they are conducted without consideration for the protection of Lake Waccamaw s environmental quality.

Private activities with no Federal involvement will not be affected by this critical habitat designation. However, if a Federal agency is involved in activities that may affect the critical habitat, section 7(a)(2) of the Act, as amended, requires that agency to consult with the Service to ensure that actions it authorizes, funds, or carries out are not likely to destroy or adversely modify critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. To collect this information, the Service has solicited comments from Federal and State agencies, local governments, planning entities, businesses, the scientific community, and interested parties through written requests. Public notices and news releases have been published and interviews have been conducted with local news media. Telephone conversations and personal contacts have been made with local governmental officials, Federal and State agency personnel, and business leaders. The Service has held several informal meetings with local government officials, both prior to publication of the proposal and during the comment period, to which the public was invited. In addition, the Service has given presentations and participated in the meetings of the Lake Waccamaw Water Quality Committee. The material collected during this process was incorporated into an economic analysis of the impacts of designating critical habitat.

All Federal and State agencies responding, except the NCDOT indicated that they anticipate no economic impacts to result from the designation of critical habitat. The NCDOT responded that the designation of critical habitat could impact on the proposed widening/relocation of U.S. Highway 74 from Hallsboro to Bolton. Several local businessmen and government officials indicated that failure to construct this highway project would have an impact on the local community in terms of jobs and business access, as well as public safety. The NCDOT currently has filed an application for a 404 permit from the COE, Wilmington District, to place fill in wetlands in association with the construction of the two additional lanes of U.S. Highway 74 across Friar Swamp. The NCDOT has indicated that any additional environmental review requirements and resultant delays would increase the cost of this project. However, they provided no specific information concerning economic or other impacts. Portions of the U.S. Highway 74 project which have already been constructed in adjacent areas across wetlands have demonstrated the ability of the NCDOT to effectively control siltation and other effects of the construction, and recent conversations with the personnel of that department have revealed that they do not foresee adverse impacts upon Lake Waccamaw from the completion of this project across Friar Swamp.

The EPA was contacted with regard to existing discharge permits or pending permit applications that would affect or be affected by this designation. In conversations with EPA and State personnel, it was revealed that there are two existing NPDES permits authorized for Columbus County. Both the industries having active NPDES permits in this area, Federal Paper Board Company and National Spinning Company, discharge into areas outside the Lake Waccamaw watershed. EPA and the State Division of Environmental Management (NCDNRCD) personnel stated that there were no pending or existing permits which would affect or be affected by the critical habitat designation.

The Soil Conservation Service and the Economic Development Administration were both contacted by letter and telephone, and both agencies indicated that they had no existing or proposed projects which would affect or be affected by the designation.

The Farmers Home Administration was contacted by letter and telephone. Personnel with the North Carolina office of that agency indicated during telephone conversations with the Service that they were not aware of any projects, existing or proposed, in the area which would affect or be affected by critical habitat designation. They stated, however, that if the municipal sewer system for the Town of Lake Waccamaw were ever upgraded, they might be involved in the funding for such a project. Upgrading of the municipal sewer system could preserve or improve the habitat of the Waccamaw silverside.

The COE, Wilmington District, was contacted by letter and by telephone. Personnel with that agency's Regulatory Functions Branch and Environmental Resources Branch indicated that they knew of no proposed or existing projects or existing permits or pending permit applications, other than that of the NCDOT for the construction of U.S. Highway 74, which would affect or be affected by critical habitat designation. The FHWA, as the lead agency in the construction of U.S. Highway 74, would be designated as responsible for fulfilling the section 7 consultation requirements of the Endangered Species Act for that project. COE personnel indicated that although they had been requested in the past to conduct weed control activities (primarily herbicide spraying) in areas adjacent to Lake Waccamaw, they had no plans for pursuing such projects in the foreseeable future.

Lake Waccamaw is the property of the State of North Carolina with the NCDNRCD (Division of State Parks and Recreation) administering the lake by authority of North Carolina General Statute. Lake Waccamaw State Park is a relatively undeveloped 273-acre tract. The NCDNRCD, Division of State Parks and Recreation, responded in support of the proposal to list the Waccamaw silverside as threatened and designate Lake Waccamaw as its critical habitat.

With the exception of the State park, the remainder of Lake Waccamaw's shoreline is in private ownership, with the principal form of development being for private residences. The 85-square-mile watershed draining into Lake Waccamaw is predominantly rural, dominated by small farms and large timber companies. There is no known Federal involvement (other than the proposed highway project) in the watershed which would affect or be affected by critical habitat designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed

species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agencies must enter into formal consultation with the Service. It has been the experience of the Service that nearly all section 7 consultations are resolved so that the species is protected and the project objectives are met. The Service is presently aware of only one proposed Federal project (the widening/relocation of U.S. Highway 74) that may affect the Waccamaw silverside and its critical habitat. The Service has been in contact with the FHWA in North Carolina and the NCDOT concerning the potential impacts of this project on the species and its habitat.

Section 9(a)(1) of the Act lists prohibited acts which apply to any fish or wildlife species listed as endangered. Section 4(d) of the Act provides that these same prohibitions may, by regulation, be applied to a threatened species. The Service does not believe that it is necessary and advisable to the conservation of the Waccamaw silverside to apply all of the prohibitions listed under section 9(a)(1).

The Waccamaw silverside is threatened by alteration and/or degradation of water and habitat quality, not by intentional, direct taking of the species or by commercialization. Individuals of the species are estimated to number more than a million, with virtually the entire population being replaced each year by a new generation. State regulations governing the take of this and other Lake Waccamaw species presently exist, and the Service has concluded that these regulations are sufficient to protect the Waccamaw silverside from any threat which may arise from excessive collecting. The Service believes that the imposition of additional prohibitions would result in needless conflict with ongoing activities in Lake Waccamaw (i.e., U.S. bait seining) and would not promote the conservation of the species.

Section 4(d) requires that the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. The Service believes that enforcement of State regulations governing take will be sufficient to protect this species. However, to support State regulations governing take and provide for the conservation of the species, the Service sets forth a special rule (see "Special Rule" section) that will provide the protection of the Endangered Species Act only when State laws governing the species were violated. The Service believes this special rule is consistent with the purposes of the Act and will facilitate the conservation of the Waccamaw silverside.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species is not a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Present and planned uses of the critical habitat area and the watershed above it are compatible with the critical habitat designation based on the information discussed in this rule concerning public projects within and private lands fronting the proposed critical habitat. It is not expected that significant economic impacts will result from the critical habitat designation. In addition, there is no known involvement of Federal funds or permits that would affect or be affected by the critical habitat designation for the private lands that front the critical habitat area. No direct costs, enforcement costs, information collection, or record keeping requirements are imposed on small entities by the critical habitat designation. Further, the rule contains no information collection or record keeping requirements as defined by the Paperwork Reduction Act of 1980. These determinations are based on a determination of effects that is available at the U.S. Fish and Wildlife Service, Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia.

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Author

The primary author of this final rule is Nora Murdock, Endangered Species Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159; 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

(h)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Silverside, Waccamaw	*Menidia extensa*	U.S.A. (NC)	Entire	T	265	17.95(e)	*ERR81*17.44(s)

3. The following paragraphs (s) is added to § 17.44:

§ 17.44: Special rules—fishes.

(s) Waccamaw Silverside (*Menidia extensa*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

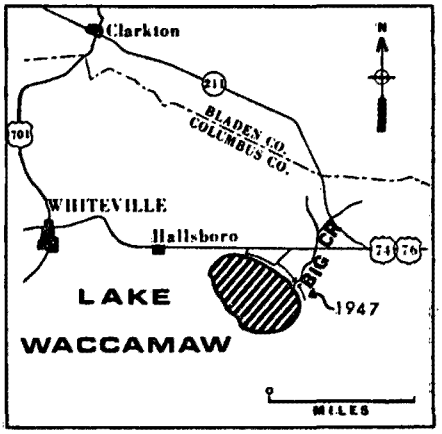
(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (s) (1) through (3) of this section.

4. Amend § 17.95(e) for "FISHES," by adding critical habitat for the Waccamaw silverside as follows: [The position of this entry under section 17.95(e) follows the same sequence as the species occurs in § 17.11.]

§ 17.95 Critical habitat—fish and wildlife.

(e)

Waccamaw Silverside (*Menidia extensa*)



North Carolina, Columbus County. Lake Waccamaw in its entirety to mean high water level, and Big Creek from its mouth at Lake Waccamaw upstream approximately 0.6 kilometer (0.4 mile) to where the creek is crossed by County Road 1947

Constituent elements include high quality clear open water, with a neutral pH and clean sand substrate.

Dated: March 24, 1987

Susan Recce,

Acting Assistant Secretary of Fish and Wildlife and Parks.

[FR Doc. 87-7786 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 52, No. 67
Wednesday, April 8, 1987

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 THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, 846, 910, 912, 921, 922, 933, 937 939, 941, 942, and 947

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program; Permanent Regulatory Program; Federal Program for a State; Individual Civil Penalties; Reopening of Comment Period

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

ACTION: Notice of reopening of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) previously has published a proposed rule to amend its Initial Regulatory Program, Permanent Regulatory Program, and Federal Programs for States to provide procedures for the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Surface Mining Control and Reclamation Act of 1977 OSMRE is now reopening and extending the comment period for that proposed rule.

DATES: The comment period on the proposed rule is extended until May 8, 1987

ADDRESSES: Written comments may be hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW Washington, DC; or mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue, NW Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Andrew F DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW Washington, DC 20240; Telephone: 202-343-5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: On December 24, 1986 (51 FR 46838) OSMRE published a proposed rule to amend its Initial Regulatory Program, Permanent Regulatory Program, and Federal Programs for States to provide procedures for the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*

Under section 518(f) if a violation is committed by a corporate permittee or a failure or refusal to comply with certain specified orders occurs, then any director, officer or agent of the corporate permittee who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal is subject to the same civil penalties as may be imposed upon the corporate permittee under section 518(a) of the Act. In order to distinguish between a penalty assessed against a corporate permittee under section 518(a) and a penalty assessed against a corporate officer, director or agent under section 518(f), OSMRE refers to the former penalty as a "civil penalty, and the latter penalty as an "individual civil penalty."

The proposed rule published on December 24, 1986 would apply through cross-referencing in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington, where Federal regulatory programs are in effect. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937 939, 941, 942, and 947 respectively.

In the notice of proposed rulemaking OSMRE offered to hold public hearings in these States to receive comments on the substance of the proposed rule. No requests for any hearing was received. To insure that it is understood that the rule if adopted would apply through cross-referencing to States in which Federal regulatory programs are in effect, OSMRE is now reopening the comment period and specifically solicits comment as to whether unique conditions exist in any of the States where Federal regulatory programs are in effect which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

Dated: April 2, 1987

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-7722 Filed 4-7-87 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-3182-3]

Approval and Promulgation of State Implementation Plans; Revisions to Regulation No. 1 of the Colorado Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes approval of a revision to the Colorado Air Quality Control Commission Regulation No. 1 (A Regulation to Control Smokes, Particulates and Sulfur Dioxide) which was submitted by the Governor on May 13, 1986. This revision requires that all major sources emitting 1,000 tons per year or more of carbon monoxide (CO) in nonattainment areas, or any source which can be expected to emit 1,000 tons or more of CO during any future 12-month period, use Reasonably Available Control Technology (RACT) to reduce emissions of CO to 0.050 or less percent of the volume of the gas by January 30, 1987 This measure is aimed at major sources in and around the Denver Metropolitan Area to ensure attainment of the required Ambient Air Quality Standard for CO by the deadline of December 31, 1987 EPA has required the use of RACT as a strategy in nonattainment areas for approval of the Colorado State Implementation Plan. The State has assured EPA that all the affected sources in the State are in compliance. The effect of this action is to ensure federal enforceability of the regulation.

DATES: Comments must be received on or before May 8, 1987

ADDRESSES: Written comments should be addressed to: Mr. Marius Gedgaudas, Environmental Protection Agency, Region VIII, Air Programs Branch, One

Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

Copies of the documents relevant to this proposed action are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices: Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Frey, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293–1768.

SUPPLEMENTARY INFORMATION: A revision to Colorado Regulation No. 1 was submitted pursuant to section 172(b)(3) of the Clean Air Act, 42 U.S.C. 7502(b)(3), which requires that the State Implementation Plan (SIP) for a nonattainment area require such reduction in emissions from existing sources as may be obtained through the adoption of Reasonably Available Control Technology (RACT). EPA's policy implementing section 172 requires that, in nonattainment areas for carbon monoxide (CO), RACT be applied to all sources with the potential to emit more than 1,000 tons per year of CO. See 46 FR 7182, 7186 (Jan. 22, 1981).

The only sources of carbon monoxide greater than 1,000 tons per year in nonattainment areas in Colorado are fluidized-bed catalytic cracking units (FCC) at two petroleum refineries. Some are cabable of emitting as much as 100,000 ppm carbon monoxide when operating without pollution controls. Although they are required to reduce CO emissions to 0.05% or less of the volume of gas by January 30, 1987 the affected sources are currently in compliance with the proposed regulation. The effect of this action is to ensure federal enforcability of the regulation.

The revised Colorado regulation applies to any source which has emitted or "can reasonably be expected to emit" 1,000 or more tons of CO per year. EPA understands the latter phrase to refer to sources with "potential emissions" of 1,000 tons or more per year as the term is used in EPA s January 22, 1981, policy statement, i.e., sources that could emit 1,000 tons or more per year when operating at full capacity without emission control measures.

The regulation allows for a demonstration by the source of an appropriate method that will allow monitoring for compliance. This demonstration must follow New Source Performance Standards (NSPS) guidelines for fluidized-bed catalytic cracking units contained in 40 CFR Part 60, Appendix B, Performance Specification 4. This regulation requires a compliance test to determine whether or not continuous emission monitoring (CEM) is applicable. If the carbon monoxide emissions are 250 ppm or less, CEM will not be mandatory. Otherwise, the source will be required to install, calibrate, certify, and maintain a CEM system for CO.

Proposed Action

EPA is proposing to approve Colorado's Regulation No. 1 as amended in this revision.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Authority: 42 U.S.C. 7401–7642.

Dated: October 9, 1986.

Alexandra B. Smith,

Acting Regional Administrator.

[FR Doc. 87–7740 Filed 4–7–87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-3182-2]

Approval and Promulgation of Implementation Plan; Ohio

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

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to approve revisions to the Ohio State Implementation Plan (SIP) for ozone. The revisions incorporate into the zone SIP: (1) Specific statewide volatile organic compound (VOC) emission limits and requirements for petroleum dry cleaning facilities, polystyrene resin manufacturing, leaks from process units that produce ogranic chemicals, and air oxidation processes that produce organic chemicals, and (2) general requirements which apply to the specific VOC emission requirements. Ohio's statewide ozone SIP is based upon Rule 3745–21–01, Definitions; Rule 3745–21–04, Attainment Dates and Compliance Time Schedules; Rule 3745–21–09, Control of Emissions of Organic Compounds from Statutory Sources; and Rule 3745–21–10, Compliance Test Methods and Procedures of Chapter 21 of the Ohio Administrative Code.

The purpose of this notice is to discuss USEPA's evaluation of the revision and to solicit public comments on this rulemaking action.

DATE: Comments must be received by May 8, 1987

ADDRESSES: Copies of the SIP revisions are available at the following addresses: (It is recommended that you telephone the contact person listed below before visiting the Region V office of USEPA.)

U.S. Environmental Protection Agency, Region V Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, U.S. Environmental Protection Agency, Region V Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: Section 172 of the Clean Air Act allowed USEPA to grant attainment date extensions to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution control program. The revised programs had to include additional reasonably available control technology (RACT) emission limits for various types of volatile organic compound (VOC) sources located in the areas needing the extension. The extension if granted by USEPA, obligated the State to develop RACT regulations for those sources addressed by Group III Control Technique Guidelines (CTGs) (these Group III CTG sources are referred to as RACT III sources).

The USEPA published CTGs in order to assist the States in determining RACT. The CTGs provide information on available air pollution control technology techniques and provide recommendations on what the USEPA calls the "presumptive norm for RACT. During the period 1982–1984, the USEPA released, among others, the following four Group III CTGs:

1. "Volatile Organic Emissions from Large Petroleum Dry Cleaners" October 6, 1982 (47 FR 44155).

This CTG covers large dry cleaning facilities that use petroleum solvent.

2. "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins" November 14, 1983 (48 FR 51848).

This CTG covers high-density polyethylene plants using a slurry process, polypropylene plants using a liquid phase process, and polystyrene plants using a continuous process.

3. "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" April 10, 1984 (49 FR 14181).

This CTG covers equipment leaks from synthetic organic chemical and polymer manufacturing plants.

4. "Volatile Organic Compound Emissions from Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry" December 28, 1984 (49 FR 50442).

This CTG covers air oxidation processes.

There are three areas in Ohio where RACT III regulations are currently required: Cleveland, Cincinnati and Akron. The State of Ohio could not demonstrate attainment of the ozone National Ambient Air Quality Standard (NAAQS) in the Cities of Cleveland and Cincinnati by the required date of December 31, 1982, so the State requested, and received, an extension to December 31, 1987 The Akron area is a State Implementation Plan (SIP) call area. Because the State did not demonstrate attainment of the ozone standard by December 31, 1982, for the Akron area (Summit and Portage Counties), the USEPA on February 24, 1984, issued a notice of SIP inadequacy to the Governor of the State of Ohio. The notice of SIP inadequacy obligated the State to correct the inadequacies and demonstrate attainment of the ozone standard by December 31, 1987 Additionally, the State is required to implement RACT III regulations in the Akron area at this time.

On April 9, 1986, to meet the extension and SIP call area obligations for its RACT III VOC sources located in the Cleveland, Cincinnati, and Akron areas, and based largely upon the above four CTGs, the State of Ohio submitted revisions to USEPA for its statewide ozone SIP Although RACT III regulations are only required in the Cleveland, Cincinnati and Akron areas, the State has chosen to make these regulations applicable statewide. USEPA notes that also within the April 9, 1986, submittal the State submitted further revisions to its overall ozone SIP and a site-specific revision for Huffy Corporation. These additional revisions are addressed in separate rulemaking actions.

Before USEPA begins its discussion of the RACT III amendments, it would first like to provide a general overview of the RACT regulations contained in Ohio's ozone SIP Ohio's statewide ozone strategy is based upon Rule 3745-21-01, Definitions; Rule 3745-21-04, Attainment Dates and Compliance Time Schedules; Rule 3745-21-09, Control of Emissions of Organic Compounds from Stationary Sources; and Rule 3745-21-10, Compliance Test Methods and Procedures, of Chapter 21 of the Ohio Administrative Code (OAC). USEPA conditionally approved these regulations as part of Ohio's SIP for ozone in separate rulemaking actions on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097). On March 6, 1985 (50 FR 9052), USEPA proposed action on further revisions to these Chapter 21 regulations. All of these rulemaking actions pertain to RACT I and II categories. The further revisions to the ozone SIP that are mentioned above and were submitted on April 9, 1986, pertain to all RACT categories and will be addressed in a separate rulemaking action.

The RACT III regulations submitted on April 9, 1986, contain both specific and general requirements. The specific RACT III requirements, i.e., emission limitations, are contained in Rule 09. General applicability requirements, i.e., definitions, attainment dates and compliance time schedules, and compliance test methods and procedures, that pertain to the specific requirements are contained in Rules 01, 04, 09, and 10. USEPA's discussion of the RACT III regulations will be segmented into (1) specific emission limits and requirements within Rule 09, and (2) general requirements within Rules 01, 04, 09, and 10, that pertain to the specific RACT III limits and requirements.

I. Specific Requirements Within Rule 09

A. Subparagraph (BB), Petroleum Dry Cleaning Facility

1. This subparagraph

Establishes RACT requirements for VOC emissions from petroleum dry cleaning facilities. The RACT requirements include the following: (1) Any dryer shall be either a solvent recovery dryer that is operated to achieve a final recovered solvent flow rate of 1.7 ounces per minute (50 milliliters per minute) or a dryer that emits less than 3.5 pounds of VOC per 100 pounds dry weight of articles cleaned; (2) any solvent filter shall be either a cartridge filter that is drained for at least eight hours in its sealed housing before removal or a filter that has a filtration waste which contains no more than 1.0 pound of VOC per 100 pounds dry weight of articles cleaned; (3) any bucket or barrel that contains petroleum solvent or petroleum solvent-laden waste shall be covered; and (4) any petroleum dry cleaning equipment shall be visually inspected weekly for leaks and if found leaking shall be repaired within 15 days.

Specifies that any solvent recovery dryer shall be tested in order to establish a minimum recovery cycle time that meets the required final recovered solvent flow rate.

Contains an exemption from the RACT requirements for dryers and solvent filters for those petroleum dry cleaning facilities in which either the total manufacturer's rated capacity of all petroleum solvent dryers is less than or equal to 83 pounds of articles, dry basis *or* total annual consumption of petroleum solvent is less than or equal to 4,700 gallons.

2. USEPA's Evaluation.

USEPA has determined that Ohio's Petroleum Dry Cleaning regulation is generally consistent with the model regulation found in the CTG and is proposing to approve it. Although USEPA is proposing to approve this regulation, it would like to discuss three areas where the regulations differ from the CTG.

a. The model regulation requires that petroleum solvent vapor and liquid leaks be repaired within 3 working days after identifying the sources of the leak. Ohio's regulations allows 15 days for the repair of leaks. The 15 day repair period is recommended in the New Source Performance Standards (NSPS) contained in Subpart JJJ, 40 CFR Part 60.620-60.625, and is, therefore, acceptable.

b. The exemption in Ohio's rule, based upon solvent use, is much more restrictive than that found in the model regulation. Ohio's rule exempts facilities with an annual consumption of less than or equal to 4,700 gallons (17,791 liters) while the CTG recommends a 123,000 liter/year exemption level.

c. Ohio's rule contains the requirement that any bucket or barrel that contains petroleum solvent or petroleum solvent-laden waste shall be covered. This is an additional requirement to that which is contained in the CTG and is, therefore, acceptable.

B. Subparagraph (CC), Polystyrene Resin Manufacturing

1. This subparagraph

Establishes a RACT requirement for VOC emissions from continuous, polystyrene resin manufacturing processes. The RACT requirement for the material recovery section of this process is an emission limitation of 0.12 pound of VOC per 1,000 pounds of polystyrene resin produced.

2. USEPA's Evaluation.

USEPA has determined that the Polystyrene Resin Manufacturing regulation is consistent with the CTG and is proposing to approve it. USEPA notes that the CTG also covers polyethylene and polypropylene processes but the State has no sources for these categories. Therefore, the State submitted a negative declaration, i.e., that it has no such sources, and USEPA's action on the negative declaration submitted by Ohio and four other States can be found in a separate rulemaking action. Approval of the "negative declaration" by USEPA would exempt the State from developing a control plan for VOC sources in that CTG category.

C. Subparagraph (DD), Leaks from Process Units that Produce Organic Chemicals

1. This subparagraph

Establishes RACT requirements for VOC leaks from process units that produce as an intermediate or final product one or more of the 382 organic chemicals listed in Appendix A of this rule. Appendix A lists the 382 organic chemicals that are subject to the requirements in new subparagraphs (DD) and (EE). RACT includes: (1) A leak detection and repair program for specific pieces of equipment; (2) a "no detectable emissions" requirement for specific pieces of equipment; (3) various equipment requirements for compressors, sampling connection systems, and open-ended valves or lines; and (4) requirements for any control equipment to which an equipment leakage is vented.

Requires the owner or operator of a process unit to meet specific recordkeeping requirements and reporting requirements. Also, the owner or operator may apply for an equivalent emission limitation as provided under this paragraph. An equivalent emission limitation may not be obtained for pressure relief devices, which are required to be operated with no detectable emissions (except during pressure releases).

Exempts from the RACT requirements certain process units and equipment. The process units exempted are those having a design production capacity of less than 1,100 tons per year, those producing only heavy liquid chemicals from heavy liquid feed or raw materials, those producing beverage alcohol, those having no equipment in VOC service, and those at a petroleum refinery.

The equipment exempted are those not in VOC service, those not in vacuum service and those subject to an equivalent emission limitation.

2. USEPA's Evaluation.

USEPA has determined that Ohio's regulation that controls leaks from Process Units that Produce Organic Chemicals is virtually the same as under the NSPS contained in Subpart VV 60.480–60.489, and is, therefore, approvable. However, any equivalent emission limitations established in accordance with (DD) (16) must be submitted to USEPA for approval as a SIP revision. By letter dated January 9, 1987 the State committed to submit these discretionary actions as a SIP revision.

D. Subparagraph (EE), Air Oxidation Processes that Produce Organic Chemicals

1. This subparagraph

Establishes a RACT requirement for VOC emissions from processes that produce by air oxidation any organic chemicals listed in Appendix A. The RACT requirement is that each process vent stream is to be vented to a combustion device which has either a control efficiency of at least 98 percent or an exit VOC concentration less than 20 parts per million by volume. (If a combustion device is installed to meet the above RACT requirement for a process vent stream containing chlorinated VOC, a scrubber is also to be installed to remove the highly acidic hydrogen chloride formed by combustion.)

Exempts any process vent stream or combination of process vent streams that has a total resource effectiveness value greater than 1.0 and any process vent stream equipped with a combustion device that was installed prior to the effective date of this subparagraph (i.e., May 9, 1986).

2. USEPA's Evaluation.

USEPA has determined that this regulation is consistent with the CTG and is proposing to approve it.

II. General Applicability Requirements Within Rules 01, 04, 09 and 10 that Pertain to the Specific RACT III Requirements

A. Rule 3745–21–01, Definitions

This regulation has been modified and new paragraphs added to define the terms employed in new paragraphs (BB), (CC), (DD), and (EE) of Rule 09 discussed above. USEPA is proposing to approve as SIP revisions, all the new terms and definitions because they are consistent with USEPA guidance. This guidance is primarily contained in the CTG document. The following portions of Rule 01 have been revised or added.

1. Paragraph (K)

This paragraph has been revised to indicate that the definitions within this paragraph are applicable to new paragraph (BB) of Rule 3745–21–09, which pertains to petroleum dry cleaning facilities. Also, definitions for the following six terms have been added because of new paragraph (BB) of Rule 09: (1) cartridge filter, (2) manufacturer's rated capacity, (3) petroleum dry cleaning facility, (4) petroleum solvent, (5) solvent filter, and (6) solvent recovery dryer. A definition has been added for "dryer" in order to clarify its usage in paragraphs (AA) and (BB) of Rule 09. Paragraph (AA), a RACT II rule, was previously approved on June 29, 1982.

2. *Paragraph (L)*

This paragraph has been added to define the terms employed in new paragraph (CC) of Rule 3745–21–09, which pertains to continuous, polystyrene resin manufacturing processes. Definitions have been included in this paragraph for the following four terms: (1) Continuous, polystyrene resin manufacturing process, (2) material recovery section, (3) styrene recovery distillation column, and (4) vacuum devolatizer.

3. *Paragraph (M)*

This paragraph has been added to define the terms employed in new paragraph (DD) of OAC Rule 3745–21–09, which pertain to leaks from process units that produce organic chemicals. Definitions have been included in this paragraph for the following 25 terms:

(1) BTU/scf
(2) closed vent system
(3) connector
(4) distance piece
(5) double block and bleed system
(6) equipment
(7) first attempt at repair
(8) heavy liquid
(9) in gas/vapor service
(10) in heavy liquid service
(11) in light liquid service
(12) in-situ sampling system
(13) in vacuum service
(14) in VOC service
(15) liquids dripping
(16) open-ended valve or line
(17) ppmv
(18) pressure release
(19) pressure relief device
(20) pressure relief valve
(21) process unit

(22) process unit shutdown
(23) repaired
(24) rupture disk
(25) sensor

4. *Paragraph (N)*

This paragraph has been added to define the terms employed in new paragraph (EE) of Rule 3745-21-09, which pertains to air oxidation processes that produce organic chemicals. Definitions have been included in this paragraph for the following two terms: "air oxidation process" and "process vent stream"

B. Rule 3745-21-04, Attainment Dates and Compliance Time Schedules

This regulation has been modified and new paragraphs added to require the owners or operators of sources subject to new paragraphs (BB) through (EE) of Rule 3745-21-09, to comply with certain certification and permit application requirements and to establish general compliance schedules. USEPA is proposing to approve as SIP revisions, the certification and permit application requirements and general compliance schedules because they are consistent with USEPA guidance. This guidance is primarily contained in the CTG document. The following portions of Rule 04 have been revised or added.

1. *Paragraph (B)(1)*

This paragraph has been modified to require the owners or operators of sources subject to new paragraphs (BB) through (EE) of Rule 3745-21-09, to comply with the certification and permit application requirements specified within this paragraph by no later than June 1, 1986. By the June 1, 1986, deadline the owners or operators were to either demonstrate compliance with the new requirements in Rule 09 or provide an acceptable compliance schedule which will achieve compliance with those requirements as expeditiously as practicable, but in no event later than the compliance deadlines established in new paragraphs (C)(36) through (C)(39) of Rule 04. USEPA notes that, through mass mailings at the end of May, the State notified the applicable sources of the June 1, 1986, deadline to comply with the certification and permit application requirements. The sources are in the process of responding to the mailing, and any additional requirements will be absorbed in the sources' permit program.

2. *Paragraph (C)(36) through (C)(39)*

These paragraphs have been added to establish the general compliance schedules for sources subject to the requirements contained in new paragraphs (BB) through (EE) of Rule 3745-21-09. These sources are required to achieve compliance as expeditiously as practicable, but in no event later than the deadlines specified in paragraphs (C)(36) through (C)(39). The final compliance deadlines for these sources are listed below.

Source category	Final compliance deadline
Petroleum dry cleaning facilities.	December 31, 1987.
Continuous, polystyrene resin manufacturing processes.	December 31, 1987.
Leaks from process units that produce organic chemicals.	January 1, 1987 (for implementation of the leak detection and repair program). February 1, 1987 (for submission of the 1st semiannual report on leak detection and repair). July 1, 1987 (for compressors, pressure relief devices in gas/vapor service, sampling connection systems, and open-ended values or lines).
Air oxidation processes that produce organic chemicals.	December 31, 1987.

C. Rule 3745-21-09, Control of Emissions of Volatile Organic Compounds From Stationary Sources

This regulation has been revised and a new sentence added to specify that new paragraphs (BB) through (EE) apply to certain counties and facilities. USEPA is proposing to approve, as SIP revisions, these applicability requirements because they satisfy USEPA's requirements that RACT III regulations apply to all those counties where extensions were granted until 1987 or a SIP call was issued. The following portions of Rule 09 have been revised or added.

1. *Paragraph (A)(1)*

This paragraph has been revised to state that the new paragraphs (BB) through (EE) are applicable to sources which are located in the following 18 urban counties: Butler, Clermont, Cuyahoga, Franklin, Greene, Hamilton, Lake, Lorain, Lucas, Mahoning, Medina, Montgomery, Portage, Stark, Summit, Trumbull, Warren, and Wood.

2. *Paragraph (A)(2)*

This paragraph has been revised to state that for the remaining 70 counties in Ohio not mentioned in paragraph (A)(1), the new paragraphs (BB) through (EE) are applicable to sources which are located at facilities having the potential to emit a total of 100 tons or more of VOC per calendar year.

3. *Paragraph (A)(4)*

A sentence has been added to state the requirements of new paragraphs (BB) through (EE) are applicable to any sources constructed or modified on or after the current effective date of this rule.

D. Rule 3745-21-10, Compliance Test Method and Procedures

This regulation has been revised and new paragraphs added to establish test methods and procedures for the RACT III source categories discussed under Part I of today's notice. USEPA is proposing to approve, as SIP revisions, the test methods and procedures, because they are consistent with USEPA guidance. That guidance is primarily contained in the CTG document. The following portions of Rule 10 have been revised or added. (USEPA notes that paragraph (L), (M) and (N) apply to petroleum dry cleaning; paragraph (C) applies to polystyrene resin manufacturing; paragraphs (F), (C), (O), and (P) apply to leaks from process units that produce organic chemcials; and paragraphs (C) and (P) apply to air oxidation processes that produce organic chemicals.)

1. *Paragraph (C)*

This paragraph has been revised to include the use of USEPA Method 18 for the determination of VOC concentration of a gas stream.

2. *Paragraph (F)*

This paragraph has been revised to pertain to chemical manufacturing equipment subject to new paragraph (DD) of Rule 3745-21-09. The procedures for the detection of leaks have been deleted and replaced by USEPA Method 21 and standard requirements on calibration of the leak detection instrument.

3. *Paragraph (L)*

This paragraph has been added for testing the VOC emission rate from dryers at petroleum dry cleaning facilities. This test procedure pertains to documenting the compliance of those dryers which are not solvent recovery dryers.

4. *Paragraph (M)*

This paragraph has been added for determining the amount of VOC contained in waste from a solvent filter at a petroleum dry cleaning facility. The amount of VOC in the waste is expressed in pounds of VOC per 100 pounds dry weight of articles cleaned and is based on the weighted average of three tests.

5. *Paragraph (N)*

This paragraph has been added to establish the procedure for determining the length of time to operate the solvent recovery cycle of a solvent recovery dryer at a petroleum dry cleaning facility. The dryer would normally be tested by the owner or operator under normal operating conditions during a 2-week period to determine the appropriate solvent recovery times for

various types of loads. The termination of the solvent recovery cycle is bsed on a recovered solvent flow rate that is not greater than 50 milliliters per minute (1.7 ounces per minute).

6. *Paragraph (O)*

This paragraph has been added to determine if any piece of equipment at a petroleum refinery or in a process unit that produces organic chemicals is in VOC service or in light liquid service.

7 *Paragraph (P)*

This paragraph has been added to determine the net heating value of a gas, the actual exit velocity for a flare, and the maximum permitted velocity for an air-assisted flare. The net heating value of a gas is used for the following: (1) To determine the compliance of flares employed to meet paragraph (DD)(10)(d) of Rule 3745-21-09, and (2) to calculate the total resource effectiveness (TRE) value of a gas stream subject to paragraph (EE) of Rule 3745-21-09. The actual exit velocity for a flare and the maximum permitted velocity for an air-assisted flare are used to determine the compliance of flares subject to paragraph (DD)(10)(d) of Rule 3745-21-09.

Interested parties are invited to submit comments on this proposed approval. USEPA will consider all comments submitted within 30 days of publication of this notice.

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

Pursuant to provisions of 5 U.S.C. 605(b), I certify that the attached rule will not have, if promulgated at the Federal level, a significant economic impact on a substantial number of small entities (See 46 FR 8709). At the time of USEPA's final rulemaking, the affected sources will be subject to the then applicable provisions of the Ohio VOC regulations as a matter of State law. Thus, no additional requirements will be imposed upon these sources, at that time, as a result of adding these requirements to the Federal SIP

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

Dated: December 29, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87-7741 Filed 4-7-87 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 6E3414/P412; FRL-3182-9]

Pesticide Tolerance for Paraquat

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: This document proposes establishing a tolerance for residues of the desiccant, defoliant, and herbicide paraquat in or on the raw agricultural commodity tyfon. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on tyfon was requested by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3414/P412], should be received on or before May 8, 1987

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703-557-1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3414 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of New Hampshire.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the pesticide paraquat (1,1'-dimethyl-4,4'-bipyridinium ion) derived from application of either the bis(methylsulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodity tyfon at 0.05 part per million (ppm). Tyfon is a cross between Chinese cabbage and turnips, and is grown for animal feeding purposes. The petitioner proposed that use on this commodity be limited to New Hampshire based on the geographical respresentation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. Several rat acute oral-feeding studies with median lethal dose (LD50) values of 30 to 150 milligrams (mg) paraquat cation/kilogram (kg) of body weight (bw).

2. A 90-day dog feeding study with a no-observed effect level (NOEL) of 20 ppm of paraquat cation (0.5 mg/kg bw).

3. A mouse oncogenicity study with a systemic NOEL for non-oncogenic effects greater than 100/125 ppm (15.0/18.75 mg paraquat cation/kg bw) (12.5, 37.5 and 100/125 ppm levels fed).

4. A one-generation rat reproduction study with a NOEL of 100 ppm paraquat cation (10 mg/kg bw, highest level tested).

5. Two teratology studies, rat and mouse, with maternal NOEL's at 1 mg/kg and fetotoxic NOEL's at 1 and 5 mg/kg, respectively.

6. A three-generation rat reproduction study with a reproductive NOEL of 150 ppm and a systemic NOEL of 25 ppm (core guideline).

7 A 1-year dog feeding study with a systemic NOEL of 15 ppm (0.45 mg of cation/kg bw) and a systemic lowest effect level (LEL) of 30 ppm.

Twenty-one mutagenicity studies were submitted for paraquat. Paraquat was negative in eight studies (mostly in gene mutation and chromosomal aberration assays); weakly positive in four studies (two gene mutations, one chromosomal aberration and one DNA

damage/repair assays); and positive in four studies (all DNA damage/repair assays). Five studies were not acceptable.

A rat chronic feeding/oncogenic study indicated a NOEL slightly below 25 ppm (1.25 mg paraquat cation/kg bw) and lung lesions which were difficult to differentiate between neoplastic and non-neoplastic pulmonary lesions as addressed in the Registration Standard for Paraquat dated March 31, 1986. The Agency subsequently considered the evidence for pulmonary adenomas and carcinomas as well as several other tumors in evaluating the rat feeding/oncogenicity study, and concluded that only squamous cell neoplasms of the skin and the subcutaneous areas of the head region of the high-dose (150 ppm) male rates were significantly increased over the concurrent control group. The Agency concluded that although the data available for paraquat places it in the "C Category" (limited evidence for oncogenicity in animals), it is not appropriate to develop a quantitative estimation of the oncogenic potential of paraquat.

The Agency has concluded that the amount of paraquat added to the diet from the proposed use will not significantly increase dietary exposure in humans. Thus the tolerance that will be established by this proposed rule is considered to pose a negligible increment in risk. Tolerances have previously been established for paraquat on a wide variety of food commodities, including meat, milk, grain, fruits, vegetables, and nuts at levels ranging from 0.01 to 5 ppm.

The acceptable daily intake (ADI), based on the 1-year dog feeding study (systemic NOEL of 0.45 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.0045 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.27 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.11130 mg/day; the current action will increase the TMRC by 0.0000225 (0.02 percent). Published tolerances will utilize 41.22 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method, spectrophotometry, is available in Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. There are presently no actions pending against the continued registration of this chemical. EPA has reviewed paraquat as a candidate for rebuttable presumption against registration (RPAR) and concluded that available data did not support an RPAR (43 FR 30613 of October 1982).

Existing meat, milk, poultry or eggs tolerances are adequate to cover any secondary residues resulting from the proposed use on tyfon in the State of New Hampshire. Based on the information and data considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 6E3414/P412]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: March 22, 1987

Edwin F Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

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

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

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

2. Section 180.205(b) is amended by adding and alphabetically inserting the raw agricultural commodity tyfon to read as follows:

§ 180.205 Paraquat; tolerances for residues.

(b)

Commodities	Parts per million
Tyfon	0.05

[FR Doc. 87-7742 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6E3325/P413; FRL-3180-7]

Pesticide Tolerance for Benomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a tolerance for the combined residues of the fungicide benomyl and its metabolites in or on the raw agricultural commodity watercress. The proposed regulation to establish a maximum permissible level for residues of benomyl in or on watercress was petitioned by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3325/P413], should be received on or before May 8, 1987

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW Washington, DC 20460. In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for

inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW Washington, DC 20460. Office location and telephone number: Rm. 716H, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703-557-1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3325 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of Florida.

This petition requested that the Agency, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide benomyl (methyl 1-[butylcarbamoyl]-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodity watercress at 10.0 parts per million (ppm). The petitioner proposed that this use of benomyl on watercress be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 miligrams (mg)/kilogram (kg) of body weight (bw)/day).

2. A 2-year rat feeding study with a NOEL of 2,500 ppm (125 mg/kg bw/day).

3. A three generation rate productive study with no effect on reproductive performance up to 1000 ppm (5.0 mg/kg bw/day).

4. A mouse teratology study (gavage dosing), negative for teratogenic effects at 50 mg/kg bw/day.

5. A rat teratology study with a teratogenic NOEL of 30 mg/kg/day.

6. An oncogenicity studies in mice discussed in more detail in the paragraph immediately following.

Subsequent to these findings, data have been made available indicating that benomyl is oncogenic in mice. A re-review of the presently registered and proposed uses of benomyl in light of the potential oncogenic and teratogenic adverse effects has been completed. Both benomyl and methyl 2-benzimidazole carbamate (MBC), the common metabolite of benomyl, have been shown to be hepatocarcinogens in tests with mice. The Agency concluded that the date available places benomyl and its major metabolite MBC in the "C Category"—limted evidence for oncogenicity in animals. The upper limit to the oncogenic lifetime risk to the general public via worst case dietary exposure to previously published tolerances is estimated to be $7.52 \times 10_5$. The incremental increase in risk from the proposed tolerance for watercress is a negligible increase in risk from $7.52 \times 10_5$ to $7.54\sqrt{10_5}$. Benomyl has the potential to cause teratogenic effects. The NOEL for these effects is set at 30 mg/kg/day based on results from a gavage study in rats. Margins of Safety (MOS) for teratogenicity from dietary exposure from current uses would amount to 761, the MOS for watercress is 2,308. The MOS for reproductive effects (damage to spermatogonia and seminal vesicles) resulting from existing tolerances (including this proposed tolerance) for benomyl is 1,712.

A comprehensive review of the data available for the chemical was conducted in connection with the rebuttable presumption against registration (RPAR) for benomyl which was published in the **Federal Register** of December 6, 1977 (42 FR 61788). This presumption was based on information indicating that benomyl posed the risks of mutagenicity (point mutation and non-disjunctions) spermatogenic depression and teratogenic effects, acute toxicity to aquatic organisms, and significant population reduction in nontarget organisms. In the **Federal Register** of August 30, 1979 (44 FR 51166), the Agency published a Preliminary Notice of Determination, which concluded that benomyl continued to pose the risks noted above with the exception of point mutations and significant population reductions in nontarget organisms. In the Notice and the accompanying Position Document 2/3, the Agency weighed the risk and benefits of use together, and determined that certain modifications to the terms and conditions of use were necessary to reduce the risk of use to applicators.

The Agency's position concerning the RPAR issues with benomyl was published in the **Federal Register** of October 20, 1982 (47 FR 46747). In the Notice of Determination Concluding the Rebuttable Presumption Against Registration (PD-4) for benomyl the Agency determined that the benefits of benomyl use exceed the risk of use if a dust mask is used when mixing and loading for aerial application. Registrants are required to amend their product labels to require use of a dust mask for persons who mix and load benomyl for aerial application.

The acceptable daily intake (ADI), based on the three-generation rat reproduction study (NOEL of 100 ppm, or 5.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.0 mg/day. The theoretical maximum residue contribution (TMRC) from established tolerances (excluding current action) for a 1.5-kg daily diet is calculated to be 1.9735 mg/day. The current action will increase the TMRC by 0.0045 mg/day (0..22 percent). Published tolerances utilize 65.78 percent of the ADI; the current action will utilize an additional 0.15 percent.

The nature of the residues is adequately understood and an adequate analytical method, fluorometric spectrometry or liquid chromatography employing an ultra-violet detector, is available in Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. Secondary residues are not expected in meat or milk from the proposed use since watercress is not an animal feed item. There are presently no actions pending against the continued registration of this chemical.

Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal

be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3325/P413]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: March 26, 1987

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

2. Section 180.294 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 180.294 Benomyl; tolerances for residues.

(b) Tolerances with regional registration as defined in § 180.1(n), are established for residues of the fungicide benomyl (methyl 1-[butylcarbamoyl]2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodities:

Commodities	Parts per million
Watercress	10.0

[FR Doc. 87-7383 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 347 (Sub-No. 2)]

Rate Guidelines—Non-Coal Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Request for additional comments to notice of proposed policy.

SUMMARY: In the notice served May 21, 1986 (51 FR 18811, May 22, 1986), in this proceeding, the Commission solicited comments on the feasibility of applying the principles of Constrained Market Pricing to captive non-coal and small coal shipments. We continue to believe that Constrained Market Pricing (CMP) is the most sophisticated and accurate method available for determining the reasonableness of captive rates. Much of the Commission's existing maximum reasonableness docket consists of cases involving high volume, unit train operations and, for these cases, CMP is the preferred methodology. Nothing presented in this proceeding suggests any valid reason to diminish reliance on it for such movements. However, many of parties commenting believe that CMP is not suitable for assessing the reasonableness of rates for other captive traffic. Because resolution of the initial cases under CMP has entailed considerable expense in the development and presentation of evidence, many parties believe that the cost of preparing and presenting a case is prohibitive where small amounts of traffic are involved. We agree that, where the cost of preparing and presenting CMP evidence is prohibitive, simplified alternative procedures are needed. Additional comments on specific proposals to create simplified procedures are solicited.

DATE: Comments are due by May 26, 1987

ADDRESS: An orginal and 15 copies of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and served on all parties of record.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. A copy of the decision is available from the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, (202) 275-7428.

Environment and energy. This action will not significantly affect the quality of the human environment or energy conservation.

Regulatory Flexibility Certification. The Commission certified that the proposed rules will not, if promulgated, have a significant impact on a substantial number of small entities, because the proposal is limited to non competitive rail shipments. To the extent it does affect small entities, the proposed rules are intended to reduce their burden in rate reasonableness proceedings.

List of Subjects

Railroads.

This notice is used pursuant to 5 U.S.C. 553 and 49 U.S.C. 10101a(6) and 10701a(b)(1).

Decided: March 23, 1987

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Chairman Gradison commented with a separate expression. Vice Chairman Lamboley commented with a separate expression. Commissioner Simmons concurred in the issuance of the notice and decision, and commented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-7814 Filed 4-7-87; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1320

[Ex Parte No. MC-1]

Regulations for Payment of Rates and Charges; Penalty Charges for Nonpayment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend 49 CFR Part 1320 to revise its credit regulations.

The proposed rules would allow a carrier to impose conditions for extensions of credit to shippers in the form of collection expense charges. They would apply to situations when a carrier seeks to collect payment of overdue freight charges. There are no provisions in the current regulations authorizing carriers to impose tariff

penalties on shippers that do not timely pay their freight bills.

DATES: Comments are due on or before May 25, 1987

ADDRESS: The original and, if possible, 10 copies of comments referring to Ex Parte No. MC-1 should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Richard Johnson (202) 275-7939

or

Andrew Lyon (202) 275-7292

SUPPLEMENTARY INFORMATION: In recent months concerns have arisen over the absence of any provisions in our credit regulations authorizing carriers to impose tariff penalties on shippers that do not timely pay their freight bills. It appears to us that the regulations should be amended to permit such extra charges for delinquent accounts. Rules authorizing such charges could take several different forms. One alternative could involve a general rule, stating simply that a carrier may establish reasonable collection expense charges, but that those charges must be computable from the carrier's tariff. A second alternative could involve specific rules prescribing a particular approach that carriers must take to address delinquent accounts. One such particular approach, for example, could allow a carrier to require payment of the full nondiscounted rates instead of discounted rates, if the shipper has not paid legitimate, overdue freight charges.

In theory, the rules need not be tied to court actions or particular collection costs. For example, straight-forward liquidated damage provisions imposed by a carrier may be permissible under the Act. (We note that liquidated damages could be the sole permissible method of addressing delinquent accounts, or it could be included as an alternative for those carriers not wishing to use a more detailed process.) For purposes of this notice of proposed rulemaking we here included liquidated damages in the more specific alternative approach as a carrier option.

We seek comments on which approach is preferable. The appendix contains a possible rule of each type. Parties should also comment, if they prefer a more detailed rule, on the appropriate conditions that should be imposed on a carrier's collection procedure.

The rules would liberalize the credit regulations for carriers and would foster prompt payments of freight charges. They would also allow carriers to recover costs incurred in collecting payments of overdue freight charges. We invite comments of interested parties on these matters.

The Commission's decision contains additional information. To obtain a copy of the decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275-7428.

Environmental and Energy Considerations

We preliminarily concluded that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

The Commission is proposing to exercise its discretion under 49 U.S.C. 10743(b)(1) and revise the credit regulations to allow carriers to make certain collection expense charges when they try to collect payments of overdue freight charges.

We preliminarily conclude that the proposed liberalization of the credit regulations for carriers will not have a significant, economic impact on a substantial number of small entities. The proposed rules will not require the filing of reports or recordkeeping by small entities. The proposed rules will not duplicate, overlap, or conflict with any existing Federal rules.

List of Subjects for 49 CFR Part 1320

Credit, Freight forwarders, Motor carriers, Maritime carriers, Railroads.

Authority: 49 U.S.C. 10321, 10701, 10702, 10741, 10743, and 10744, and 5 U.S.C. 553.

Decided: March 25, 1987

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1320—EXTENSIONS OF CREDIT TO SHIPPERS BY RAIL COMMON CARRIERS, MOTOR COMMON CARRIERS, WATER COMMON CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS

1. The authority citation for 49 CFR Part 1320 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321, 10701, 10702, 10741, 10743, and 10744.

2. Section 1320.2 is proposed to be amended by redesignating paragraph (g) as paragraph (h), and by adding one of the new alternative paragraphs (g) to read as follows:

§ 1320.2 Extension of credit to shippers.

Alternative I:

(g) *Collection expense charges.* Carriers may, by tariff rule, impose conditions for extensions of credit to shippers in the form of collection expense charges for the nonpayment of overdue freight charges. Carriers may establish the collection expense charges in addition to the service charges allowed in paragraph (e) of this section. All such charges must be computable from the tariff, and otherwise be lawful.

Alternative II:

(g)(1) Collection expense charges. Carriers may, by tariff rule, assess charges for reasonable attorneys' fees, court costs, and administrative costs incurred in legitimate collection efforts. The amount of the charge must be specified in the tariff.

(2) These charges may be applied when the shipper does not make payment after the expiration of an authorized credit period, and does not timely notify the carrier that it disputes the amount charged for the shipment.

(3) A tariff rule may also require payment of the full, nondiscounted rates instead of discounted rates, as a reasonable collection expense, if the shipper has not paid legitimate, overdue freight charges.

(4) Alternatively, or in addition, tariffs may provide reasonable liquidated damage charges for bills unpaid after a certain period.

§ 1320.3 [Amended]

3. Section 1320.3(c) is proposed to be amended by inserting the term "collection expense charge" after the term "service charge" each time it appears.

[FR Doc. 87-7724 Filed 4-7-87 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 52, No. 67
Wednesday, April 8, 1987

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 3, 1987

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

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

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

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

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

Reinstatement

Food and Nutrition Service
Report of the Care Food Program
FNS-44
Monthly, Quarterly, Semi-annually
State of local governments; 1,584 responses; 4,752 hours; not applicable under 3504(h)
Alan Rich (703) 756-3100

Revision

Agricultural Market Service
Oranges, Grapefruit, Tangerines and Tangelos grown in Florida
Marketing Order 905
Weekly; Annually; Once every 6 years
Farms; Businesses or other for-profit; Small businesses or organizations; 1,418 responses; 406 hours; not applicable under 3504(h)
Gary D. Rasmussen (202) 475-3918

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 87-7783 Filed 4-7-87; 8:45 am]

BILLING CODE 3410-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control Disarmament.

Date: April 23, 24, 1987.

Time: 9:15 A.M.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact Person: Barry Daniel, Executive Director, General Advisory Committee U.S. Arms Control and Disarmament Agency, Room 5927, Washington, DC 20451 (202) 647-5177

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will present the following discussions and presentations:

April 23, 1987

AM Receive briefing on and discuss NATO/WP forces

PM Receive briefing on and discuss Soviet INF forces and INF negotiations

April 24, 1987

AM Receive briefing on Verification Collection Capabilities
Executive Discussions.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated April 1, 1987, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 87-7674 Filed 4-7-87; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Prelist Operation, 1990 Census
Form Number: Agency—D-101A, D-169, D-31; OMB—NA
Type of Request: New collection
Burden: 28,715,000 respondents; 717,875 reporting hours
Needs and Uses: This is an address list compilation and update operation to be used in the 1990 decennial census. This prelist operation will require respondents to provide information about their mailing address, the physical location of the housing unit and the name of the householder.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377—3271, Department of Commerce, Room

H6622, 14th and Constitution Avenue, NW Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dates: March 16, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-7701 Filed 4-7-87 8:45 am]

BILLING CODE 3510-07-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Auxiliary Establishment Report
Form Number: Agency—ES-9200; OMB—NA
Type of Request: New collection
Burden: 40,000 respondents; 20,000 reporting hours
Needs and Uses: This survey is part of the 1987 Economic Censuses. Form ES-9200 will be used to collect census data items on auxiliary units of multiestablishment enterprises within the scope of the economic censuses. These auxiliary establishments are primarily engaged in general business administration; management; research, development and testing; warehousing; and other supporting services.
Affected Public: Businesses or other for-profit institutions
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

Agency: Bureau of the Census
Title: 1987/1988 Census of Horticultural Specialties Pretests
Form Number: Agency—BC86-A19.01, BC86-A19.02, BC86-A19.03; OMB—NA
Type of Request: New collection
Burden: 2,500 respondents; 1,250 reporting hours
Needs and Uses: These pretests will provide a means of measuring the effectiveness of the report form consent to obtain the requested information, and will allow for testing the various form designs of the report forms.
Affected Public: Farms
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: March 16, 1987

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-7702 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-07-M

Bureau of the Census

Census Advisory Committee (CAC); Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on April 23 and 24, 1987, at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

Each of these committees is composed of 12 members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communications between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 decennial census.

The committees will draw on the knowledge and insight of their members to provide advice during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The agenda for the April 23 combined meeting that will begin at 8:45 a.m. and end at 2:00 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) 1990 planning update; (3) 1990 census budget; (4) race and Hispanic items; and (5) publicity and outreach activities, including (a) language assistance, and (b) community action guide.

The agendas for the four committees in their separate and jointly held meetings that will begin at 2:00 p.m. and end at 5:15 p.m. on April 23 are:

The CAC on the American Indian and Alaska Native Populations for the 1990 Census: (1) Bureau of Indian Affairs identification of tribal lands, (2) Alaska enumeration plans, (3) language assistance, (4) community action guide, (5) publicity and outreach activities, and (6) consideration of Census Bureau responses to recommendations made at the last meeting.

The CAC on the Asian and Pacific Islander Populations for the 1990 Census: (1) publicity and outreach activities, (2) language assistance, (3) community action guide, and (4) consideration of Census Bureau responses to recommendations made at the last meeting.

The CAC on the Black Population for the 1990 Census: (1) Publicity and outreach activities, (2) language assistance, (3) community action guide, and (4) consideration of Census Bureau responses to recommendations made at the last meeting.

The CAC on the Hispanic Population for the 1990 Census: (1) Publicity and outreach activities, (2) language assistance, (3) community action guide, and (4) consideration of Census Bureau responses to recommendations made at the last meeting.

The agenda for the April 24 combined meeting that will begin at 8:45 a.m. and end at 10:15 a.m. will be 1990 census community awareness plans.

In their separate meetings that will begin at 10:30 a.m. and end at 12:00 noon the American Indian and Alaska Native Populations Committee for the 1990 census will discuss (1) 1990 census community awareness plans, and (2) the American Indian Office. The Asian and Pacific Islanders, Black, and Hispanic Committees will discuss 1990 Census community awareness plans. In separate meetings from 1:15 p.m. to 2:45 p.m. the four Committees will develop and discuss recommendations to the Census Bureau.

The agenda for the combined meeting that will begin at 3 p.m. and adjourn at 4 p.m. is: (1) comments by outside observers, (2) presentation of

recommendations, and (3) plans for the next meeting.

All meetings are open to the public, and a brief period is set aside on April 24 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact Mr. Russell L. Valentine, Assistant Chief for Outreach and Program Information, Decennial Planning Division, Bureau of the Census, Room 3779, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone (301) 763-5169.

Dated: April 2, 1987

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 87-17753 Filed 4-7-87 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-475-601]

Amendment to Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From Italy and Amendment to Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: As a result of correction of a clerical error, the Department of Commerce (the Department) is amending its final determination in this investigation and its antidumping duty order, and is directing the U.S. Customs Service to adjust the cash deposit as follows:

Manufacturer/producer/exporter	From (percent)	To (percent)
La Metalli Industriale, SpA	12.08	9.74
All others	12.08	9.74

EFFECTIVE DATE: April 8, 1987

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

SUPPLEMENTARY INFORMATION: On January 9, 1987 we published a final determination of sales at less than fair value on brass sheet and strip from Italy (52 FR 816). On February 19, 1987 in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the United States International Trade Commission (ITC) notified the Department that imports of this merchandise are materially injuring a United States industry. After being notified of these findings, the Department published an antidumping duty order on March 6, 1987 (52 FR 6997).

The detection of a clerical error by counsel for respondent has caused us to review our calculations in this investigation. We have discovered and have corrected the clerical error found in the calculations. Consequently, we are amending our final determination by changing the weighted-average margins.

We are also amending our antidumping duty order to reflect these weighted-average margins. This amendment is effective as of the date of publication of this notice. The new estimated weighted-average antidumping duty margins are as follows.

Manufacturer/producer/exporter	Weighted-Average Margin (percent)
La Metalli Industriale, SpA	9.74
All others	9.74

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

April 3, 1987

[FR Doc. 87-7804 Filed 4-7-87 8:45 am]

BILLING CODE 3510-DS-M

[A-428-037]

Drycleaning Machinery From West Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 20, 1987 the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from West Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period November 1, 1982 through October 31, 1984.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and correction of clerical errors, we have changed the margins from those presented in the preliminary results.

EFFECTIVE DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987 the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 2124) the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from West Germany (37 FR 23715, November 2, 1972). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery, currently classifiable under item 670.4100 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer/exporter of this merchandise to the United States and the period November 1, 1982 through October 31, 1984.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from Boewe Reinigungstechnik GmbH, the respondent.

Comment 1: Boewe contends that through apparent clerical error, the foreign market value of certain machines was calculated using list price rather than actual prices during the review period November 1, 1982 through October 31, 1983.

Department's position: We agree and have corrected the error.

Comment 2: Boewe contends that we improperly compared a U.S. sale of a certain model that had no filter to the foreign market value based on constructed value of the same model machine with a filter. In its comment Boewe provided constructed value figures for that model without a filter and argues that we should use those figures for comparison purposes.

Department's position: We agree and have changed our calculations accordingly.

Comment 3: Boewe contends that the Department improperly added, rather than subtracted, the packing adjustment in its calculation of foreign market value. Furthermore, the full amount of export packing should be substracted from the foreign market value because U.S. prices were reported without packing included in the price.

Department's position: We disagree. The cost of packing for export to the United States is included in both the U.S. price and the foreign market value when calculating dumping margins. Boewe's home market prices included home market packing. We, therefore, subtracted home market packing from the foreign market value and added U.S. export packing in accordance with section 773(a) of the Act.

The U.S. selling prices Boewe reported included export packing. In addition Permac reported additional packing performed in the United States. We further adjusted the foreign market value to reflect this additional packing.

Comment 4: Boewe contends that for one U.S. sale in the review period November 1, 1982 through October 31, 1983 we incorrectly calculated the foreign market value of a particular partially completed drycleaning machine. The machine in question was sold without a still or a condensor, in effect rendering it a half machine. Boewe requests that we make appropriate adjustments in calculating the foreign market value for this machine.

Department's position: We agree and have changed our calculations accordingly.

Comment 5: Boewe contends, as in previous reviews, that the Department should make adjustments to the foreign market value for differences in the levels of trade involved in comparisons of home market and U.S. sales. In its home market Boewe sold directly to end-users, whereas in the United States its subsidiary, Permac, sold through distributors.

Department's position: Our position remains unchanged from the previous reviews. In terms of function in the marketplace, Permac's distributor customers and Boewe's agents in their home market are at a comparable level of trade. The Department has compared Permac's sales to distributors with Boewe's sales in West Germany through independent agents to end-users, in accordance with section 353.19 of the Commerce Regulations. When there were no contemporaneous home market sales through agents, we compared sales to distributors in the United States with direct sales to end-users in the home market, with no adjustment for differences in level of trade because the differences were not adequately quantified.

Comment 6: Boewe continues to maintain that trade-in losses should be treated as discounts on its home market sales of new machinery or, in the alternative, that such losses be treated as direct selling expenses and allowed as an adjustment to foreign market value on that basis.

Department's position: Our position remains unchanged from the previous reviews. We do not consider profits and losses on the sales of any machines to be selling expenses, direct or indirect. Nor do we consider the amount deducted from the price of a new machine for a trade-in to be a discount. It is still our policy that the amount of that credit is a measure to Boewe of the value of the used machine. Therefore, we have not made any adjustment.

Comment 7: Boewe continues to maintain that warranty expenses incurred by Boewe, even if outside the narrow warranty period, are proper adjustments and requests that its claimed warranty expenses be allowed, in full, as direct selling expenses.

Department's position: The claimed warranty expenses were actually repair work performed on the machines after the guarantee periods had expired. As neither the customer nor Boewe anticipated or bargained for the work at the time of the sale, they are not true warranty expenses but rather goodwill. We do not allow such expenses as circumstance-of-sale adjustments.

Comment 8: Boewe continues to maintain that the amounts reported for general and administrative expenses, research and development, advertising and other items are properly included in the calculation of indirect selling expenses in the home market for use as offsets, where appropriate. Boewe also maintains that sales related general and administrative expenses, management expenses, and traffic department expenses are directly related selling expenses and should be treated as such.

Department's position: As in the last reviews we disallowed all of these claims as selling expenses because: (1) They were not properly allocated to home market sales; or (2) Boewe failed to specifically relate them to the sales function.

Final Results of Review

As a result of the comments received, we have revised our preliminary results for Boewe and we determine that the following weighted-average margins exist for the period November 1, 1982 through October 31, 1984:

Manufacturer/exporter	Time period	Margin (percent)
Boewe Reinigungstechnik GmbH	11/1/82-10/31/83	5.55
	11/1/83-10/31/84	0.84

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

The above margins do not change the current rates for cash deposits of antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: April 1, 1987

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-7813 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-001]

Leather Wearing Apparel From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Argentina. The review covers the period July 1, 1983 through December 31, 1984 and three programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be zero for the period of review. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 34479) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Argentina (48 FR 11480; March 18, 1983). On September 17 1985, an interested party, the Amalgamated Clothing and Textile Workers Union, AFL/CIO, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on May 30, 1986 (51 FR 19580). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine leather wearing apparel currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983 through December 31, 1984 and three programs: (1) The reembolso, a cash rebate of taxes; (2) pre-export financing; and (3) incentives for exports from southern ports.

Analysis of Programs

(1) Reembolso

The reembolso is a tax rebate paid upon export. It is calculated as a percentage of the f.o.b. invoice price. The Tariff Act and the Commerce Regulations allow the rebate of the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (*see* Annex I.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (*see* Annex I.2 of part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes, we consider the difference to be an overrebate of indirect taxes and, therefore, a bounty or grant.

Based on our analysis and verification of the questionnaire response submitted by the Government of Argentina, we find that indirect taxes on physically incorporated inputs and final stage indirect taxes on leather wearing apparel amount to 6.87 percent *ad valorem* for the period of July 1, 1983 through December 31, 1983 and 6.67 percent *ad valorem* for the period January 1, 1984 through December 31, 1984. Until October 1984, the reembolso rate for leather wearing apparel was 5.00 percent (Resolution ME 8; July 5, 1982). On October 29, 1984 the Argentine government reduced the rate to zero (Resolution ME 1090). We preliminarily find no overrebate of indirect taxes for the period of review.

(2) Pre-export Financing

The Central Bank makes pre-export financing available to exporters through Circular OPRAC 1-9, chapter 1, section 2.1. Communication C-504, dated November 23, 1983, excluded exports of leather wearing apparel to the United States from this program. We verified that the exporters did not use this program. Therefore, we preliminarily find no benefit from this program during the review period.

(3) Incentives for Exports from Southern Ports

Law 23.018, dated December 7 1983, provides a payment to promote exports from southern ports of Argentina. We verified that no exporters of leather wearing apparel used this program. Therefore, we preliminarily find no benefit from this program during the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be zero for the period of review.

The Department intends to instruct the Customs Service to assess no countervailing duties on any shipments of this merchandise exported on or after July 1, 1983 and on or before December 31, 1984.

The Department intends to instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of leather wearing apparel from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: April 2, 1987.

Joseph Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-7809 Filed 4-7-87 8:45 am]

BILLING CODE 3510-DS-M

[A-437-601]

Antidumping Duty Investigation of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Hungarian People's Republic; Preliminary Negative Determination of Critical Circumstances

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that "critical circumstances" do not exist with respect to imports of tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from the Hungarian People's Republic (Hungary). We have notified the U.S. International Trade Commission (ITC) of our determination

EFFECTIVE DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: John Brinkman (202-377-3965) or Mary Jenkins (202-377-1756), Office of Investigations, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230.

Case History

On February 6, 1987 we published a preliminary determination of sales at less than fair value with respect to the subject merchandise (52 FR 3836). On February 25, 1987 petitioner alleged that "critical circumstances" exist with respect to imports of tapered roller bearings from Hungary.

Critical Circumstances

In determining whether critical circumstances exist, section 733(e)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(e)) requires that we examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class of kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(A), we reviewed past antidumping findings of the Department of Treasury as well as past Department of Commerce antidumping orders to determine whether there is a history of dumping of tapered roller bearings from Hungary in the United States or elsewhere. There have been no past United States antidumping determinations on tapered roller bearings from Hungary. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no history of dumping of this product from Hungary. We then consider whether the persons by whom, or for whose account, this product was imported knew or should have known that it is was being sold at less than its fair value. We have no evidence that the importers had such knowledge. Nor is the weighted-average margin found in the preliminary determination (3.66 percent) sufficiently large in and of itself for us to assume that the importers should have known that the product was being sold at less than fair value. Accordingly, having failed the first prong of the test there is no need to consider whether the second prong, massive imports, under section 733(e)(1)(B) of the Act applies.

For the reasons described above, we have preliminarily determined that "critical circumstances" do not exist with respect to tapered roller bearings from Hungary.

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof (tapered roller bearings), currently classified in the *Tariff Schedules of the United States* (TSUS) under items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classifed in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified in TSUS item 692.32 or elsewhere in the TUSU.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 27 1987.

[FR Doc. 87-7806 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-603]

Antidumping Duty Investigation of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy; Preliminary Affirmative Determination of Critical Circumstances

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that "critical circumstances" exist with respect to imports of tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Italy. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend retroactively liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination of "critical circumstances" by June 22, 1987

EFFECTIVE DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: Charles Wilson (202-377-5288) or Karen S. DiBenedetto (202-377-1776), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

On February 6, 1987 we published a preliminary determination of sales at less than fair value with respect to the subject merchandise (52 FR 3835).

On February 26, 1987 petitioner alleged that "critical circumstances" exist with respect to tapered roller bearings from Italy.

Critical Circumstances

In determining whether critical circumstances exist, section 733(e)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(e)) requires that we examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining whether the importers knew, or should have known, the exporter was selling the merchandise at less than fair value, we normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the preliminary margin in this case exceeds this level, we find that knowledge of sales at less than fair value can be imputed to the importers.

In determining whether imports have been massive over a relatively short period, we normally consider the following factors: (1) The volume and value of imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Import data on the subject merchandise falls within five different TSUS categories. Three of these TSUSA categories relate to pieces and two categories relate to pounds. Using volume figures, we found massive imports with respect to the TSUSA categories in which imports of the subject merchandise were measured in pounds. With respect to the remaining three TSUSA categories, the data was less conclusive, and merely showed fluctuations in the volume of imports. By combining the value of imports in all five categories, we find there have been significant increases in total imports of the subject merchandise after the filing of the petition. Thus, based on currently available information, we preliminarily determine that imports of tapered roller bearings have been massive. We will be requesting further, more specific information from the respondent regarding imports of the subject merchandise for the final determination on critical circumstances.

For the reasons described above, we have preliminarily determined that "critical circumstances" exist with respect to tapered roller bearings from Italy.

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof (tapered roller bearings), currently classified in the

Tariff Schedules of the United States (TSUS) under items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item 692.32 or elsewhere in the TSUS.

Suspension of Liquidation

In accordance with section 733(e) of the Act, we have directed the U.S. Customs Service to suspend retroactively liquidation of all entries of tapered roller bearings, from Italy that are entered, or withdrawn from warehouse, for consumption, on or after November 7 1986, the date which is 90 days before the date of which suspension of liquidation was first ordered, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 54.18 percent of the ex-factory value. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

March 30, 1987

[FR Doc. 87-7807 Filed 4-7-87 8:45 am]

BILLING CODE 3510-DS-M

[A-485-602]

Antidumping Duty Investigation of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Socialist Republic of Romania; Preliminary Affirmative Determination of Critical Circumstances

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that "critical circumstances" exist with respect to imports of tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from the Socialist Republic of Romania (Romania). We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to retroactively suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: April 8, 1987

FOR FURTHER INFORMATION: Contact John Brinkmann (202-377-3965) or Mary Jenkins (202-377-1756), Office of Investigation, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Case History

On February 6, 1987 we published a preliminary determination of sales at less than fair value with respect to the subject merchandise (52 FR 3838). The estimated dumping margin was 8.87 percent. On February 25, 1987 petitioner alleged that "critical circumstances" exist with respect to imports of tapered roller bearings from Romania.

Critical Circumstances

In determining whether critical circumstances exist, section 733(e)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(e)) requires that we examine whether:

(a)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(A), we reviewed past antidumping findings of the Department of Treasury as well as past Department of Commerce antidumping orders to determine whether there is a history of dumping of tapered roller bearings from Romania in the United States. There have been no past United States antidumping determinations on tapered roller bearings from Romania. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found that the Commission of European Communities (EC) made a preliminary determination of dumping and injury. Subsequently, on June 4, 1981, the EC and Romania entered an undertaking with respect to roller bearings. On April 15, 1986, this undertaking was terminated. (*Offical Journal of the European Communities*, No. L 102-31, April 18, 1986.) We have therefore preliminarily determined, based on this EC undertaking, that there is a history of dumping of the class of kind of merchandise which is the subject of this investigation. Accordingly, we do not have to consider whether the persons by whom, of for whose account, this product was imported knew or should have known that it was being sold at less than fair value under section 733(e)(A)(ii) of the Act.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place over a short period of time. (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of the domestic consumption accounted for by the imports. We found that imports have been massive since the filing of the petition, even though total volume and value have decreased since 1985. Import penetration was not available for the second half of 1986.

For the reasons described above, we have preliminarily determined that "critical circumstances" exist with respect to tapered roller bearings from Romania.

Scope of Investigation

The products covered by this investigation are tapered roller bearings, currently classified in the *Tariff Schedules of the United States* (TSUS) under items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item 692.32 or elsewhere in the TSUS.

Suspension of Liquidation

In accordance with section 733(e) of the Act, we have directed the U.S. Customs Service to retroactively suspend liquidation of all entries of tapered roller bearings from Romania that are entered, or withdrawn from warehouse, for consumption, on or after November 7 1986, the date which is 90 days before the date on which suspension of liquidation was first ordered, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin amount by which the foreign market

value of the merchandise subject to this investigation exceeded the United States price, which was 8.87 percent of the ex-factory value. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 27 1987

[FR Doc. 87-7808 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Certain Steel Billets; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products with respect to certain steel billets for use in the manufacture of wire rod.

DATE: Comments must be submitted no later than April 20, 1987

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product.

We have received a short supply request for low carbon steel billets (AISI Grade 1008 or 1010). The requested billets are of a square cross section, measuring 4¾ inches on each side, and in lengths ranging between 25 and 30 feet.

Any party interested commenting on this request should send written comments as soon as possible, and no later than April 20, 1987 Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

April 2, 1987

[FR Doc. 87-7810 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[P27C]

Marine Mammals; Application for Permit; Walt Disney Company

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name: Walt Disney Company
   b. Address: P.O. Box 10,000, Lake Buena Vista, Florida, 32830-1000
2. Type of Permit: Public Display
3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus*), 8
4. Type of Take: Capture and maintain
5. Location of Activity: West Coast of Florida
6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW Room 805, Washington, DC 20235;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: April 1, 1987

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-7737 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-22-M

Coastal Zone Management; Federal Consistency Appeal by Korea Drilling Company Ltd. From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public comment period.

On December 15, 1986, Korea Drilling Company Ltd. ("Appellant") filed an appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A). The appeal is taken from an objection by the California Coastal Commission to the activities described

in Appellant's application for a permit under section 402 of the Clean Water Act for the discharge of drilling muds and cuttings from its Outer Continential Shelf oil and gas drilling vessel, the DOO SUNG. The Commission objected to the EPA permit because of issues relating to foreign competition and drilling vessel safety.

Appellant requested and was granted a 60-day extension to file supporting information. This information has now been submitted and public comments are invited on the issues raised by the appeal, as set out in the regulations at 15 CFR 930.121.

Comments are due within 30 days of the publication of this notice. Comments should be sent to: Daniel W. McGovern, General Counsel, National Oceanic and Atmospheric Administration, Washington, DC 20235. Copies of the comments also should be sent to the parties: Shelby H. Moore, Jr., Esq., 908 Camino Dos Rios, Thousand Oaks, CA 91360 and Michael Wornum, California Coastal Commission, 631 Howard Street, Fourth Floor, San Francisco, CA 94105.

FOR ADDITIONAL INFORMATION CONTACT: S. Campbell, Office of General Counsel, National Oceanic and Atmospheric Administration, (202) 673-5200.

(Domestic Assistance Catalog No. 11.419 Coastal Zone Management Administration)

Dated: April 3, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87-7767 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-08-M

[P329]

Marine Mammals; Modification No. 1 to Permit No. 455; Brighton Aquarium and Dolphinarium

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 455 issued to Brighton Aquarium and Dolphinarium, Marine Parade and Madeira Drive, Brighton BN2 1TE Sussex, United Kingdom, on March 16, 1984, (50 FR 32252), is modified as follows:

Section B.4 is replaced by:

4. This Permit is valid with respect to the taking authorized herein until December 31, 1987. The terms and conditions of this Permit (sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective April 8, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: April 1, 1987

Nancy M. Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-7721 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Romania

April 3, 1987.

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 9, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On December 31, 1986, a notice was published in the **Federal Register** (51 FR 47280), announcing import restraint limits for wool and man-made fiber textile products, produced or manufactured in Romania and exported to the United States during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The Bilateral Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania establishes a minimum consultation level for man-made fiber textile products in Category 641, produced or manufactured in Romania and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

The United States Government has decided to control imports of Category 641 at the agreed level. Accordingly, in the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry, or withdrawal from warehouse, for consumption in the United States of man-made fiber textile products in Category 641, in excess of designated level. Category 641 is currently controlled under Group III and shall remain part of the group.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This action and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provision.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 3, 1987

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption for certain wool and man-made fiber textile products, produced or manufactured in the Socialist Republic of Romania.

Effective on April 9, 1987 the directive of December 23, 1986 is hereby amended to include an individual restraint limit for man-made fiber textile products in Category 641, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987 at a level of 48,276

dozen. Category 641 is currently controlled under Group III and shall remain part of the group.

In carrying out this directive, entries of textile products in Category 641, produced or manufactured in the Socialist Republic of Romania, which have been exported to the United States on and after January 1, 1986, shall, to the extent of any unfilled balances, be charged against the level of restraint established for that period. In the event the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(l).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-7798 Filed 4-7-87 8:45 am]

BILLING CODE 3510-DR-M

New Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

April 2, 1987

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 8, 1987 For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

During consultations held January 26-28, 1987 the Governments of the United States and Sri Lanka agreed to amend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, to establish specific limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 333/633, 345/845, 350, 442, 636/836, 638/639/838 and 642/842.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry or withdrawal from warehouse for consumption, in the United States of textile products, produced or manufactured in Sri Lanka and exported during the periods which began, in the case of Categories 333/633, 345/845, 350 and 442, on June 1, 1986; in the case of Category 638/639/838, on December 1, 1986; and in the case of Categories 636/836 and 642/842 on January 1, 1987 and extend through May 31, 1987 in excess of the designated limits.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 2, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 8, 1987 entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the designated periods, in excess of the following levels of restraint.

Category	Restraint limit (doz.)	Restraint period
333/633	29,000	June 1, 1986-May 31, 1987
345/845	90,000	June 1, 1986-May 31, 1987
350	45,000	June 1, 1986-May 31, 1987
442	12,000	June 1, 1986-May 31, 1987
636/836	90,000	Jan. 1, 1987-May 31, 1987
638/639/838	400,000	Dec. 1, 1986-May 31, 1987
642/842	75,000	Jan. 1, 1987-May 31, 1987

Textile products in Categories 333/633, 345/845, 350 and 442, which have been exported to the United States prior to June 1, 1986; Category 638/639/838 prior to December 1, 1986; and Categories 636/836 and 642/842 prior to January 1, 1987 shall not be subject to this directive.

Textile products in Categories 33/633, 345/845, 350, 442, 636/836, 642/842 and 638/639/838 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, which provide, in part, that (1) any specific limit and sublimit may be exceeded by designated percentages of the square yards equivalent total in any agreement period, provided that the amount of the increase is compensated for by an equivalent decrease in one or more other specific limits; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; however, carryover will not be available in the agreement period during which the specific limit is first established; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any of the adjustments referred to above will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-7799 Filed 4-7-87 8:45 am]

BILLING CODE 3510-DR-M

The limit has not been adjusted to account for any imports exported after December 31, 1986.

The limits have not been adjusted to account for imports exported after May 31, 1986 (Categories 333/633, 345/845, 350 and 442), November 30, 1986 (Category 638/639/838) and December 31, 1986 (Categories 636/836 and 642/842).

Increasing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

April 3, 1987

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 9, 1987 For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive published in the **Federal Register** on August 18, 1986 (51 FR 29513) established import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987

During consultations held January 8–10, 1987 under Article 3 of the Arrangement Regarding International Trade in Textiles, the Governments of the United States and Turkey agreed to increase the designated consultation levels for Categories 300/301 and 604–O (all TSUSA numbers except 310.5049), produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 300/301 and 604–O during the designated period in excess of the new agreed limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

April 3, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on August 12, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987.

Effective on April 9, 1987 the directive of August 12, 1986 is hereby further amended to include new limits [1] for Categories 300/301 and 604–O:[2]

Category	12-mo. restraint limit
300/301	6,400,000 pounds.
604–O	935,000 pounds.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–7800 Filed 4–7–87 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

April 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 9, 1987 For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

On October 6, 1986 a notice was published in the **Federal Register** (51 FR 40351) announcing that the Government of the United States had requested consultations with Turkey concerning exports to the United States of cotton dressing gowns and robes in Category 350 and man-made fiber handknitting yarn in Category 605–H (only TSUSA numbers 310.9310 and 310.9320).

During consultations held January 8–10, 1987 under Article 3 of the Arrangement Regarding International Trade in Textiles, the Governments of the United States and Trukey agreed to establish specific limits for cotton and man-made fiber textile products in Categoreis 350 and 605-H, produced or manufactured in Turkey and exported during the eight-month period which began on November 1, 1986 and extends through June 30, 1987.

The United States Government has decided to control imports in these categories at the agreed limits. Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 350 and 605-H during the designated period in excess of the agreed limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the

[1] The limits have not been adjusted to account for any imports exported after June 30, 1985.

[2] In Category 604, all TSUSA numbers except 310.5049.

Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 3, 1987

Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textile done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended and extended, between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 9, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categoris 350 and 605-H [1] produced or manufactured in Turkey and exported during the eight-month period which began on November 1, 1986 and extends through June 30, 1987, in excess of the following limits.

Category	8-mo. restraint limit[1]
350	62,250 dozen
605-H	735,000 pounds

[1] The limits have not been adjusted to account for any imports exported after October 31, 1986.

Textile products in Categories 350 and 605-H which have been exported to the United States prior to November 1, 1986 shall not be subject to this directive.

Textile products in Categories 350 and 605-H which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The following amounts should be charged to the restraint limits established for the period which began on November 1, 1986 and extends through June 30, 1987. These charges are for goods imported during the period November 1, 1986 through January 31, 1987

Category	Amount to be charged
350	14,895 dozen
605-H	197,853 pounds

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 16, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-7801 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] Category 605, only TSUSA numbers 310.9310 and 310.9320

Amending the Export Visa Arrangement and Exempt Certification for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Products Produced or Manufactured in the Republic of the Philippines

April 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreement (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 13, 1987. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

Background

Under the terms of the Bilateral Agreement for Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Products of March 4, 1987 the Government of the United States and the Republic of the Philippines have exchanged letters amending the export visa arrangement and exempt certification system which was published in the **Federal Register** (44 FR 68005) on November 28, 1979.

Effective on April 13, 1987 commercial shipments of cotton, wool and man-made fiber textile and textile products and silk blend and other vegetable fiber apparel products in categories 300-369, 400-469, 600-670 and 831-859 exported on and after April 13, 1987 must be accompanied by a valid visa that includes the correct category and quantity or exempt certification as described in the enclosed letter to the Commissioner of Customs. Merchandise imported for the personal use of the importer and not for resale, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa or exempt certification for entry and shall not be charged to the restraint limits.

The visa and exempt certification stamps remain unchanged.

The Government of the Republic of the Philippines has authorized the following officials to issue visas and exempt certifications:

Ana Maria V Coruna, Deputy Executive Director

Aida B. Cabardo, Consultant

Eden S. Malapad, Assistant Chief, Industry Development Specialist

Lorna A. Del Rosario, Assistant Chief, Industry Development Specialist

Interested persons are advised to take all necessary steps to ensure that cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel products, produced or manufactured in the Philippines and exported on and after April 13, 1987 which are to be entered or withdrawn from warehouse for consumption into the United States will meet the requirements set forth in this notice.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 3, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supercedes the directive of November 21, 1979 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for the consumption of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Philippines in designated categories for which the Government of the Republic of the Philippines had not issued an appropriate export visa or exempt certification.

Under the Arrangement Regarding International Trade in Textiles one at Geneva on December 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of March 4, 1987 between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on April 13, 1987

and until further notice, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel, in Categories 300–369, 400–469, 600–670, and 831–859, *except* Categories 355, 356, 655, 656, 455, 371 and 671, produced or manufactured in the Philippines and exported on and after April 13, 1987 which are not visaed or certified for exemption in accordance with the procedures outlined below.

The suffix designation of T and NT adjacent to the category number will no longer be required for certain categories exported from the Philippines. Cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel which have been exported before April 13, 1987 and visaed or certified in accordance with previously established requirements shall not be denied entry.

A valid visa or exempt certification shall be presented to the U.S. Customs Service before entry, or withdrawal from warehouse for consumption, into the Customs territory of the United States (the 50 States, the District of Columbia and Puerto Rico).

Customs shall not deny entry for shipments covering merchandise in Categories 800–810 and 863–899, which do not require a visa. However, should additional categories, merged categories or part categories be added to or changed in the Bilateral Agreement or become subject to import quotas the entire category or categories shall be automatically included in the coverage of the Visa Arrangement when the first action takes place. Merchandise exported on or after the date the category is added to or changed in the Agreement or becomes subject to import quotas shall require a visa subject to a grace period to establish the required administrative procedures. Notification will be provided when additions or changes are made.

Cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel exported from the Philippines on and after April 13, 1987 shall be visaed by the stamping of the original circular visa in blue ink on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number and date of issuance. The visa number shall be nine digits and letters, beginning with one numeric digit for the last digit of the year of export; the two character alpha country code specified by the International Organization for Standardization (ISO), and a six digit numeric serial number identifying the shipment; e.g., 7PH123456.

2. The signature of the issuing official.

3. The correct category(s), part category(s) or merged category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tarriff Schedules of the United States Annotated (TSUSA). (e.g., "Cat. 340–510 DZ."). Annex B lists all the part-category and merged category visa required for entry. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment. Customs is directed to deny entry if a shipment arrives with a wrong category visa. (e.g., quota Category 333/334 may be visaed as "Cat. 333/334" or if shipment consists solely Cat. 333 merchandise, the shipment may be visaed as "Cat. 333" but *not* as "Cat. 33").

U.S. Customs shall not accept a visa and entry will not be permitted if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

If the visa is not acceptable to U.S. Customs, a new visa must be obtained from the Philippine Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Philippine Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service shall not return the original document after entry or attempted entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or visa waiver.

If import quotas are in force, U.S. Customs shall charge only the actual quantity in the shipment and the correct category will be charged to the restraint level. If a shipment from the Philippines has been allowed entryinto the commerce of the United States with either an incorrect visa or no visa redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Certain cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel will be exempt from levels of restraint and visa requirements if they are certified, prior to the shipment leaving the Philippines, by the placing of the original rectangular-shaped stamped marking in blue ink on the front or the original commercial invoice. The original copy of the invoice with the original exempt certification will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or exempt certification may not be used.

Exempt products include: (1) Handwoven and handloomed fabrics of the cottage industry; (2) Handmade articles and garments of handwoven and handloomed fabric: All items must be cut, sewn, or otherwise fabricated by hand in order to quality for this exemption. They may not include machine stitching. (3) Traditional folklore handicraft products: Only products which fall within the definition of "Philippine Items" in Annex A attached, qualify for this exemption provided they are cut, sewn, or otherwise fabricated by hand. They may not include machine stitching.

Each exempt certification stamp will include the following information: (1) Date of issuance, (2) signature or issuing official, and (3) the basis for the exemption shall be noted as, for example, handwoven fabric or handloomed fabric or handmade textile product or the name of the particular traditional folklore handicraft product (Philippine Items) as listed in Annex A attached to this directive.

Should a shipment be exported from the Philippines without an exempt certification being issued prior to the date of exportation, or the certification is incorrectly certified (i.e., the date of issuance, signature or basis for the exemption is missing, incorrect or illegible, or have been crossed out or altered in any way), then the exempt certification will not be accepted and entry shall not be permitted.

If the exempt certification is not acceptable then a visa or a visa waiver nust be obtained prior to release of any portion of the shipment by U.S. Customs Service. An exempt certification may not be issued after exportation of the shipment from the Philippines. If quotas are in force, the shipment will be charged to the appropriate quota level.

An invoice may cover visaed merchandise or exempt certification merhandise, but not both.

U.S. Customs shall not require a visa or exempt certification for entry and shall not charge to quota merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued $250 or less.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa or a valid exempt certification in accordance with the foregoing provisions, shall be denied entry by U.S. Customs Service unless the Government of the Philippines authorizes the entry and any charges to the Agreement levels through the visa waiver process.

Facsimiles of the visa and exempt certification stamps are enclosed, as are the names of the officials authorized by the Government of the Republic of the Philippines to issue visas and certifications.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782); July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of

cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Enclosures: Annex A & B, Facsimiles of Visa an Certification Stamps, List of Authorizing Officials.

Annex A—Philippine Items

Philippine Traditional Folklore Handicraft Textile Products

1. Philippine items are traditional Philippine products, cut, sewn or otherwise fabricated by hand in cottage units of the cottage industry. The following is the agreed upon list of such items:

A. Batik and hablon fabrics—handwoven fabrics of the cottage industry.

B. Banaue cloth—cotton handloom fabric in multi-colors.

C. Other handwoven and handloom fabrics of the cottage industry.

D. Articles and garments made by hand from handwoven and handloomed fabrics.

Annex B—Merged Category Visas

333/334	351/651
337/637	352/652
338/339	445/446
341/641	638/639
342/642	645/646
347/348	647/648

Annex B—Part-Category Visas

340-Y/640-Y [1]
340-O/640-O [2]
359-I [3] Visaed in Dozens
359-O [4]
369-S [5]
369-O [6]
659-I [7] Visaed in Dozens
659-H
659-O [9]

Not published in the Federal Register.

In Category 340-Y/640-Y, made from fabrics with two or more colors in the warp and/or filling, in TSUSA numbers 381.0522, 381.5637, 381.5610, 381.5625, 381.5660, 381.5500, 381.3132, 381.3142, 381.3152, 381.9535, 381.9547 and 381.9550.

[2] In Category 340-O/640-O, all TSUSA numbers except those listed in footnote 1.

[3] In Category 359-I, infant sets, in TSUSA numbers 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172, 384.3451, 384.3452, 384.3453 and 384.3454.

[4] In Category 359-O, other, all TSUSA numbers except those listed in footnote 3.

[5] In Category 369-S, shop towels, only TSUSA number 366.2840.

[6] In Category 369-O, other, all TSUSA numbers except that list in footnote 5.

[7] In Category 659-I, infant sets, only TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359 and 384.9365.

[8] In Category 659-H, headwear, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[9] In Category 659-O, all TSUSA numbers except those listed in footnotes 7 and 8.

Government of the Republic of the Philippines Officials Authorized to Issue Visas and Exempt Certifications

Ana Maria V. Coruna, Deputy Executive Director
Aida B. Cabardo, Consultant
Eden S. Malapad, Assistant Chief, Industry Development Specialist
Lorna A. Del Rosario, Assistant Chief, Industry Development Specialist

[FR Doc. 87-7803 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Airborne Reconnaissance

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Airborne Reconnaissance will meet in closed session on May 1, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish airborne reconnaissance.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 2, 1987

[FR Doc. 87-7726 Filed 4-7-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Detection and Neutralization of Illegal Drugs and/or Terrorist Devices

ACTION: Change in Dates of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Detection and Neutralization of Illegal Drugs and/or Terrorist Devices scheduled for May 12-13, June 16-17 and July 14-15, 1987 as published in the **Federal Register** (Vol. 52, No. 28, Page 4376, Wednesday, February 11, 1987 FR Doc. 87-2825) will be held on May 20-21, June 17-18, and July 15-16, 1987 In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 2, 1987

[FR Doc. 87-7727 Filed 4-7-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on LHX Requirements

ACTION: Change in Date of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on LHX Requirements scheduled for April 27 1987 as published in the **Federal Register** (Vol. 52, No. 35, Page 5482, Monday, February 23, 1987 FR Doc. 87-3714) will be held on April 25, 1987 In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 2, 1987

[FR Doc. 87-7728 Filed 4-7-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force Subgroup to the Strategic Air Defense

ACTION: Notice of Advisory committee meetings.

SUMMARY: The Defense Science Board Task Force Subgroup to the Strategic Air Defense will meet in closed session on June 1-2, and June 17-18, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate and make recommendations on the use of

technology for the extension of the Strategic Air Defense mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 2, 1987

[FR Doc. 87-7729 Filed 4-7-87; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 10 April 1987 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act, and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison, Department of Defense.

April 3, 1987

[FR Doc. 87-7730 Filed 4-3-87; 2:11 pm]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the Janitorial Services function at Kelly AFB, TX will be examined for possible conversion to contract.

For further information contact Mrs. Karen Johnson, HQ ESC/XPMQX, Kelly AFB, TX 78243-5000, telephone (512) 925-2271.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-7697 Filed 4-7-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Intent To Prepare Environmental Impact Statement on the Defense Department's Biological Defense Research Program

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Biological Defense Research Program.

1. The Department of the Army intends to prepare an Environmental Impact Statement for certain activities performed as part of the Biological Denfense Research Program (BDRP).

The Department of the Army, as Executive Agent for the Department of Defense, is responsible for research, development, test, and evaluation of biological defense. The Biological Defense Research Program involves research and product development for equipment, devices, drugs, substances, and biologics that are used to: Detect biological substances; protect from the adverse effects of biological substances; treat exposed individuals; decontaminate exposed individuals, areas and equipment. It is anticipated that the Army will use the services of contractors, consultants, and advisors with demonstrated expertise and experience as well as scientists, engineers and other Government personnel to accumulate the necessary information to make the appropriate analysis.

2. The environmental impact analysis process will be in accord with the National Environmental Policy Act of 1969, Army Regulation 200-2, 32 CFR Part 651, and the regulations of the Council on Environmental Quality, 40 CFR Part 1500. The purpose of this analysis is to determine the extent of any significant impacts, and in the event significant impacts exist, to analyze those impacts under the National Environmental Policy Act of 1969.

3. The Army will conduct a scoping process to aid in determining the significant issues related to the proposed action. Public as well as Federal, State, and local agency participation and input are desired. To provide an opportunity for public input to the scoping process, interested individuals, governmental agencies, and private organizations are invited to submit information and comments for consideration by the Army and possible incorporation into the EIS. Particularly solicited is information that would assist the Army in analyzing the potential environmental consequences of the proposed action. This includes information on other environmental studies, issues and alternatives which the EIS should consider, major impacts and recommended mitigating measures associated with the proposed action.

4. Individuals or agencies may offer information relevant to the environmental impacts or aspects of the environment that should be considered by writing to or participating in a public scoping meeting which will be held approximately June, 1987. Notice will also be mailed to groups and individuals, agencies, and anyone responding to this Notice of Intent desiring to be informed on the details of this upcoming public participation meeting. Questions and comments regarding the scope of the environmental analysis should be submitted to Commander, U.S. Army Medical Research and Development Command, ATTN: SGRD-PA, Fort Detrick, MD 21701-5012. Comments and suggestions should be received no later than 15 days following the public scoping meeting to be considered in the Draft EIS (DEIS).

5. The DEIS is expected to be available to the public in December, 1987. The completed DEIS will be available for review in order that interested persons may comment on the document. Comments received will be considered in preparation of a Final Environmental Impact Statement (FEIS) unless the Army concludes that a finding of no significant impact to the environment is appropriate. Persons desiring to be placed on a mailing list to receive additional information regarding the public scoping process and copies of the DEIS and FEIS may contact Mr. Charles Dasey at the address above.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA(I&L).

[FR Doc. 87-7756 Filed 4-7-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 8, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulation Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 3, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Bilingual Education and Minority Affairs

Type of Review: Reinstatement
Title: Application for Grants Under the Transition Program for Refugee Children
Agency Form Number ED 443–2
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 54
Burden Hours: 156
Recordkeeping Burden:
Recordkeepers:
Burden Hours: 0.

Abstract: This application will be used by State educational agencies to apply for grants under the Transition Program for Refugee Children. The Department uses the data collected to determine the amount of the grant award based on the number of eligible refugee children enrolled in a State's public and private elementary and secondary schools.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Application for Grants Under the Strengthening Research Library Resources Program
Agency Form Number ED 592
Frequency :Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 100
Burden Hours: 1,600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

Abstract: This application will be used by institutions and non-profit organizations to apply for funds under the strengthening Research Library Resources Program. The Department evaluates the data submitted to determine the significance of the applicant's facility as a major research library and the quality of the proposed project. Grants are awarded on a competitive basis.

Type of Review: New
Title: Application for Training and Demonstration Grants to Institutions of Higher Education for the Drug Free Schools and Communities Program
Agency Form Number: G50–32P
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 600
Burden Hours: 11,400
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

Abstract: This application will be used by institutions of higher education to apply for Training and Demonstration grants under the Drug Free Schools and Communities Program. The Department will evaluate the data collected and award grants for personnel training and curriculum demonstrations in drug and alcohol abuse education and prevention.

Type of Review: New
Title: Application for Federal Activities Grants under the Drug Free Schools and Communities Program
Agency Form Number: G50–31P
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 600
Burden Hours: 11,400
Recordkeeping Burden:
Burden Hours: 0.

Abstract: This application will be used by State educational agencies, local education agencies, institutions of higher education, and other non-profit organizations, to apply for Federal Activities grants under the Drug Free Schools and Communities Program. The Department will evaluate the data collected and award grants for programs that support model development, dissemination, technical assistance, and curriculum development activities for drug and alcohol abuse education and prevention.

Type of Review: New
Title: Fast Response Survey—Survey of Arts and Humanities Education
Agency Form Number: E50–30P
Frequency: Non-recurring
Affected Public: Individuals or households
Reporting Burden:
Responses: 700; Burden Hours: 350
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0

Abstract: This survey will collect information from school district about the policies and practices of local school systems as they pertain to arts and humanities education. The Department will use this data for a Congressionally mandated report.

Office of Management

Type of Review: Reinstatement
Title: Request for Advance Reimbursement
Agency Form Number: ED PMS 270
Frequency: On occasion
Affected Public: State or local governments; businesses or other for profit; small businesses or organizations
Reporting Burden:
Responses: 66,000; Burden Hours: 1,150
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: This is a cash request form which is used by approximately 5500 recipients to obtain grant funds from the Department of Education. Recipients are required to schedule for one advance within the month to correspond to disbursement needs, also, the recipient is required to report actual cash on hand as of the request date.

Type of Review: Reinstatement
Title: Federal Cash Transactions Report
Agency Form Number: ED PMS 272
Frequency: On occasion

Affected Public: State or local governments; business or other for profit; non-profit institutions
Reporting Burden:
Responses: 30,000; Burden Hours: 90,000
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This report collects cash disbursement information from recipients of grant awards in order for the Department to monitor Federal cash advances to grantees.

Office of Postsecondary Education

Type of Review: Revised
Title: Application for Grants and Contracts Under the Veterans Education Outreach Program
Agency From Number: ED 269
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 800; Burden Hours: 800
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This application will be used by institutions of higher education to apply for grants under the Veterans Education Outreach Program. The Department uses the data collected to award grants to all eligible institutions that provide special educational services to veterans.

Type of Review: New
Title: Loan Application for the College Facilities Program
Agency Form Number: E40–14P
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 1000; Burden Hours: 8000
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This application will be used by institutions of higher education to apply for loan funds under the College Facilities Loan Program. Information submitted by the institutions will be evaluated by the Department and used as a basis for obligating program funds for the construction, reconstruction, and renovation of housing and other college facilities.

Type of Review: Reinstatement
Title: Application for New and Continuing Grants Under the Cooperative Education Program
Agency Form Number: ED 1193
Frequency: Annually
Affected Public: Non-profit
Reporting Burden:
Responses: 357 Burden Hours: 3376
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This application is used by institutions of higher education to apply for grants under the Cooperative Education Program. The Department uses the data collected to evaluate proposals for cooperative education programs and to obligate program funds.

Office of Special Education and Rehabilitation Services

Type of Review: New
Title: Study of Programs of Instruction for Handicapped Children and Youth in Day and Residential Facilities
Agency Form Number: B20–23P
Frequency: Once only
Affected Public: State or local governments; business or other for-profit; non-profit institutions; small business or organizations
Reporting Burden:
Responses: 540; Burden Hours: 1344
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This survey will collect information from principals and directors of day and residential schools for children with handicaps. The Department needs this information to evaluate program and population characteristics in this segment of educational services to handicapped persons.

Type of Review: New
Title: Application for Preschool Grants Program Under the Education of the Handicapped Act
Agency Form Number: E20–24P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57 Burden Hours: 342
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This application will be used by State educational agencies to apply for for grants under the Preschool Grant Program. The Department will use the data collected to determine a State's eligibility to receive grant awards for programs that serve handicapped children ages three through five.

Type of Review: New
Title: Report of the Estimated Total Number of Handicapped Children Ages 3–5 Expected to be Receiving Special Education and Related Services
Agency Form Number: E20–25P
Frequency: One time only
Affected Public: State or local governments
Reporting Burden:
Responses: 57 Burden Hours: 228
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This form will be used by State educational agencies to report the estimated number of children ages 3–5 years old, who will be receiving special education and related services under the Education of the Handicapped Act in the 1987–88 school year. The Department will use the data collected to award preschool grants for the 1987–88 school year based on the number of eligible children reported.

[FR Doc. 87–7777 Filed 4–7–87 8:45 am]
BILLING CODE 4000–01–M

Office for Civil Rights; Higher Education Desegregation Plan Implementation

AGENCY: Department of Education.
ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the Office for Civil Rights proposed factual reports on public higher education desegregation plan implementation by Arkansas, Delaware, Florida, Georgia, Missouri (3 institutions only), North Carolina (community college system only), Oklahoma, South Carolina, Virginia, and West Virginia (1 institution only) are available for inspection by the public from 9:00 a.m. to 4:00 p.m., Washington, DC time, Monday through Friday, excluding Federal holidays, at the following location: U.S. Department of Education, Switzer Building, 330 C Street, SW Room 3129, Washington, DC 20202.

This action is taken to obtain public comments on the reports before final decisons are made on compliance with Title VI of the Civil Rights Act of 1984. These states' higher education desegregation plans expired in the 1985–86 academic year.

DATES: The reports will be available until June 8, 1987

FOR FURTHER INFORMATION: Contact Gloria Wilkinson at 202–732–1213.

Dated: March 31, 1987
Alicia Coro,
Acting Assistant Secretary for Civil Rights.
[FR Doc. 87–7780 Filed 4–7–87 8:45 am]
BILLING CODE 4000–01–M

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Education.
ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs and its Executive; Federal Policies, Practices and Programs; WEEA Program and Civil Rights Committees. The agenda will

include orientation, legislation up-date, budget review, committee reports, distribution of annual report and Council calendar. This notice also describes the function 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 22, 1987· 8:30 a.m. to close of business—Executive Committee Meeting.

April 22, 1987· 10:15 a.m. to 3:30 p.m.—orientation and related activities.

April 23, 1987· 9:00 a.m. to 10:00 a.m.—General session 10:00 a.m. to close of business—Committee meetings.

April 24, 1987· 9:00 a.m. to close of business—Full Council Meeting.

ADDRESSES: All meetings will be held at the Embassy Row Hotel, 2015 Massachusetts Ave., NW., Washington, DC 20036. The April 22, 1987 meeting will be held in the Board Room of the Embassy Row Hotel; the April 23, 1987 meetings will be held in the Wintergarden Atrium of the Embassy Row Hotel and the Full Council meeting of April 24, 1987 will be held in the Board Room of the Embassy Row Hotel.

FOR FURTHER INFORMATION CONTACT: Patricia W. Weber, Executive Director-Designate, National Advisory Council on Women's Educational Programs, 2000 L Street, NW Suite 568, Washington, DC 20036, (202) 634-6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) make recommendations to the Secretary with respect to the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet on Wednesday, April 22, 1987 from 8:30 a.m. until close of business. The agenda will include discussion of the '86 annual report, budget review and Council calendar.

The meetings of the Federal Policies, Practices and Programs; Civil Rights; and WEEA Program Committees will take place on Thursday, April 23, 1987 from 10:00 a.m. until noon when they will recess for lunch. At 2:00 p.m. the committees will reconvene until close of business. The agenda will include general discussion and committee mission statement discussion.

The full Council will meet on Friday, April 24, 1987 from 9:00 a.m. until close of business. The agenda will include discussion of '86 and '87 annual reports; committee reports; Budget review; WEEA site visit budgeting and Council calendar.

The meeting of the Council is open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC, on March 31, 1987

Patricia A. Weber,

Executive Director—Designate.

[FR Doc. 87-7699 Filed 4-7-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP87-247-000 et al.]

Natural Gas Certificate Filings; Phillips Natural Gas Co. et al.

Take notice that the following filings have been made with the Commission:

1. Phillips Natural Gas Company

[Docket No. CP87-247-000]

March 31, 1987.

Take notice that on March 12, 1987 Phillips Natural Gas Company (Phillips Gas) 800-A Plaza Office Building, Bartlesville, Oklahoma 74004, filed in Docket No. CP87-247-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity that would authorize Phillips Gas to transport natural gas on behalf of others pursuant to Commission Order No. 436, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Phillips states that it is a "Hinshaw" pipeline company that is not subject to the jurisdiction of the Commission by reason of Section 1(c) of the NGA.

Phillips Gas proposes that capacity in excess of its affiliated end-use industrial transportation customers' needs will be used to serve firm or interruptible natural gas transportation for others by receiving gas into its Texas Border Gathering System (TBGS) pipeline near Denision, Texas, or other receipt points for redelivery, less fuel and unaccounted for losses, at any point between Phillips Gas and the Shipper(s).

Phillips Gas states that its transportation rates are regulated by the Texas Railroad Commission (TRC) and that it elects, pursuant to 284.123(b)(1)(ii) to use the rates contained in one of its effective intrastate transportation rate schedules on file with the TRC.

Comment date: April 21, 1987 in accordance with Standard Paragraph F at the end of this notice.

2. Mountain Fuel Resources, Inc.

[Docket No. CP85-78-001]

April 1, 1987

Take notice that on March 6, 1987 Mountain Fuel Resources, Inc. (MFR), Post Office Box 11368, Salt Lake City, Utah 84139, filed in Docket No. CP85-78-001, pursuant to section 7(c) of the Natural Gas Act an amendment to its application in Docket No. CP85-78-000, filed on October 31, 1984, all as more fully set forth in the amendment which is on filed with the Commission and open to public inspection.

MFR requests that the original application be amended to add an April 15, 1985, gas transportation agreement with Cordillera Corporation (Cordillera), so as to:

(1) Increase the maximum daily gas transportation and delivery limitation from 1,000 to 5,000 Mcf of natural gas per day on behalf of Cordillera;

2. Include a new receipt point for Cordillera at the interconnection of MFR's interstate transmission facilities and gathering facilities located in Section 19, Township 13 South, Range 7 East, Carbon County, Utah; and

(3) Incorporate the gas transportation agreement into its tariff as revised Rate Schedule X-34.

Comment date: April 22, 1987 in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP87-256-000]

April 1, 1987

Take notice that on March 18, 1987 Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87-256-000 an application pursuant to

section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing until October 31, 1988, the transportation of natural gas for the City of LaGrange, Georgia (LaGrange), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of LaGrange in accordance with the terms and conditions of a transportation agreement between LaGrange and Southern dated February 20, 1987 (agreement).

It is stated that subject to the receipt of all necessary governmental authorizations, Southern has agreed to transport on an interruptible basis up to 4.6 billion Btu equivalent of gas per day purchased by LaGrange from SNG Trading Inc. (SNG). Southern requests that the Commission issue a limited-term certificate for a term expiring on October 31, 1988.

The agreement, it is said, provides that LaGrange would cause gas to be delivered to Southern for transportation at various existing points of delivery on LaGrange's contiguous pipeline system as specified in Exhibit F to the Application. Southern states that it would redeliver to LaGrange at the City of LaGrange Meter Station No. 2 located in Troup County, Georgia, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less LaGrange's *pro rata* share of any gas delivered for LaGrange's account which is lost or vented for any reason.

Southern states that LaGrange has agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to LaGrange under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to LaGrange do not exceed the daily contract demand of LaGrange, the transportation rate would be 39.9 cents per million Btu equivalent; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to LaGrange under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to LaGrange exceed the daily contract demand of LaGrange, the transportation rate for the excess volumes would be 64.9 cents per million Btu equivalent.

Southern states that it also proposes to collect from LaGrange the GRI surcharge of 1.52 cents per Mcf or such other GRI surcharge funding which is applicable.

Southern states that the transportation arrangement would enable LaGrange to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, it is said that Southern would obtain take-or-pay relief on all volumes transported pursuant to the agreement.

Comment date: April 22, 1987 in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP87-258-000]

April 1, 1987

Take notice that on March 19, 1987 Southern Natural Gas Company (Southern), P O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87-258-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport gas on behalf of Amax Nickel, Inc., (Amax) for use in its Braithwaite, Louisiana, plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Amax in accordance with the terms and conditions of a transportation agreement between Amax and Southern dated February 26, 1987 Southern states it has agreed to transport on an interruptible basis up to 3 billion Btu equivalent of natural gas per day purchased by Amax from SNG Trading Inc., and Seagull Marketing Services, Inc. Southern requests that the Commission issue a limited-term certificate for a term expiring on October 31, 1988.

Southern states that the transportation agreement provides for Amax to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in the Breton Sound and Main Pass Areas, offshore-Louisiana, and Plaquemines, St. Mary, and St. Martin Parishes, Louisiana. Southern states it would redeliver to Amax at the Amax Meter Station, Plaquemines Parish, Louisiana, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Amax's pro-rata share of any gas delivered for Amax's account which is lost or vented for any reason.

Southern states that Amax has agreed to pay Southern each month 34.8 cents per MMBtu of gas redelivered by Southern. Additionally, Southern states it would collect from Amax the GRI surcharge of 1.52 cents per Mcf of gas or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern states that the transportation arrangement would enable Amax to diversify its natural gas supply sources and to obtain gas at competitive prices. Southern additionally states it would obtain take-or-pay relief on all volumes Amax may obtain from its suppliers.

Comment date: April 22, 1987 in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-647-001]

April 1, 1987

Take notice that on March 11, 1987 Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-647-001 an amendment to its application filed in Docket No. CP86-647-000 pursuant to section 7(c) of the Natural Gas Act so as to reflect the deletion of two proposed points of receipt and the corresponding point of delivery, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In Docket No. CP86-647-000, applicant requested authority to provide an interruptible transportation service for Mobil Oil Exploration & Producing Southeast, Inc., Mobil Exporation and Producing North America, Inc., and Mobil Producing Texas and New Mexico, Inc, (Mobil) of up to 162,000 dt of natural gas per day from various points of receipt located onshore and offshore Louisiana, offshore Texas, and Mississippi to various points of delivery to interstate pipelines with whom Applicant is interconnected. Applicant now states that alternative arrangements have been made for the transportation of Mobil's Mississippi reserves. Applicant proposes in Docket No. CP87-647-001 to amend its application to delete the proposed points of receipt from Mobil in the Bovina and Oakridge Fields, Warren

County, Mississippi, and to delete the corresponding point of delivery to United Gas Pipe Line Company at Bovina, and the transportation service proposed therein.

Comment date: April 22, 1987 in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP87-7-001]

April 1, 1987.

Take notice that on March 9, 1987, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro Kentucky 42302, filed in Docket No. CP87-7-001, an amendment to its application for a certificate of public convenience and necessity filed in Docket No. CP87-7-000 pursuant to section 7 of the Natural Gas Act requesting that the contract demand of Louisville Gas and Electric Company (LG&E) be decreased to 215,000 MMBtu of natural gas per day from the original request of 231,753 MMBtu of natural gas per day, and as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

On October 3, 1986, Applicant filed an application in Docket No. CP87-7-000 requesting authority to increase the contract demand for twenty-one of its existing customers, for a total increase in contract demand of 17,495 MMBtu of natual gas per day. Applicant states that its requested authority to decrease the contract demand of one existing customer, LG&E, by 436 MMBtu of natural gas per day. Applicant states that although LG&E's original requested reduction was in excess of 436 MMBtu of natural gas per day, of the above-referenced requests for increases in contract demand, only 436 MMBtu of natural gas was available in the same sales zone and under the same sales rate schedule to offset the requested reduction, as required under Section 13.2 of the General Terms and Conditions of Applicant's tariff.

Applicant states that it proposes to amend its application in Docket No. 87-7-000 to request an increase in the original amount of contract demand reduction proposed for LG&E, bringing the total reduction to 16,753 MMBtu per day, for an effective contract demand of 215,000 MMBtu per day. Applicant requests the waiver of any and all applicable Commission regulations necessary to make the reduction in contract demand for LG&E effective on March 1, 1987.

Applicant states that the requested reduction and the effective date is the result of a mutual agreement between the parties and it is required by the public convience and necessity.

Comment date: April 22, 1987 in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convience and necessity. If no motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provded for, unless otherwise advised, it will be unnecessary for the applicant to appear or to be represented at the hearing.

Keneth F Plumb,

Secretary.

[FR Doc. 87-7695 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-386-000]

American Central Gas Pipeline Corp., Application

April 3, 1987.

Take notice that on March 23, 1987 American Central Gas Pipeline Corporation (American Central), pursuant to sections 4 and 7 of the Natural Gas Act (NGA), and Parts 154 and 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Parts 154 and 157 applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by American Central; (2) authorizing sales for resale of natural gas in interstate commerce by the certain producers from whom American Central purchases natural gas as described herein; (3) authorizing sales for resale of natural gas in interstate commerce by certain producers through American Central acting as their agent; and (4) authorizing pregranted abandonment of sales. American Central requests such authorizations for an unlimited duration.

American Central states that such authorities, if granted, will enable American Central to sell natural gas in the spot market which it purchases from certain producers, that have received prior abandonment approval and gas which has not previously been sold in interstate commerce but which if sold would require a certificate for sale, as described more fully in its application. Such authority will also enable American Central to act as agent for certain producers in the sale for resale of their gas in the spot market.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1987 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining with appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise adviser, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7758 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-394-000]

ARCO Oil Gas Co., Division of Atlantic Richfield Co., Application

April 3, 1987.

Take notice that on March 25, 1987 ARCO Oil and Gas Company, a Division of Atlantic Richfield Company (ARCO) filed an application requesting the Federal Energy Regulatory Commission (Commission) to issue an Order Permitting and Approving a Blanket Limited-Term Certificate for Sales for Resale with Pregranted Abandonment upon the expiration of the term of such sales. The requested authorizations would enable ARCO to initiate sales of gas into interstate commerce from acreage subject to the jurisdiction of the Commission under the Natural Gas Act which is currently not dedicated by contract to a specific purchaser.

ARCO asked that the Commission also: (1) Grant the requested authority for a term of three years; (2) include the undedicated interests of coowners in the same wells under the requested authorizations; (3) waive requirements under section 154 and 271 of the Commission's Regulations concerning the establishment and maintenance of rate schedules and blanket affidavits; and (4) include categories of gas qualifying for a maximum lawful price prescribed by section 109 or 102(d) of the Natural Gas Policy Act of 1978 from wells drilled offshore on old OCS leases.

ARCO states that the requested authority will give ARCO maximum flexibility in moving new gas supplies from wellhead to burner tip at market responsive prices, and thus serve the public interest by promoting competition in the nationwide gas market.

Any person desiring to be head or to make any protests with reference to said application should on or before April 20, 1987 file with the Federal Energy Regulatory Commission, Washington, DC 20436, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7759 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-360-000]

Coastal Oil & Gas Corp., Application for Limited-Term Blanket Abandonment and Limited-Term Blanket Certificate With Pre-Granted Abandonment

April 3, 1987

Take notice that on March 11, 1987 Coastal Oil & Gas Corporation (Coastal) filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 and § 2.77 of the Regulations, requesting: (1) Limited-term blanket authorization to abandon sales by Coastal (or its co-owners in the same production) of certificated gas released by the original pipeline-purchaser; and (2) limited-term blanket certificate authorization with pre-granted abandonment for sales for resale in interstate commerce of gas released by the original pipeline-purchaser and covered by such blanket limited-term abandonment. The authorizations requested would be for a three-year term without supply or market restrictions and without limitation on vintage of gas, as more fully described in the Application which is on file with the Commission and open for public inspection.

Coastal states that the authorizations sought herein, if granted, will enable Coastal (and its co-owners) to sell on a short-term and spot basis natural gas that remains subject to the Commission's NGA jurisdiction, but has been released by the original pipeline-purchasers. The authorizations requested in this proceeding, it is alleged, would enable Coastal to continue and to expand its ability to sell gas on an expeditious basis to meet market needs. Sales volumes, prices, purchasers and delivery points will vary from sale to sale.

Further, Coastal has requested a waiver of Commission rules and regulations to the extent necessary to implement the authorizations requested including, without limitation, filings required under §§ 154.94(h) and 154.94(k), and Part 271 of the regulations.

Coastal asserts that the authorizations requested herein are consistent with the Commission's recent orders in *NICOR Exploration Company*, Docket No. CI87-708-000 (issued December 22, 1986); *Sonat Exploration Company*, Docket No. CI86-403-000 (issued December 29, 1986); and *ANR Pipeline Company, et al.*, Docket Nos. CI86-637-000, *et al.* (issued January 21, 1987).

Any person desiring to be heard or to make any protest with reference to said application should, on or before April 20, 1987 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7760 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-353-000]

Kenrell Petroleum Resources, Inc., Application

April 3, 1987.

Take notice that on March 10, 1987 Kenrell Petroleum Resources, Inc. (Kenrell), of 4545 Post Oak Place, Suite 250, Houston, Texas 77027 filed an application pursuant to section 7 of the Natural Gas Act (NGA—15 U.S.C. 717f) and § 157.30 of the Commission's Regulations (18 CFR 157.30 (1986)), for a three-year limited-term blanket abandonment for initial sales and a three-year pregranted abandonment for subsequent sales, both to be made under its small producer certificate exemption (for which an application is currently pending in Docket No. CS87-48-000 as noticed March 3, 1987).

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7761 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES87-19-000]

MDU Resources Group, Inc., Application

March 31, 1987

Take notice that on March 23, 1987 MDU Resources Group, Inc. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an Order (a) exempting the Applicant from the competitive bidding requirements of the Act and (b) authorizing the issuance of up to 1,000,000 shares of Common Stock, par value $5, pursuant to Applicant's Automatic Dividend Reinvestment and Stock Purchase Plan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 22, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-7762 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-225-000]

South Jersey Gas Company, Complainant and SunOlin Chemical Company, Respondent; Complaint

April 3, 1987

Take notice that on February 27 1987 South Jersey Gas Company (Complainant), One South Jersey Plaza, Folsom, New Jersey 08037 filed in Docket No. CP87-225-000 a complaint, pursuant to § 385.206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), against SunOlin Chemical Company (Respondent) for engaging in the construction or extension of facilities for the transportation of natural gas in interstate commerce without prior Federal Energy Regulatory Commission certification, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Complainant states that in late January 1987 Respondent initiated construction or extension of pipeline facilities in New Jersey necessary for the delivery of gas supplies from Claymont, Delaware to B F Goodrich Company's (Goodrich) plant in Pedricktown, New Jersey. Complainant further states that Respondent and Goodrich have entered into a contract under which, effective March 1, 1987 Respondent will sell and transport to Goodrich approximately 650 Mcf per day of gas supplies which are or may be "natural gas" within the meaning of section 2(5) of the Natural Gas Act. Complainant indicates that to its knowledge no application for a certificate authorizing such construction or transportation has been filed with the Commission.

Complainant requests that proceedings be instituted against Respondent requiring Respondent to show cause (1) why it is not in violation of section 7(c) of the Natural Gas Act by engaging in the construction of facilities for transportation of natural gas in interstate commerce without prior authorization, (2) why its proposed transportation of natural gas in interstate commerce without prior authorization would not violate section 7(c) of the Natural Gas Act, and (3) why Respondent should not be required to refrain from such acts unless and until an appropriate certificate is issued by the Commission. Complainant further requests that Respondent be ordered to cease and desist from the transportation and construction of facilities until those proceedings have been completed and that the sale pricing arrangements between Respondent and Goodrich be investigated to determine whether they violate the Natural Gas Policy Act of 1978.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before May 4, 1987 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Complainant states that a copy of the complaint has been served on Respondent. Respondent's answer to the complaint shall also be due on or before May 4, 1987

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7763 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-54-000]

Southwest Gas Corp., Request for Southwest Gas Corporation of Waiver

April 3, 1987

Take notice that on March 24, 1987 Southwest Gas Corporation (Southwest) tendered for filing a request for waiver of footnote one of § 154.38(d)(4) of the Commission's regulations. Southwest anticipates purchasing gas from Canadian sources. Southwest states that the net effect will be to reduce the average cost of gas on Southwest's system. As Southwest understands the Commission's rules, system gas purchases from Canadian sources may not be flowed through the PGA unless authorization through a waiver of the limitation set forth in the footnote is obtained. As these will be purchased gas costs, Southwest is requesting this waiver to include the Canadian costs in its PGA adjustments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7764 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-29-011, TA85-3-29-027, TA86-1-29-009, TA86-5-29-010, TA87-1-29-004, TA87-4-29-002]

Transcontinental Gas Pipe Line Corp., Proposed Stipulation and Agreement

April 3, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 31, 1987 a Stipulation and Agreement in the above-referenced proceedings. Transco also filed, as an Appendix B to the Agreement, proposed tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 to implement the Agreement.

The major elements of the settlement proposal are as follows:

In regard to several of the earlier PGA dockets, issues should be resolved (or reserved for separate disposition in the case of the "Title I" issue) with respect to gas purchase practices and "as-billed" treatment of Sulpetro import quantities essentially in the same fashion as provided in Transco's May 13, 1986 offer of settlement, subject also to separate resolution of the "transition costs" issues as provided under the Commission's severance orders.

Refunds shall be made (1) to all customers for Sulpetro demand charges collected during February, March and April, 1987 based upon relative firm sales entitlement levels, and (2) to those customers which, along with their state commissions and agencies, do not oppose the settlement; such refunds shall be in the specific amounts set forth on an attachment to the settlement.

Transco would reduce its PGA cost of gas to $2.1487/dt effective April 1, 1987 with provision for Transco to assume the risk of any undercollections of gas costs above 103% of that level as to all quantities purchased by those customers which purchase at least 20% of their firm sales entitlements during the period April–October 1987. Refunds of any actual costs below the level reflected in rates will be made to all customers, and surcharges due to any higher unit gas costs shall be billed and collected (subject to refund to the 103% level as a refund floor) from those customers which purchase at less than a 20% sales entitlement level for the period.

In accordance with Rule 602(f) of the Commission's Rules of Practice and Procedure, the Commission will grant a shortened comment period for parties wishing to comment on this settlement. Initial comments should be filed on or before April 13, 1987 and reply comments should be filed on or before April 20, 1987 with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7766 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-4-29-000, 001]

Transcontinental Gas Pipe Line Corp., Proposed Changes in FERC Gas Tariff

April 3, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 31, 1987 the following proposed tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

Third Revised Forty-Fourth Revised Sheet No. 12
Third Revised Forty-Second Revised Sheet No. 15
Fourth Revised Sheet No. 15-A
First Revised Sheet No. 250-C

The proposed tariff sheets reflect an overall rate decrease of 85.1¢ per dt in the commodity charge under the CD, PS, ACQ and S-2 Rate Schedules, a decrease of 86.7¢ per dt in the commodity charge under the G, OG, and E Rate Schedules, a decrease of $0.50 per dt in the demand charge under the CD Rate Schedule, and a decrease of $0.04 per dt in the demand charge under the PS Rate Schedule.

Transco states that this PGA filing reflects a projected average cost of purchased gas of approximately $2.15 based on projected system gas purchases of 750 Mdt/day. In accordance with Ordering Paragraph (A) of the Commission's June 4, 1986 order in Docket No. TA86-5-29-003, Transco has excluded approximately $1.7 million from its Account No. 191 related to the "at risk" condition in effect for the period May, 1986 through October, 1986. Transco proposes a special transition gas cost surcharge to amortize $66.2 million of remaining "transition costs" over a 3-year period commencing May 1, 1987. Additionally, Transco proposes to directly refund approximately $1.4 million of overrecovered Sulpetro demand charges related to the month of February 1987.

Transco states that it has mailed copies of this filing to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7765 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-150002; FRL-3182-6]

Procedures for Submission of Claims for Indemnification and Disposal of 2,4,5-T and Silvex Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of procedures for requesting indemnification and disposal.

SUMMARY: This Notice announces that EPA is accepting claims for indemnification and requests for disposal for certain 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) and 2-(2,4,5-trichlorophenoxy) propionic acid (silvex) pesticides under sections 15 and 19 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136m and 136q. This Notice provides information to persons who may be entitled to indemnification for losses suffered as a result of regulatory actions taken by EPA with respect to these products and who may wish to request Federal disposal of eligible pesticide stocks. It states who may be entitled to indemnification and how claims for Federal disposal and indemnification should be prepared and submitted to the Agency.

DATES: All claims filed as a result of this Notice must be received by July 7, 1987, in order to be considered.

ADDRESS: Claims filed in response to this Notice must be mailed or delivered to, and claims forms may be obtained from: Mailing address: Stanley Cook, Special Review Branch (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW Washington, DC 20460. Office location and telephone number: Rm. 1006, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-74000).

FOR FURTHER INFORMATION CONTACT: Stanley Cook (at the address above).

SUPPLEMENTARY INFORMATION:

I. Background

FIFRA section 6 authorizes the Administrator to take certain actions to prohibit production, sale, and use of pesticide products that cause danger to human health or the environment. The Administrator may cancel or suspend the registration of a pesticide, depending upon the degree of hazard posed by continued registration.

The Administrator may cancel a pesticide registration if he finds that its use generally causes unreasonable adverse on the environment. A Notice of Intent to Canel becomes effective 30 days after the date the registrant receives the notices or the date the notice is published, whichever is later, unless an affected person first requests a hearing. If action is necessary to prevent an imminent hazard to human health, the Administrator may suspend a pesticide registration, and at the same time issue a Notice of Intent to Cancel the registration. A suspension order immediately prohibits all sale or distribution of the pesticide in both intrastate and interstate commerce, and may also prohibit use of the pesticide.

Based on information concerning potential human health risks posed by certain uses of pesticide products containing 2,4,5-T or silvex, the Administrator issued an emergency suspension order on February 28, 1979, pursuant to FIFRA section 6(c)(3), for the forestry, rights-of-way, and pasture uses of 2,4,5-T products, published in the **Federal Register** of March 15, 1979 (44 FR 15874). The Administrator also ordered emergency suspensions of the forestry, rights-of-way, pasture, home and garden, commercial/ornamental turf and aquatic weed control/ditch bank uses of silvex (44 FR 15897). From that date forward, no person could lawfully sell, distribute or use 2,4,5-T or silvex product labeled for suspended uses.

At the same time, the Administrator issued Notices of Intent to Cancel the suspended uses (44 FR 15893 and 15917). In accordance with FIFRA section 6, each product labeled exclusively for suspended uses was canceled 30 days after publication of the notice, unless the registrant or other adversely affected person requested a hearing to contest the cancellation of that product. Although non-suspended uses were not subject to those cancellation notices, a product lableled for both suspended and non-suspended uses could not be legally sold or distributed unless the registrant submitted an application for amended registration to delete the suspended uses from the label.

Thereafter, 18 registrants of silvex pesticides labeled for home and garden use entered into agreements with EPA regarding suspension and cancellation of certain silvex pesticides. Each agreement provided that the silvex registrations which were the subject of the agreement were thereby canceled. The agreements established a procedure for the submission and processing of indemnification claims and for the disposal of the pesticides. Pesticides owned by, or purchased from, these registrants prior to the suspension order have been disposed of by the Agency in accordance with the agreements. The Agency has also processed indemnification claims in accordance with the agreements. However, as registrants were informed when they entered the agreements, the Agency lacked the funds with which to pay such claims. Some registrants have brought suits for indemnification in the U.S. Claims Court and have obtained judgments in their favor.

A number of registrants requested hearings on proposed cancellations of 2,4,5-T and/or silvex uses, and their registrations remained in effect pending the outcome of the administrative hearing. The cancellation proceedings resulting from the hearing requests were consolidated by an order of the Administrative Law Judge. Order of Consolidation, *In re The Dow Chemical Company et al.*, FIFRA Docket Nos. 415 et al. (April 24, 1979).

On December 9, 1979, the Administrator issued a Notice of Intent to Hold a Hearing under FIFRA section 6(b)(2) to determine whether products registered for the remaining non-suspended end-uses of 2,4,5-T and silvex should be canceled, published in the **Federal Register** of December 13, 1979 (44 FR 72316 and 72328). These proceedings were merged with the previously consolidated proceedings.

The Agency issued a notice announcing the denial of all applications for Federal registration of all intrastate pesticide products containing 2,4,5-T and silvex submitted to the Agency pursuant to 40 CFR 162.17 which was published in the **Federal Register** of January 15, 1980 (45 FR 2898). Three hearing requests challenging this action were also consolidated with the previously described hearing.

By notice dated October 14, 1983, Dow Chemical Company, a major participant in the 2,4,5-T/silvex hearing, withdrew its hearing requests and terminated its participation in the hearing. Thereafter, on October 28, 1983, under the authority of FIFRA section 6(b)(1), the Agency issued a Notice of Intent to Cancel the registrations of all products which contained 2,4,5-T or silvex and which were labeled for any manufacturing use or end use not already the subject of the March 15, 1979, Notice of Intent to Cancel. At the same time, the Agency revoked its earlier notice of intent to hold a hearing on these issues issued under FIFRA section 6(b)(2).

Several registrants of 2,4,5-T and silvex products and other parties requested hearings concerning the October 18, 1983, cancellation notice. An EPA motion to consolidate the resulting cancellation proceeding with the previously stayed 1979 cancellation proceeding was denied by the Chief Administrative Law Judge on May 3, 1984. A number of registrants subsequently withdrew from each proceeding, resulting in cancellation of affected products by operation of law. Because no remaining party was prepared to assume the burden of persuasion concerning the continued registrability of 2,4,5-T and silvex products, EPA submitted a motion in each proceeding seeking an order and accelerated decision which would terminate that proceeding. Pursuant to these motions, the respective Administrative Law Judge issued orders dismissing all remaining parties and terminating the proceedings. The order in the 1979 cancellation proceeding concerning products labeled for suspended uses became final and effective on January 30, 1985; the order in the 1983 cancellation proceeding concerning products labeled for non-suspended uses became final and effective on February 11, 1985. These two orders resulted in the final cancellation by operation of law of all remaining registrations of pesticide products containing 2,4,5-T or silvex.

The Agency has established procedures by which persons may claim indemnity for and/or request disposal of 2,4,5-T and silvex products suspended and canceled under FIFRA section 6. FIFRA section 15 provides a right of indemnification under specified conditions. Section 19 provides for disposal of suspended and canceled

pesticides at Federal expense. Claimants who satisfy statutory eligibility standards may obtain indemnification and disposal, if their claims are not barred by the applicable Federal statute of limitations.

Title 28 U.S.C. 2401(a) provides generally that any action concerning a claim against the United States shall be barred unless filed within 6 years of the date when the claim arose. This provision would bar a claimant from instituting any action to enforce any claim arising out of suspension and cancellation of any 2,4,5-T or silvex product which was cancelled more than 6 years ago. The Agency will deny any indemnification claim submitted concerning such a product. The Agency has not determined whether or not it will provide disposal assistance to owners of such products. Persons holding stocks of 2,4,5-T and silvex products for which the statute of limitations has expired may submit disposal requests for consideration by the Agency. The 2,4,5-T and silvex products are listed under Unit IV of this notice. That list indicates whether the statute of limitations has expired for each of the 2,4,5-T and silvex products.

II. Statutory Criteria

FIFRA section 15 requires EPA to indemnify any person who suffers economic loss by reason of suspension or cancellation of a pesticide registration and who satisfies other statutory requirements. The statute provides that indemnification is payable if (1) the Administrator suspended the registration to prevent an imminent hazard; (2) the registration was cancelled; (3) the person owned some quantity of the pesticide immediately before the suspension (i.e., on February 28, 1979); and (4) the person suffered losses by reason of the suspension or cancellation. The right to indemnification extends to "any person" who meets these four requirements. Therefore, indemnity payments may be made not only to registrants, but also to sellers, distributers, or individual users who owned the products at the time of suspension. Under section 15(b), the amount of the indemnity payment is to be determined on the basis of the cost of the pesticide to the owner immediately before the suspension, but may not exceed the pesticide's fair market value at that time.

FIFRA section 19(a) requires the Administrator to accept at convenient locations for safe disposal, those pesticides the registrations of which have been suspended and canceled as specified in FIFRA section 6(c), if requested by the owner of the pesticide.

III. Products That Are Eligible for Indemnification and Disposal

Whether a particular claimant satisfies the statutory requirements will depend on the regulatory action taken against the particular 2,4,5-T or silvex pesticide product the claimant owned. For purposes of this Notice, products have been classified into three categories: (1) 2,4,5-T and silvex products labeled only for uses that were suspended on February 28, 1979; (2) 2,4,5-T and silvex products that were labeled only for uses that were not suspended on February 28, 1979; and (3) 2,4,5-T and silvex products that were labeled for both suspended and non-spended uses. Each of these categories is discussed below. A list of the 2,4,5-T and silvex products in each of these categories is inlcuded at the end of this unit.

In addition to the federally registered 2,4,5-T and silvex products, certain products containing these pesticides were being marketed intrastate under State pesticides registrations at the time of the February 28, 1979, suspension orders, in accordance with EPA regulations, 40 CFR 162.17 By virtue of a recent U.S. Claims Court decision, *Gro-Green Products, Inc.* v. *United States*, 3 Cl. Ct. 639 (1983), owners of products with such State registrations are entitled to indemnification on the same basis as Federal registrants.

A. 2,4,5–T and Silvex Products Labeled Only for Uses That Were Suspended on February 28, 1979

Owners of products labeled solely for suspended uses of 2,4,5–T or silvex may qualify for indemnification and disposal if other conditions have been met. All registrations of 2,4,5–T products in effect on February 28, 1979, and bearing labeling allowing use only on forest, right-of-way, or pasture sites have been suspended and cancelled. Similarly, all silvex pesticide registrations in effect on February 28, 1979, and bearing label directions allowing use only on forest, right-of-way, pasture, home and garden, commercial/ornamental turf, or aquatic weed control/ditch bank sites have been suspended and cancelled. Persons who owned 2,4,5–T or silvex products labeled solely for these uses on February 28, 1979, who suffered losses by reason of suspension or cancellation of such products, and whose claims are not barred by the statute of limitations will generally be eligible for indemnification and disposal.

B. 2,4,5–T and Silvex Pesticide Products Labeled for Uses That Were not Subject to the February 28, 1979 Suspension Orders

The February 28, 1979, suspension orders affected only 2,4,5–T products registered for forestry, rights-of-way, and pasture uses, and silvex products registered for forestry, rights-of-way, pasture, home and garden, commercial/ornamental turf, or aquatic weed control/ditch bank uses. Owners of 2,4,5–T or silvex pesticide products that were registered solely for other uses as of that date are not eligible for indemnification or for disposal at Federal expense since FIFRA provides indemnification and disposal only for pesticide products that have been suspended.

C. 2,4,5–T and Silvex Products That Were Registered for Both Suspended and Non-Suspended Uses

Owners of 2,4,5–T or silvex products which are labeled for both suspended and non-suspended uses and which are not subject to the statute of limitations will generally be eligible for Federal disposal. However, such persons will in many cases not qualify for Federal indemnification. After the 2,4,5–T and silvex suspension orders, the Agency permitted registrants to delete suspended uses from their product labels and to distribute and sell the products with amended labeling retaining the non-suspended uses. End-users who held 2,4,5–T or silvex products labeled for both suspended and non-suspended uses at the time of the suspension orders could subsequently use, and may continue to use, such products for any non-suspended use appearing on the label. Owners of products labeled for both suspended and non-suspended uses may file indemnification claims, but may be found ineligible to the extent that they failed to mitigate their losses, as discussed below. In some instances, a pesticide intended primarily for suspended uses included a minor non-suspended use on its label. In appropriate circumstances, the Agency will treat such products as if they were labled solely for suspended uses.

IV. Registration Numbers and Eligibility Status for Silvex and 2,4,5–T Products

A. Silvex Products Labeled Only for Suspended Uses: Eligible for Indemnification and Disposal

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

000004-00113 3 in 1 Weed Killer
000004-00121 New Bonide Chickweed Clover and Bent Grass Killer
000004-00141 Lawn Weed Killer
000004-00168 Bonide Foaming Jet Action Weed Killer
000004-00243 Lawn Weed Killer Granules.

Great Western Chemical Company:
000168-00314**** Morgro 2-in-1 Weed & Feed

Riverdale Chemical Company:
000228-00116 Riverdale Weedestroy Lawn Weed Killer

Chevron Chemical Company:
000239-00599**** Weed-B-Gon
000239-01393**** Ortho Chickweed and Clover Killer
000239-02227**** Ortho-gro Weed & Feed
000239-02296**** Ortho Chickweed, Spurge & Oxalis Killer
000239-02301**** Ortho Dandelion & Broadleaf Weed Killer
000239-02305**** Ortho-gro Bahia Weed & Feed
000239-02425**** Ortho Weed-B-Gon Lawn Weed Killer

Union Carbide Agricultural Products Company:
000264-00076 Weedone TP
000264-00083 Weedone Granular Lawn Weed Control
000264-00237 Amchem 3-D Weedone Turf Weed Control

Hysan Corporation:
000334-00249**** Hyweed Chickweed and Clover Killer

Imperial, Inc..
000407-00299 Imperial Lawn Weed Killer Contains 2,4-D and Silvex

Farmland Industries, Inc..
000449-00176

Dow Chemical U.S.A..
000464-00382 Lawn Weed Killer

Gurney Seed and Nursery Company:
000468-00012**** Gurney's Lawn Weed Killer Contains Silvex (2,4,5-TP)

Chase Products Company:
000498-00090**** Spot Weed Killer

Growmark, Inc..
000534-00082**** FS Farmtown Weed and Feed

O.M. Scott & Sons Company:
000538-00054**** O-X-D Weed Control

Sears Roebuck & Company:
000539-00197**** Sears Lawn Weed Killer Contains 2,4-D and Silvex
000539-00261**** Sears Superfine Weed & Feed with 2,4-D and Silvex 23-4-9

Rockland Chemical Co., Inc..
000572-00159**** Rockland Weed & Feed
000572-00197**** Lawn-A-Magic Weed Away Prills Plus
000572-00202**** Lawn-A-Magic "Weed Away Plus" with Silvex
000572-00203**** Professional Lawn Weed Killer
000572-00267**** Rockland Professional Lawn Weed Killer with Silvex
000572-00270**** Rockland Professional Lawn Killer D
000572-00297**** Rockland Professional Lawn Killer 'B'
000572-00300**** Rockland Weed & Feed "B" 18-6-6

Purina Mills, Inc..
000602-00180**** Purina Lawn Weed Killer

Safeway Stores, Inc..
000793-00009**** Safeway Brand Lawn & Feed

Chas. H. Lilly Company:
000802-00402 Miller's Silvex Silvicide
000802-00463 Miller's Weed Bomb

Agrico Chemical Co., Div. of Continental:
000827-00203**** Agrico Country Club Fertilizer 10-6-4
000827-00216**** Agrico Dandelion & Broadleaf Weed Control

Farmers Union Central Exchange, Inc..
000912-00041**** Greenhouse Lawn Weed and Feed

Lebanon Chemical Corporation:
000961-00209**** Lebanon Lawn Weed Killer
000961-00212**** Lebanon 10-6-4 with Silvex and 2,4-D
000961-00213**** Lebanon Turf Weed Killer Silvex and 2,4-D
000961-00219**** Lebanon Turf Organic with Weed Killer
000961-00231**** Glorion Lawn Weed and Crabgrass Killer
000961-00241**** Lebanon Weed Spray Contains 2,4-D and Silvex
000961-00249**** Greenskeeper 10-6-4 with Weed Killer
000961-00282**** Greenview Dandelion and Chickweed Killer
000961-00289**** Greenview Crabgrass & Dandelion Killer
000961-00295**** Greenview Expel Spot Weed Killer
000961-00299**** Greenview Two-Way Green Power
000961-00300**** Greenview Two-Way Winter Green
000961-00301**** Greenview Modern Two-Way Green Power
000961-00302**** Greenview Expel Granular Lawn Weed Killer
000961-00304**** Lebanon Weed Control with Grass Food
000961-00305**** Lebanon Country Club for Professional Use
000961-00306**** Lebanon Grass Food with Weed Control
000961-00308**** Agrico Country Club Fertilizer 16-8-8 with Herbicide
000961-00311**** Green Gold Law Weed Killer
000961-00315**** Lebanon Country Club Fertilizer 12-4-8 with Herbicide
000961-00324**** Lebanon Weed Control Plus Turf Food with Iron
000961-00327**** Lebanon Weed Control Plus Turf Food with Iron

Malter International Corporation:
001266-00151 Di-Phen Broadleaf Weed & Woody Brush Killer

Land O' Lakes:
001381-00080**** Splendor 18-9-4 Weed & Feed

Blue Spruce Company:
001439-00195**** Lawn-Aid Weed Killer with Silvex (2,4-D Plus 2,4,5-TP)

Elanco Products Company:
001471-00044**** Greenfield Dandelion & Broadleaf Weed Killer

Montgomery Ward:
001946-00036**** Wards Garden Mark Weed & Feed 20-10-5 with 2,4,-D & Silvex

Patterson Chemical Company, Inc.:
002169-00166 Patterson's Chickweed Killer with Silvex

PBI/Gordon Corporation:
002217-00305 Chickweed & Clover Killer
033955-00089 Acme Weed-No-More Lawn Weed Killer
033955-00436 Acme Chickweed Clover Killer

Terre Company of New Jersey, Inc..
002290-00031 Terre Easy to Use Granular: A Selective Weed Killer for Lawns

Kerr-McGee Chemical Corporation:
002342-00826**** Nitroganic 5-4-0 with Weed Killer
002342-00873**** Granular Lawn Weed Killer with 2,4-D & Silvex
002342-00918**** 2'N 1 Weed and Feed

Koos, Inc.:
002491-00319**** Thrive with Weed Killers

USS Agri-chemicals Division, US Steel Corporation:
003442-00660**** USS Vertagreen Double Duty Fertilizer, Broadleaf Weed Killer
003442-00674**** USS Weed & Feed: Kills Weed—Feeds Turf
003442-00675**** USS Vertagreen Double Duty Fertilizer, Broadleaf Weed Killer

Economy Products:
003770-00048 Economy's Lawn Weed Killer/2,4-D Low Volatile Esters & Silvex

Smith-Douglass, Inc..

004185–00354**** Ongaro s Weed & Feed 20–5–5
004185–00404**** Nutro Dandelion & Weed Killer
004185–00441**** Smith-Douglass Sevin 50% High Concentrate Dust
Agchem Division, Pennwalt Corporation:
004581–00183 Aquathol Plus
004581–00200 Aquathol Plus Granular
004581–00249 Aqua-vex Granular
004581–00251 Aqua-vex
Ringer Judd Corporation:
004825–00009 Pill Kill Weed Killer for Lawn Weeds
Seedkem, Inc. c/o:
004876–00045 Lawn Weed Killer
Federal Chemical Company:
005288–00055**** Nu Turf 20–10–5 Weed and Feed
005288–00083**** Texaco Nu-Turf 20–10–5 Feed & Weed
Old Fox Agric Sales, Inc.:
005293–00005**** Old Fox Weed Killer
005298–00006**** M. N. A. Weed. Kleen
Patco Products, Inc..
005348–00003**** Patco s Weedkill
005348–00004**** Patco Weed and Feed
Adikes, Inc. J & L:
005535–00018**** Gro-well Chickweed and Clover Killer
005535–00041**** Gro-well Weed-N-Chick
005535–00046**** Gro-well Feed-N-Weed
005535–00076**** Gro-well Lawn Weed Bomb
Farmingdale Garden Labs:
005605–00015**** Farmingdale 2,4,5 T. P Silvex Chickweed & Clover Killer
005605–00088**** Farmingdale 2,4-D Plus 2,4,5-TP Lawn Weed & Dandelion Killer
Wegro, Inc.:
005815–00022**** Farmer Tom Lawn Fertilizer 10–6–4
005815–00023**** Mr. Gro Weed and Feed with Silvex and Iron-Triple Action H
005815–00027**** Forest City Weed & Feed Plus Iron 22–7–7 (contains Silvex)
005815–00031**** Stein Supreme Weed and Feed
Black Leaf Products Company:
005887–00020**** Blackheat Clover and Chickweed Killer
005887–00048**** Black Leaf Chickweed & Clover Killer
005887–00092**** Black Leaf Lawn Weed Killer
005887–00106**** Black Leaf Lawn Weed Killer Spray
Lott's Pedigreed Seed, Inc.:
006143–00017**** Loft's Weed & Feed
006143–00018**** Loft's Dandelion and Broadleaf Lawn Weed Killer
Voluntary Purchasing Group's, Inc.:
007401–00006**** Ferti-lome Weed & Feed Containing 2,4–D & 2,4,5–TP
Nulife Fertilizers Div. of Hygrade Food:
007404–00007**** Nulife Weed and Feed 10–2–3
007404–00008**** Turf King Weed & Feed 3-In-1
Liqui Lawn Corporation:
007764–00016**** Heritage House Systemic Weed & Feed Plus
007764–00018**** Heritage House Systemic Dandelion & Chickweed Killer
007764–00020**** Heritage House Systemic Lawn Weed Killer
Webfoot Fertilizer Co., Inc..
007923–00001 Web Foot Weed & Feed 8–4–4
Kaiser Agricultural Chemicals:
007943–00011**** Lawn Life Weed Killer
007943–00012**** Lawn Master Lawn Weed Killer
Miller Frank & Sons, Inc.:
008123–00039**** Selective Lawn Weed Killer
Knox Fertilizer & Chemical Co., Inc.:
008378–00003**** Patio Lawn Weed Killer Contains 2,4–D and Silvex
The Andersons:
008419–00008**** Luster Green Turf Fertilizer 10–6–4 Plus Weed Control
008419–00009**** Aladdin Weed & Feed 10–6–4 Plus Silvex & 2,4–D
008419–00015**** The Andersons Broadleaf Weed Killer
008419–00016**** Th Andersons Weed and Feed
Agway, Inc.—Crop Services:
008590–00262**** Agway Improved Weed-N-Green Turfood and Weed Control
008590–00389**** Greenlawn Plus 12–5–7 Broadleaf Weed Killer
Sta-Green Plant Food Company:
008660–00002**** Sta-Green Logo Post-Emergence Crabgrass and Weed Killer
Kaiser Aluminum & Chemical Corporation:
009159–00141**** Federal New Improved Lawn Life Weed & Feed
The Anderson Lawn Feterilizer Division:
009198–00002**** Feast-N-Famine
009198–00012**** Garden Gate Turf Food Plus Weed Control
009198–00014**** Hawthorne House Lawn Food and Weed Killer
009198–00015**** Wickes Big Acre Weed and Feed 24–6–6 Plus 2
009198–00022**** Turf Care 30–5–3 W/ 2,4–D & Silvex
009198–00025**** Weed and Feed 18–5–9
009198–00027**** A. C. E. Weed & Feed 12–4–8
009198–00029**** Mr Wiggs 10–6–6 Weed Killer and Turf Feed
009198–00034**** Constantine's Weed Killer and Fertilizer
09198–00035**** Big City Weed and Feed 10–6–4
009198–00034**** Golf Green Weed and Feed 24–4–9
Fertile Acres Corp..
010345–00002**** Old Gardener Weed 'N Feed
Jubilee Products, Inc..
010645–00002**** Home Pride Weed & Feed
Occidental Chemical Company:
010659–00044**** Green Gro Lite Weight Weed-N-Feed with Silvex
Seaboard Seed Company:
011281–00002**** Seaboard Premium Weed & Feed
Ayr-Way Stores:
011506–00001**** Ayr-Way 10-6-4 Lawn Food with Weed Killers
Shalco Chemical Corporation:
011511–00018**** Shalco Selective Lawn Week Killer
Meijer, Inc.:
011700–00001**** Meijer Best Weed 'N Feed 22-6-6
Washington Distributors, Inc..
011706–00001**** Rink's Green World Premium Weed and Feed
D.H. and R., Inc..
028003–00002**** Green Up Weed & Feed Contains 2,4-D Silvex
028003–00006**** Easy Green Weed & Feed
Howard Johnson's Enterprises, Inc.:
032802–00002**** Howard Johnson's Weed & Feed 20-10-5
Weaver's Lawn and Garden Products, Inc..
033108–00003**** Garden Gate Turf Food and Weed Control
Vertac Chemical Corporation:
039511–00046 Silvi-Rhap Low Volatile/ Granular TP Hebricide 2,4,5-TP

B. Intrastate Silvex Products Labeled Only For Suspended Uses: Eligible For Indemnification and Disposal

Note: If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Union Carbide Agricultural Products:
000264–08322**** Weedone 2,4,5-TP
000264–08323**** Weedone 2,4,5-TP
Amvac Chemical Corporation:
005481–03858**** Alco Squirt-N-Kill
Wegro, Inc..
005815–09362**** Durig's Weed & Feed 22-5-5
005815–09363**** Lazurus 22-5-5 Weed & Feed
J.R. Simplot Co..
007001–07704**** Aristocrat Blade Grass Weed & Feed 12-3-6
Nulife Fertilizers Div. of Hygrade Food:
007404–08328**** Vita-Rich Weed and Feed
007404–08329**** Nulife Deluxe Weed and Feed
007404–08330**** Deluxe Weed and Feed
007404–08331**** Lowell Deyoung Co., Inc. Deluxe Weed and Feed
007404–08332**** Furney's Deluxe Weed and Feed
007404–08333**** Harvey's Deluxe Weed and Feed
007404–08334**** Five Corner's Deluxe Weed and Feed
007404–08337**** Poole's Deluxe Weed and Feed
Nulife Fertilizers Div. of Hygrade Food (continued):
007404–08338**** P.F.C. Fertilizers Deluxe Weed and Feed
007404–08339**** Gateway Deluxe Weed and Feed
Cape Chemical Company:
010371–07436**** Chick Weed Killer
010371–07539**** 245 Brush Killer
Farm Bureau Services, Inc..
020792–08853**** Weed-Go Lawn Weed Killer with 10-6-4 Fertilizer
Horn's Crop Service Center, Inc..
033285–09369**** Weed and Feed
033285–09371**** Super Green Weed and Feed
033285–09374**** Green Lightning Weed and Feed
Chemicals-Pesticides Program, Department of En:
038655–07430**** NYS-Dewey-Silvex (% and form not specified)

C. 2,4,5-T Products Labeled Only For Suspended Uses: Eligible For Indemnification and Disposal

Note: If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Union Carbide Agricultural Products:
000264–00009 Weedone 2,4,5-T
000264–00121 Amchem Envert-DT
000264–00123 Amchem Envert-T
000264–00161 Amchem Emulsamine 2,4,5-T
000264–00163 Emulsamine BK Woody Plant Herbicide
000264–00208 Emulsavert 100
000264–00269 Emulsavert 248
000264–00284 Amchem 2,4,5,-T Wood Plant Herbicide
000264–00286 Weedone 2,4,5-T Woody Plant Herbicide Odor Inhibited
Rhone-Poulenc, Inc..
000359–00653**** Visko-RHAP H Low Volatile 2 T
Dow Chemical U.S.A..
000464–00364 Dow Tordon 155 Mixture Brush Killer
U.S. Eagle, Inc..
001200–00026**** Eagle Brush Kill 2,4,5-T Solution
Reuel Little Tree Injection Company:
004917–00002**** Reuel Little Tree Injection Fluid Formula No. 2
Fertile Acres Corporation:
010345–00002**** Old Gardener Weed N Feed
K–AGRI, Inc..
041653–00010**** Butyl Ester 22 Brush Killer

D. Intrastate 2,4,5-T Products Labeled Only For Suspended Uses: Eligible For Indemnification and Disposal

Note: If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Thompson-Hayward Chemical Company:
000148–10180**** DED-Weed LV-9
000148–10181**** DED-Weed LV-33
000148–10182**** DED-Weed LV-6
Union Carbide Agricultural Products Company:
000264–10178**** Envert DT
000264–10179**** Envert DT
Cape Chemical Company:
10371–07492**** 3-Way Weed Killer
Colorado Chemical & Fert., Co., Inc..
037351–05523**** Colorado's Own Spot Grass Killer

E. 2,4,5–T Products Registered Under Section 24(C) and Labeled Only For Suspended Uses: Eligible For Indemnification and Disposal

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

OR–760031****
OR–770007****
OR–770008****
OR–770009****
OR–770010****
OR–770011****
WA–760018****
WA–770005****
WA–770006****
WA–770007****
WA–770008****
WA–790005
WA–790006
CA–780065****
CA–780066****

F Silvex Products Labeled For Both Suspended Non-Suspended Uses: Eligible For Disposal Possibly Eligible For Indemnification

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Bonide Chemical Co., Inc..
000004–00151 Bonide "Squeeze-Weeder"
000004–00163 Bonide Weed Killer Contains 2,4-D Plus Silvex
Thompson-Hayward Chemical Company:
000148–00361**** De-Pester DED-Weed for Lawn Contains 2,4-D 2,4,5-TP
000148–00479 Depester DED-Weed Silvex LV
Great Western Chemical Company:
000168–00317 Morgro Weedit Lawn Weed Spray
Tobacco States Chemical Company:
000226–00218 Tasco Brand Broadleafed Weed X
Riverdale Chemical Company:
000228–00088 Riverdale Silvex
000228–00100 Riverdale Brush Killer 2 Special
000228–00130 Riverdale Butoxy Ethanol Low Volatile Ester of Silvex
Union Carbide Agricultural Products Company:
000264–00061 Amchem Weedone 2,4,5–TP
000264–00289 Amchem 2,4,5–TP
Hysan Corporation:
000334–00308 GCC–425
000334–00253 GCC–429
Nott Manufacturing Company, Inc..
000358–00147 Super Poison Ivy Killer
Rhone-Poulenc, Inc.,
000359–00366 Chipman Silvex-4 L.
000359–00643 Visko-RHAP Low Volatile Ester 2 TP for Ground Application
000359–00644 Visko-RHAP Low Volatile Ester 2 TP for Air Application
Durhams Drug Products Company:
000430–00046 Durham's Weed-Killer for Lawns
Farmland Industries, Inc..

000449–00478 Sure Death Brand Special Low Vol Wood-Kill 4 LB Concentrate

Dow Chemical U.S.A..

000464–00162 Kuron a Brush Killer

Rockland Chemical Co., Inc..

000572–00123 Rockland Lawn Weed Killer

000572–00269 Rockland Lawn Weed Killer

000572–00298 Rockland Lawn Weed Killer 'B'

Diamond Shamrock Agricultural Chemicals:

000677–00305 Silvex 4–TP

Chas H. Lilly Company:

000802–00087 Miller's Lawn Weed Killer

000802–00272 Miller's Silvex 4 Brush and Weed Killer

000802–00521 Miller's Silvex 4 BP

Southern Agricultural Insecticides, Inc..

000829–00183 SA–50 Brand Silvex Herbicide

Velsicol Chemical Corporation:

000876–00227 Velsicol Vegatrol LV Herbicide

Miller Chemical & Fertilizer Corporation:

000904–00136 Pratt Industrial Weed Killer

Farmers Union Central Exchange, Inc..

000912–00057 Greenhouse Lawn Weed Killer with Silvex and 2,4,D

Malter International Corporation:

001266–00106 DI-PHEN Broadleaf Weed and Woody Brush Killer

Universal Cooperatives, Inc.:

001386–00528 Unico LO-V Brush Killer B

001386–00529 Unico Silvex 2,4-D LO-V 1-2 Brush Killer

001386–00530 Unico Silvex 2,4-D LO-V 2-2 Brush Killer

001386–00583 Unico LO-V 2,4,5-TP Weed & Brush Killer

Blue Spruce Company:

001439–00174 Chemsect Brand Chem Vex

W.R. Grace & Company:

002124–00746 Naco Low Volatile 4 TP Herbicide

Patterson Chemical Company, Inc.:

002169–00241 Dandelion & Chickweed Killer

PBI/Gordon Corporation:

002217–00318 Silvex-T Brush Killer

002217–00351 Silvex Lawn Weed Killer

Oxford Chemicals:

003635–0039 Osford WK82 Low-Volatile Herbicide for Controlling Woody Pl

Colorado International Corporation:

004715–00235 Best 4 Servis Brand Lawn Killer Contains 2,4-D & Silvex

ABCO, Inc.:

004828–00063 ABCO WKS-65 Brush Killer

Good Life:

004931–00078 Good Life Chickweed Killer

Farmingdale Garden Labs:

006505–00142**** Farmingdale Lawn Weed and Dandelion Formula C Killer

Bes Tex Insecticides Co., Inc.:

006853–00016 BEX–TEX Lawn Weed Killer

Miller Frank & Sons, Inc..

008123–00043 Brush Killer

Agway, Inc.—Crop Services:

008590–00299**** Agway 2,4-D and Silvex Lawn Weed Killer

Hanco Mfg. Company, Inc.:

009931–00006 Hanco WS–22 Brush Killer

Athea Laboratories, Inc..

010088–00043 Selective Herbicide #4

Dymon, Inc.:

0116940–00041 SWK–99

Vertac Chemical Corporation:

039511–00047 Silvi-RHAP LV-4TP (Silvex) Herbicide 2,4,5-TP

039511–00048 Silvi-RHAP LV OXY 4-TP Herbicide

G. Intrastate Silvex Products Labeled For Both Suspended and Non-Suspended Uses: Eligible For Disposal/Possibly Eligible For Indemnification

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Esco Distributor, Inc.:

003286–08058**** Staffel's New Improved Lawn Weed Killer

Bel Chemical & Supply Company, Inc..

004502–03318 Bel Silvex Weed and Brush Killer

004502–03319 Bel Weed and Brush Killer Silvex 4 TP

Gro Green Products, Inc.:

006665–09475 Weed & Feed 60

Bes Tex Insecticides Company, Inc.:

006853–07345**** BES-TEX Lawn Weed Killer Low Volatile

Chem-Pak Company:

007478–07987**** Sprink'l

007478–08001**** Florida Lawn Weed Killer

Rowco, Inc.:

011465–10170**** Rowchem LPL–21 Right-of-Way Brush Control Mixture

038655–10430****

H. 2,4,5–T Products Labeled For Both Suspended and Non-Suspended Uses: Eligible For Disposal/Possibly Eligible For Indemnification

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Brulin & Company, Inc.:

000106–00049 Liqweedate Concentrate

Thompson-Hayward Chemical Company:

000148–00211 DED-Weed LV-2D2T

000148–00212 DED-Weed LV-6 Brush Kill Low Volatile Ester

000148–00272 De-Pester DED-Weed Amine-T Amine Salt

000148–00431 DED-Weed LV-9 Brush Kil

000148–01193 DED-Weed Amint-T Amine Salt

000148–01204 DED-Weed OS-6 Brush Kil

000148–01206 DED-Weed LV 2-1 Brush Kil

Great Western Chemical Company:

000168–00227 Wasco 2,4,5, T Low Volatile Ester 4LB E.C.

000168–00231 Wasco 2,4,5, T Butyl Ester #4 E.C. (2,4,5, T Emul. Conc.)

000168–00261 Wasco Brush Killer Low Volatile 2,4,-D 2,4,5-T Emul. C.

Bogle R.H. Company:

000179–00064 BO-RID K.O. Brush Killer BKE-4

000179–00065 BO-RID K.O. Brush Killer BKE-6

000179–00067 BO-RID K.O. Brush Killer BKE-2+2

Tabacco States Chemical Company:

000226–00124 Tobacco States Brand Ester Brush Killer 2-2

000226–00155 Tabacco States Brand Low-Vol Brush Killer 2-20

Riverdale Chemical Company:

000228–00015 Riverdale Brush Killer 1 Contains Low Volatile 2,4,5,-T+2,4

000228–00016 Riverdale Weedestroy 2,4,5, T

000228–00027 2,4,5-T Low Volatile Ester

000228–00028 Riverdale Brush Killer 2 Ester

000228–00045 Riverdale Brush Killer 2 Low Volatile Ester

000228–00075 Riverdale Formula 4 Brush Killer

000228–00077 Riverdale 2,4,5-T Amine Brush Killer

000228–00078 Weedestroy 2,4,5,-T Ester 4

000228–00091 2,4,5-T LV6

000228–00119 Riverdale Butoxy 2,4,5-T Low Volatile Ester

000228–00120 Riverdale Butoxy Brush Killer 2 Low Volatile Ester.

Chevron Chemical Company:
000239-01256 Ortho LV Brush Killer TD-2

Union Carbide Agricultural Products Company:
000264-00010 Weedone BK 32
000264-00019 Weedone BK 64 Woody Plant Herbicide
000264-00021 Weedone I.B.K.
000264-00053 Weedar Amine BK
000264-00062 Weedone 2,4,5-T
000264-00071 2,4,5-T Low Volatile Ester Brush Killer
000264-00073 2,4,-D2,4,5-T Low Volatile Ester Brush Killer
000264-00084 Amchem Trinoxol
000264-00089 Weedone 2,4,5-T Special Air Spray Formula
000264-00103 Dinoxol
000264-00128 Amchem Trinoxol Super-6
000264-00132 Dinoxol Super-6 Woody Plant Herbicide
000264-00200 Asplundh 1054-E Brush Killer
000264-00268 Weedone IBK Odor Inhibited Woody Plant Herbicide
000264-00282 Amchem BK Woody Plant Herbicide
000264-00283 Amchem BK Woody Plant Herbicide
000264-00288 Weedone 2,4,5-T Special Air Spray Formula

Hysan Corporation:
000334-00253 GCC-429
000334-00308 GCC-425

Rhone-Poulenc, Inc..
000359-00178 Rhodia 2,4,5-T Low Volatile Ester 4 L
000359-00179 Rhodia Low Volatile Brush Killer No. 2
000359-00412 Rhodia Low Volatile Brush Killer No. 3
000359-00413 Rhodia 2,4,5-T, Low Volatile Ester 6 L
000359-00540 Utility Brush Killer No. 4
000359-00645 Visko-RHAP Low Volatile Ester 1D-1T for Air Application
000359-00646 Visko-RHAP Low Volatile Ester 1D-1T Herbicide for Ground Application
000359-00651 Visko-RHAP Low Volatile Ester 2T Ground Application

Imperial, Inc..
000407-00345 Imperial LO-VOL Super Brush Killer
000407-00346 Imperial LO-Vol, 2,4,5-T
000407-00365 Imperial No. 4 Low Volatile 2,4,5-T Brush and Weed Killer
000407-00366 Imperial No. 2+2 Low Volatile Brush and Weed Killer

Bartels & Shores Chemical Company:
000413-00023 Pioneer Brand Brush Killer No. 23 Butyl Ester

Farmland Industries, Inc..
000449-00014 Woodbury Woodkill Ester
000449-00028 Woodbury Woodkill 6 LB. Ester Concentrate

Farmland Industries, Inc. (continued)
000449-00065 Wood-Kill 4 LB Butyl Ester Concentrate
000449-00126
000449-00127 No. 4 Low Volatile 2,4,5-T
000449-00218 No. 6 Low Volatile 2,4,5-T
000449-00317 2,4,5-T 4LB Butyl Ester

Dow Chemical U.S.A..
000464-00180 Reddon
000464-00199 Veon 245
000464-00204 Esteron Brush Killer
000464-00205 Esterton 245
000464-00272 Tippon T6 Brush and Weed Killer
000464-00273 Tippon 2-2 Brush and Weed Killer
000464-00289 Verton CE Weed and Brush Killer
000464-00308 Verton T Herbicide
000464-00351 Brush Killer 4T
000464-00352 Brush Killer 2-2
000464-00407 Tordon 225 Mixture Herbicide
000464-00422 Verton 2T
000464-00527 Dow Brush Killer X Herbicide
000464-00528 Dow Bursh Killer TX Herbicide

Stauffer Chemical Company:
000476-00600 2,4,5-T Triethylamine 4WS
000476-00623 2,4-D-2,4,5-T Amine 2-2 WS
000476-00901 2,4-D-2,4,5-T Isooctyl Ester 2-2E Low Volatile Brush Killer
00476-00906 2,4,5-T Isooctyl Ester 4-E Low Volatile Brush Killer
000476-00933 2,4,5-T Butyl Ester 4-E
000476-00938 2,4-D 2,4,5-T Butyl Ester 1.33-.66E
000476-00939 2,4-D 2,4,5-T Butyl Ester 2-2-E High Volatile Brush Killer

Monsanto Company:
000524-00075* Monsanto 2,4,-D-2,4,5-T Butyl Ester Brush Killer
000524-00081 * 2,4,5-T Low Volatile Ester Brush Killer
000524-00097* Monsanto 2,4,5-T Ester Brush Killer
000524-00099* 2,4,-D,4,5-T Amine Brush Killer
000524-00100* Monsanto 2,4,5-T Amine Brush Killer
000524-00110* Brush-O-Cide Brush Killer
000524-00111* Brush Blitz
000524-00254* 2,4,-D/2,4,5-T Low Volatile Ester Brush Killer (CODE 34)

Baird & McGuire, Inc..
000551-00111 4DT Amine Brush Killer
000551-00116 4T Amine Brush Killer
000551-00157 4T-Ester Brush Killer
000551-00158 4DT-Ester Brush Killer
000551-00183 Brush Killer (Low Volatile Emusifiable Concentrate) LV 3D/3
000551-00184 Brush Killer (Low Volatile Emusifiable Concentrate) LV-6T

AGSCO:
000554-00056 Agsco Brush Killer

Rockland Chemical Company, Inc..
000572-00035 Rockland Brush Killer (Ester Form) Low Volatile

Mutual Dealer Wholesale, Inc..
000632-00022 Worthmore L-V Brush Killer

Diamond Shamrock Agricultural Chemicals:
000667-00095 Line Rider 22 Brush Killer
000677-00097 Line Rider 4T Brush Killer
000667-00102 Line Rider LV 3D/3T Brush Killer
000677-00103 Brush Killer Dormant Cane LV 3D/3T-OS
000677-00104 Dormant Cane Concentrate LV-6T-OS
000677-00133 Line Rider Amine 4T Brush Killer
000677-00136 Fence Rider 6T Brush Killer
000677-00141 Line Rider LV-21 Brush Killer
000677-00172 Line Rider Invert T Concentrate
000677-00174 Line Rider Invert D/T Concentrate
000677-00195 Dacamine 4T Brush Killer
000677-00196 Dacamine 2D/2T
000677-00238 Diamond Shamrock Chemical Co., Trailway 2D/2T Weed & Brush Killer
000677-00273 Trailway 4T Contains 4.0 Pounds 2,4,5-T Acid Equivalent Per
000677-00301 LO-VOL 2D/2T
000677-00306 LO-VOL 4T
000677-00324 Diamond Shamrock BP LO-VOL 2D/25 Brush Killer
000677-00325 Diamond Shamrock Brush Killer BP LO-VOL 4T.

MFA Oil Company:
000746-00050 M.F.A. LO-V 2,4,5-T
000746-00051 M.F.A. 2,4,5-T Butyl Ester
000746-00052 M.F.A. LO-V Super Brush Kill
000746-00053 M.F.A. Super Brush Kill (Butyl Ester)
000746-00108 M.F.A. Aerial Ester No. 42

Chas H. Lilly Company:
000802-00182 Miller's 2,4,5-T Amine 4
000802-00181 Miller's LV Brush Killer
000802-00184 Miller's LV 2,4,5-T Ester
000802-00229 Miller's Blackberry & Brush Killer
000802-00329 Miller's LV 2,4,5-T Ester 6E

000802-00520 Miller's LV Brush Killer D
000802-00523 Miller's LV 2,4,5-T Ester Four BP
000802-00529 Millers Brush Killer

Southern Agricultural Insecticides Inc..
000892-00212 SA-50 Brand Brush Killer

Velsicol Chemical Corporation:
000876-00169 Banvel 510 Oil Soluble Industrial Herbicide
000876-00176 Banvel—710
000876-00179 Velsicol Banvel—320 Water Soluble Industrial Herbicide
000876-00180 Velsicol Banvel 310 Oil Soluble Industrial Herbicide
000876-00204 Brush Buster III Herbicide
000876-00214**** Velsicol Vegatrol A 2D-2T Herbicide for Brush Control
000876-00216**** Velsicol Vegatrol LV-2D-2T Herbicide for Brush Control
000876-00219**** Velsicol Vegatrol LV-2D-2T Herbicide for Brush Control
000876-00220**** Velsicol Vegatrol BE-4T Herbicide for Brush Control
000876-00226**** Velsicol Vegatrol 0-6T Herbicide for Brush Control
000876-00228**** Velsicol Vegatrol LV-4T Herbicide for Brush Control
000876-00229**** Velsicol Vegatrol LV-6T Herbicide for Brush Control
000876-00230**** Velsicol Vegatrol 0-4T Herbicide for Brush Control
000876-00231**** Velsicol Vegatrol A-4T Herbicide Brush Control

Farmers Union Central Exchange, Inc..
000912-00049 Co-op A Brush Killer Concentrate
000912-00050 Co-op Brush Killer LV 2&2 Brush and Weed Killer

The Cropmate Company:
001145-00016 Amoco Brush Killer
001145-00029 Amoco 2,4,5-T LV Ester For Brush Control
001145-00079 Amoco 2,4,5-T Amine
001145-00126 Amoco Brush Killer-M
001145-00133 Amoco 2,4,5-T LV Ester-M

Midland Cooperatives, Inc..
001180-00017 Midland 50-50 Low Volatile Brush Killer

Indiana Farm Bureau Coop. Assn., Inc..
001222-00034 Coop Concentrate 2,4,5-T
001222-00044 Co-op Long Chain Low Volatile Four Pound Brush Killer

Dewitt Chemical Company:
001269-00033 De Witt S-77 Weed Killer
0001269-00104 Dewitt No. 170 Brush Killer

Zep Manufacturing Company:
001270-00055 Zep R-61 Weed Killer
001270-00125 Zep B-70 Brush Killer

Land O'Lakes:
001381-00020 Felco Super Brush Killer
001381-00065 Felco 2,4,5-T Brush Killer

Universal Cooperatives, Inc..
001386-00057 Unico 2,4,5-T LO-V Ester Brush Killer
001386-000556 Unico LO V Brush Killer 1-2

The Detteback Chemical Corporation:
001421-00107 Brush Killer-EH-10 2,4, D/2,4,5-T Low Volatile Emuls Conc

State Chemical MFG:
001685-00041 Formula 888 Brush-Kil Selective Weed and Brush Killer
001685-00048 Formula 220 Brush-Kil Selective Weed and Brush Killer
001685-00078 Formula 220-A Brush-Kil

NCH Corporation:
001769-00100 National Chemsearch Chemester 123

Holder Corporation:
001772-00072 Chemform Brand Butoxy Brush Killer

Navy Brand MFG Company:
001926-00010 WKB-15

Parsons Chemicals:
001969-00071 Poison Ivy & Brush Killer #2

Farmland Ind., Inc..
001990-00100 Co-op Weed-Out (2,4,5-T Low Volatile Ester 4 Pounds)
001990-00101 Co-op Weed-Out Brush Killer Low Volatile
001990-00106 Weed-Out 2,4,5-T Butyl Ester
001990-00227 Co-op Weed-Out (Brush Killer Butyl Ester)

W.R. Grace & Company:
002124-00437 NACO Low Volatile 2D-2T
002124-00705 NACO 2,4,5-T Low Vola Brush Killer-4T Cont. 4 LBS 2,4,5-T Gal

I. Schneid, Inc..
002155-00045 Formula 406 Brush Killer

Patterson Chemical Company, Inc..
002169-00069 Patterson's Brush Killer No. 200

PBI/Gordon Corporation:
002217-00074 LV Brush Killer
002217-00094 Super Brush Killer No. 400 Butyl
002217-00100 Butyl Ester 400 2,4,5-T Brush Killer
002217-00554 2,4,5-T Amine

Hopkins Agricultural Chemicals:
002393-00309 Arcadian Low Volatile 2-2 Brush Killer

Pueblo Chemical & Supply Company:
002737-00012 Pueblo 4 LB Brush Killer
002737-00033 Pueblo Brush Killer Lovol 2D/2T

Oxford Chemicals;
003635-00039 Oxford WK-82 Low-Volatile Herbicide for Controlling Woody Pl

Economy Products:
003770-00013 No. 2 & 2 Brush Killer
003370-00098 Economy 2,4,5-T Butyl Ester 4E

DH Industrial Sup Company:
003797-00003 Right-A-Way Brush-Killer Semi-Concentrate

Smith-Douglass, Inc..
004185-00124 Smith-Douglass Mangle Brush Killer
004185-00126 Smith-Douglass 2,4,5-T Low Volatile Ester Brush Killer

Colorado International Corporation:
004715-00173 Best 4 Servis Brand LO-VOL Brush Killer
004715-00174 Best 4 Servis Brand LO-VOL 2,4,5-T Brush Killer
004715-00182 Best 45 Servis Brand Butyl Ester 400 2,4,5-T Brush Killer
004715-00246 Butyl Brush Killer 3-3

ABCO, Inc..
004828-00037 W.K.—DT 133
004828-00063 ABCO WKS-65 Brush Killer

Good Life:
004931-00086 Good-Life 2-2 Low Volatile Brush Killer
004931-00087 Good-Life 4 LB 2,4,5-T Low Volatile Brush Killer
004931-00089 Good-Life 4 LB 2,4,5-T Brush Killer Butyl

Helena Chemical Company:
005905-00074 Helena 2D-2T Brush Killer

Comet Manufacturing Company:
006294-00018**** Com-O-Brush LV 20-10 Low Volatile Isoctyl Ester of 2,4,5-T
006294-00019**** Com-O-Brush Isoctyl BRH KLR 5LV Low VOL ISOTL Ester 2,4,5-TE

Southern Mill Creek Products Company, Inc..
006720-00033 Standard Amine T Brush Killer
006720-00112 SMCP Special Ester LV D & D

Stern Chemtech Corporation:
006762-00010 Weedex 130 Low Volatile Ester Weed Grass and Brush Killer
006762-00021 Weedex-65 Low Volatile Ester Weed Grass & Brush Killer
006762-00032 2,4,5-T Tree Killer
006900-00073 Dill 2,4,5-T Low Volatile Ester 4L Brush and Weed Killer

Chempar Chemical Company Inc..
007173-00021 Chempar L.V. Brush Killer Z/Z
007173-00050 Chempar

Crown Chemical Industries:
007273-00062 Brush-Off 4-T Amine Brush Killer
007273-00066 Brush-Off D & T Brush Killer
007273-00077 Brush-Off 2-2-LV Brush Killer

007273-00083 Weed and Brush-Off Amine Formula 400
007273-00088 Brush-Off Low Volatile Brush & Weed Killer
007273-00091 Brush-Off 2-2 Amine Brush Killer

BASF Corporation:
007969-00016 U-46 DT-LV Brush Killer

Miller Frank & Sons, Inc..
008123-00032 Brush & Weed Killer To Control Broadleaf Weed & Wood Plants

Habco, Inc..
008823-00050 Habco LO-VOL 2D/2T
008823-00051 Habco LO-VOL 4T

Precision Laboratories, Inc..
009349-00005 Liqui-Date Brush Killer (Ester Form) Range Eng Dev Corporation
009650-00001 Foamicide No. 100 Brush & Weed Killer

Riverside/Terr Corporation:
009779-00122 Riverside Herbicide Low Volatile 4T
009779-00123 Riverside Herbicide Low Volatile 2-D-2T
009779-00124 Riverside Herbicide A-4T 2,4,5-T

Athea Laboratories, Inc..
010088-00008 LVBK Kills Broadleaf Weeds and Woody Plants Low Volatile Sel
010088-00009 Weed & Brush Killer No. 2
010088-00010 2,4,5-T Low Volatile Ester Brush and Weed Killer

Mantek:
010272-00006 Mantek Man Weed X-40

ABC Chemical Corporation:
011515-00056 Twin Esters Kills Woody Plants Low Volatility

Forage Unlimited:
033330-00001 Sifon Rangeland Brush Spray OLV 4D-2T
033330-00005 Forage Unlimited Industrial Brush Spray OLV 3D-3T

Environmental Process Research:
039128-00001 Best 4 Servis Brand Butyl Brush Killer 2-2
039128-00002 Best 4 Servis Brand Brush & Range Clear 3-3
039128-00003 Best 4 Servis Brand Brush & Range Clear 4-4

Vertac Chemical Corporation:
039511-00016 Brush-RHAP Amine A-2D-2T Herbicide
039511-00017 Brush-RHAP A-4T Herbicide 2,4,5-T Amine
039511-00018 Brush-RHAP O B-4T Herbicide 2,4,5-T
039511-00019 Brush-RHAP Butyl Ester B-4T Herbicide 2,4,5-T
039511-00021 Brush-RHAP Butyl-2D-2T Herbicide
039511-00022 Brush-RHAP LV-6T Herbicide 2,4,5-T
039511-00023 Brush-RHAP LV-5T Herbicide 2,4,5-T
039511-00024 Brush-RHAP LV-4T Herbicide
039511-00025 Brush-RHAP LV OXY-5T Herbicide
039511-00026 Brush-RHAP LV OXY-45 Herbicide
039511-00027 Brush-RHAP LV OXY-6T Herbicide
039511-00028 Brush-RHAP LV OXY 3D-3T Herbicide
039511-00029 Brush-RHAP LV OXY-2D-2T Herbicide
039511-00030 Brush-RHAP LV 3D-3T Herbicide
039511-00032 Brush-RHAP LV 2D-2T Herbicide
039511-00033 Brush-RHAP OLV 2D-2T Herbicide
039511-00034 Brush-RHAP OLV-4T Herbicide
039511-00035 Brush-RHAP OLV-6T Herbicide
039511-00036 Brush-RHAP OLV 3D-3T Herbicide
039511-00050 Amine OA-1.50-1.5T Herbicide
039511-00051 Transamine OA-3T Herbicide 2,4,5-T Oil Soluble Amine

K-Agri, Inc..
041653-00003 LV Ester 22 Brush Killer
041653-00004 LV Ester T4 Brush Killer
041653-00011 Butyl Ester T4 Brush Killer

I. Intrastate 2,4,5-T Products Labeled For Both Suspended and Non-Suspended Uses: Eligible For Disposal/Possibly Eligible For Indemnification

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Dow Chemical U.S.A..
000464-08120**** Tordon Special LV 225 Herbicide

S&P Branded Fertilizer, Inc..
000557-09483**** Swifts Gold Bear Brush Kill 55

Velsicol Chemical Corporation:
000876-07819 Banvel 2+2 Herbicide for Pasture, Rangeland Grasses and NONCR
000876-07934 Banvel 2+2 Herbicide
000876-07943 Banvel 2+2 Herbicide

Esco Distributer, Inc..
003286-08060**** Staffel's 2,4,5-T
003286-10172**** Staffel's Brush Killer No. 32

Brewer Chemical Corporation:
003579-03279**** Ultramar LV-BK

Chemical Specialties, Inc..
010827-03424**** IND-SOL 100

Rowco, Inc..
011465-10171**** Rowchem Brush Control Mixture T

American National Chemical Company:
025203-10595**** Quick Kill 400 Weed Killer Liquid

Uni-Chem Corporation of Florida:
037347-03126**** Uni-Chem Brush and Weed Killer

J. 2,4,5-T Products Registered Under Section 24(c) and Labeled For Both Suspended and Non-Suspended Uses: Eligible For Disposal/Possibly Eligible For Indemnification

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

TX-760003****
TX-770001****
TX-770016****
TX-780017
TX-780006****
TX-770003****
TX-770001****
TX-780001
TX-780008****

K. Silvex Products Labeled Exclusively for Non-Suspended Uses: Ineligible for Indemnification or Disposal

Miller Chemical and Fertilizer Corporation:
000072-00407 Miller's Nu-Set 2,4,5-Hormone Type Spray

Thompson-Hayward Chemical Company:
000148-00925 Isoocytle Ester of Silvex Technical

Riverdale Chemical Company:
000228-00134 Riverdale Silvex Butoxyl Ethanol Ester Tech
000228-00135 Riverdale Silvex Isoocytl Ester Tech

Union Carbide Agricultural Products Co..
000264-00144 Fruitone-T Double Strength
000264-00150 Fruitone
000264-00272 Technical Silvex

FMC Corp..
000279-01794 Niagara Stikcol
000279-01809 Niagara Stikcol-D
000279-02079 Stikcol 256

Rhone-Poulenc, Inc..
000359-00598 Ag Mix 561
000359-00623 Rhodia 2,4-D & 2,4,5-TP Blend (Technical)
000359-00670 Rhodia 2,4,5-TP Acid

Farmland Industries, Inc..
000449-00344 No. 4 Silvex Ester Emulsifiable
000449-00496 2,4,5-TP Technical Acid for Manufacturing Purposes Only

Dow Chemical U.S.A..
000464-00436 Silvex, Isooctyl Esters for Manufacturing Use Only
000464-00455 Silvex, Acid for Manufacturing Use Only

000464–00461 Silvex, Butoxypropyl Esters for Manufacturing Uses
000464–00515 Dow Butoxy Propylester Mix No. 1
000464–00519 Dow IOE Mix No. 1

Diamond Shamrock Agricultural Chemicals:
000677–00287 Technical Isoocytle Esters of Silvex for Manufacturing Purposes Only

Chas. H. Lilly Co..
000802–00400 Miller's Stick 'N Stay #243 (Tree Fruit Set)
000802–00518 Miller's 2,4-D Silvex 18-20 Granular
000802–00519 Miller's 2,4-D Silvex 30-10 Granular

PBI/Gordon Corporation:
002217–00598 Technical Herbicide Blend No. 820 Manufacturing Concentrate

Aceto Chemical Company:
0002749–00097 Silvex Technical

Wilbur Ellis Company:
002935–00338 Red Top Brand 2,4,5-TP 256
002935–00339 Red Top Brand 2,4,5-TP 400

Gallard-Schelsinger Chemicides, Inc..
004221–00016 2,4,5-T.P Acid

Vertac Chemicals Corporation:
039511–00045 Transvaal MCPA Low Volatile Oxy Ester
039511–00056 2,4,5-TP Acid
039511–00057 2,4,5-TP Volatile Silvex Ester

Falls Chemicals, Inc..
040831–00071 Best 4 Servis Brand Lawn Weed Killer Cont. 2,4-D & Silvex

Morgro Chemical & Energy Corp..
042057–0049 Morgro Weedit Lawn Weed Spray

L. Intrastate Silvex Products Labeled Exclusively for Non-Suspended Uses: Ineligible for Indemnification or Disposal

Dow Chemical U.S.A..
000464–06847 Kuron

M. 2,4,5-T Products Labeled Exclusively for Non-Suspended Uses: Ineligible for Indemnification or Disposal

Bonide Chemical Co., Inc.
000004–00164 Bonide Kilbrush

Thompson-Hayward Chemical Company:
000148–000924 2,4,5-T Isooctyl Ester Technical
000148–001223 T-H 2,4,5-T Acid

Union Carbide Agricultural Products Company:
000264–00086 Amine 2,4,5-T for Rice
000264–00234 Technical 2,4,5-T Ester (for use in the Manufacture of Herbicide
000264–00255 Brominal Industrial Broadleaf Herbicide

Nott Manufacturing Company, Inc..
000358–00094 Nott's Poison Ivy Killer

Rhone-Poulenc, Inc..
000359–00574 Chipman Aerosol Special Mixture No. 1
000359–00578 Chipman 2,4,5-T Acid
000359–00580 Rhodia 2,4,5-T Isooctyl Ester (Technical)
000359–00582 Chipman 2,4-D and 2,4,5-T Ester Mix Technical
000359–00605 Chipman D and T Mix No. 8
000359–00612 T & C Lawn Weed Killer Concentrate
000359–00615 Swift Mix No. 1
000359–00616 Swift Mix No. 2
000359–00652 Visko-RHAP Low Volatile Ester 2T for Air Application

Dow Chemical U.S.A..
000464–00491 2,4,5-T Butoxy Ethanol Esters
000464–00492 2,4,5-T Butoxy Proply Esters
000464–00493 2,4,5-T Acid
000464–00494 2,4,5-T Butyl Esters
000464–00495 2,4,5-T Isooctyl Esters

Monsanto Company:
000524–00047 2,4,5-T Isopropyl Ester Technical Grade
000524–00048 2,4,5-Trichlorophenoxyacetic Acid
000524–00067 Technical Grade 2,4,5-T Butyl Ester
000524–00095 D-61 Monsanto 2,4,5-T Isooctyl Ester
000524–000149 2,4,-D/2,4,5-T Mixed Esters N-Butyl and Isobutyl
000524–000150 2,4,-D/2,4,5-T Butyl Esters
000524–000258 2,4,5-T Isobutyl Ester Technical Grade

Prentiss Drug & Chemical Company, Inc..
000655–000611 Parsons Poison Ivy and Brush Killer NO. 2

Diamond Shamrock Agricultural Chemicals:
000677–000247 Technical 2-Ethylhexyl-T (2,4,5-T)
000677–000248 Technical Isopropyl-T (2,4,5-T)
000677–000250 Technical Butyl-T (2,4,5-T)
000677–000253 Technical Isooctyl-T (2,4,5-T)
000677–000267 Diamond Chemical 2,4,5-T Acid Dustless for Manufacturing Purposes

Olin Corporation:
001258–01007 LV Ester 22 Brush Killer
001258–01008 LV Ester T4 Brush Killer
001258–01015 Butyl Ester T4 Brush Killer

Land O'Lakes:
001381–00086 Midland 50-50 Low Volatile Brush Killer

Universal Cooperatives, Inc..
001386–00028 Unico Brush Killer
001386–00056 Unico LO-V Brush Killer

Farmland Industries, Inc..
001990–00393 Woodbury Woodkill Ester
001990–00395 Woodbury WoodKill 6 LB Ester Concentrate
001990–00411 Low Vol 4 LB Woodkill
001990–00412 No. 4 Low Volatile 2,4,5-T
001990–00422 No. 6 Low Volatile 2,4,5-T
001990–00439 2,4,5-T 4 LB Butyl Ester

PBI/Gordon Corporation:
002217–00442 2,4,5-Trichlorophenoxyacetic Acid

Kerr-McGee Chemical Corporation:
002342–00838 Poison Ivy Killer

Corn Belt Chemical Company:
010107–00025 Wasco 2,4,5-T Low Volatile Ester 4 LB E.C.
010107–00026 Wasco 2,4,5-T Butyl Ester #4 E.C. (2,4,5-T Emul. Conc.)

EM Industries, Inc.—Plant Protection Div..
021137–00013 2,4,5-T Technical

Inland Labs., Inc..
023486–00004 No. 2 & 3 Brush Killer
023486–00018 Economy 2,4,5-T Butyl Ester 4E

Vertac Chemical Corporation:
039511–00052 2,4,5-T Acid
039511–00053 2,4,5-T Butyl Ester
039511–00054 2,4,5-T Low Voltile Ester
039511–00055 2,4,5-T Low Volatile Oxy-Ester
039511–00083 Helena 2D-2T Brush Killer

Falls Chemicals, Inc..
040831–00009
040831–00048 Best 4 Servis Brand LO-VOL Brush Killer
040831–00049 Best 4 Servis Brand LO-VOL 2,4,5-T Brush Killer
040831–00053 Best 4 Servis Brand Butyl Ester 400 2,4,5-T Brush Killer
040831–00078 Butyl Brush Killer 3-3

Morgro Chemical & Energy Corporation:
042057–00032 Wasco Brush Killer Low Volatile 2,4-D 2,4,5-T Emul. C.

Gilmore, Inc..
042545–00002 2,4,5-T 4LB Amine
042545–00003 2,4,5-T Technical Acid
042545–00005 Chipman 2,4,5-T Acid
042545–00006 Rhodia Low Volatile Brush Killer No. 2
042545–00021 Rhodia 2,4,5-T Low Volatile Ester 4L
042545–00022 Rhodia 2,4,5-T Low Volatile Ester 6L
042545–00023 Rhodia 2,4,5-T Isooctyl Ester (Technical)

Cameron M. Baird:

050415–00037 Brush Killer (Low Volatile Emulsifiable Concentrate) LV 3C/3

N. Intrastate 2,4,5-T Products Labled Exclusively For Non-Suspended Uses: Ineligible For Indemnification or Disposal

Dow Chemical U.S.A..
000464–08119 Mesquite T Herbicide

S & P Branded Fertilizer, Inc..
000557–09482 Swifts Gold Bear Brush Kill 22

O. 2,4,5-T Products Registered Under Section 24(c) and Labeled Exclusively For Non-Suspended Uses: Ineligible For Indemnification or Disposal

TX-780007

V What Is a Loss Caused by Suspension or Cancellation?

A. General Rule

FIFRA section 15 provides that a pesticide owner who is otherwise eligible may be entitled to indemnification if the owner has suffered losses by reason of suspension or cancellation of a pesticide registration. The Agency interprets this provision to mean that a claimant is entitled to be indemnified for losses the claimant suffered when the claimant was prevented from using or selling a pesticide product by Agency action. The 2,4,5–T/silvex suspension orders generally prohibited both the sale and use of products registered for specified uses. Thus, registrants, sellers, and end-users may claim indemnification for losses resulting from compliance with the orders. However, to the extent that the Agency has permitted the sale or use of existing pesticide stocks, either as originally labeled or after relabeling, owners of such stocks may be ineligible for indemnification.

B. Registrants Who Had Opportunity to Relabel Product

It is the Agency's view that registrants who lawfully could have amended their pesticide registrations and relabeled their products for non-suspended uses are in most instances not eligible for indemnification. The Agency permitted registrants of products registered for both suspended and non-suspended uses to delete the suspended uses and to retain active registrations for the non-suspended uses. Registrants, distributors, and retailers of such pesticides may be ineligible for indemnification depending on the particular factual circumstances. Such persons may submit claims for consideration by the Agency.

C. Sale and Distribution of Existing Stocks

The Agency incorporated a provision concerning distribution and sale of existing stocks in the cancellation notice concerning the non-suspended uses of 2,4,5–T and silvex which was published in the **Federal Register** of October 18, 1983 (48 FR 48434). That notice stated that the Agency would permit continued distribution and sale of 2,4,5–T and silvex products labeled for non-suspended end-uses and canceled pursuant to the notice for no more than 1 year from the effective date of such cancellation. Although this 1983 existing stocks provision excluded all products labeled for any end-use subject to the 1979 suspension orders, that provision nevertheless is pertinent here. Products with labeling which originally included both suspended and non-suspended uses, and which were subsequently amended to delete suspended uses, could be distributed and sold pursuant to the 1983 existing stocks provision.

The owner of any quantity of a pesticide product that could have been lawfully distributed and sold pursuant to the existing stocks determination may not obtain indemnification for the cost of that quantity of that pesticide unless and until the owner demonstrates that the product could not reasonably have been distributed and sold for any nonsuspended use pursuant to that determination.

D. Products Owned by End-Users

Because no 2,4,5–T or silvex product may be legally used for any use subject to the 1979 emergency suspension orders, end-users who own stocks of 2,4,5–T or silvex products labeled for suspended uses may be eligible for indemnification. However, end-users who currently own 2,4,5–T or silvex products labeled for non-suspended uses may continue to use those products for such uses. Some end-users may have originally acquired a product for a non-suspended use or could otherwise reasonably use the product for such a use. Accordingly, end-users who own stocks of 2,4,5–T or silvex products labeled for both suspended and non-suspended uses may be ineligible for indemnification depending on the particular factual circumstances. Such persons may submit claims for consideration by the Agency.

E. Prior Indemnity Payment

Some registrants of silvex pesticides entered into settlement agreements with EPA which resulted in the cancellation of their pesticide registrations. These agreements established a procedure for the processing of indemnification claims and for the disposal of affected products. Most of the owners of pesticides covered by these Agreements have obtained indemnification payments as a result of litigation in the U.S. Claims Court, and have had their products disposed of by EPA. Such persons have no rights to further indemnification or disposal. In any event, any remaining claims by owners of pesticides covered by the Agreements who have not already instituted an appropriate action in the U.S. Claims Court are now barred by the statute of limitations.

VI. Who May File a Claim for Indemnification

A claim for indemnification may be filed by: (1) Any person who, on February 28, 1979, owned some quantity of a 2,4,5-T or silvex pesticide product the registration of which was suspended and cancelled; (2) the assignee of the claim of such a person; or (3) the authorized representative of such a person. Unit VII of this Notice tells how to file a claim for indemnification.

Some registrants and suppliers have recalled products from their customers who owned the product at the time of suspension. EPA is interested in consolidating as many claims as possible, and therefore, encourages submission of consolidated claims by such registrants or suppliers (see Unit VIII.C. of this Notice).

A person who is entitled to be indemnified may authorize another person to file a claim on his behalf, to receive payment on his behalf, or both. A power of attorney is a document which appoints someone (the registrant, for exmaple), as the agent of the person who is entitled to be indemnified, and authorizes the agent to submit an indemnification claim and receive payment on the owner's behalf.

A person entitled to claim indemnification may instead assign his/her claim to another person, and thereby transfer his right to indemnification to that other person. The person who assigns his/her claim thereafter has no legal interest in the claim. In either situation, the validity of the claim depends on whether the agent or assignee obtained the right to present it from a person eligible for indemnification under section 15. Although the Federal Anti-Assignment of Claims Act, 31 U.S.C. 3727 ordinarily would bar the assignment of claims against the Government, the Government has determined that it will waive the defense with regard to otherwise valid claims for

indemnification for 2,4,5-T and silvex products under section 15.

VII. Who May Request Federal Disposal

Any person who currently owns any quantity of a 2,4,5-T or silvex pesticide product which is eligible for disposal (see Unit III of this Notice), or any authorized representative of such a person, may request that EPA dispose of the pesticide, whether or not the person claims indemnification for that quantity of the product. Unit VIII of this Notice describes how to request disposal.

VIII. How To File a Claim or Request Disposal

A. Form and Supporting Documentation

EPA Form 8500–21, entitled "Silvex/2,4,5-T Products; Claim for Indemnification and Request for Federal Disposal," must be filled out and submitted to the address listed at the beginning of this Notice in order for any indemnification claim or disposal request to be considered. Copies of the form can be obtained at the same address.

The person submitting the form must submit the required documentation to support the claim or disposal request. The instructions accompanying the form state what kinds of supporting documentation will be accepted for each element of the claim or disposal request.

The person filing the form must find the product for which he/she is claiming indemnification or requesting disposal on the list in Unit III of this Notice, and indicate on the form the category to which the product belongs. If indemnification is being requested for a product registered for both suspended and non-suspended uses, registrants, distributors, or retailers must state why the product was not relabeled for only non-suspended uses and subsequently marketed, and end-users must state why the product was not used for non-suspended uses.

If the person submitting a claim for indemnity was not the owner of the pesticide product on February 28, 1979, the person submitting the claim must submit documentary evidence which establishes that he/she is authorized to file the claim. If the person submitting the claim seeks to have the Government pay him/her on behalf of the owner of the product, an appropriate power of attorney must be submitted. All assignments and power of attorney documents should be notarized.

The form provides a means to request disposal of pesticide stocks, whether or not indemnification is requested. All information requested on the form regarding quantity, unit number and size, and other facts pertinent to disposing of products must be submitted.

B. Business Records Verification

Manufacturers, registrants, distributors, and any other claimants that normally maintain business records may consolidate the information required to support a claim and to verify the contents of the claim by submitting an auditor's report, or a schedule supported by an independent certified accountant's statement verifying the validity of the schedule. Each element of the claim, such as cost per unit of product or quantity of product owned at the time of suspension, must be reviewed and verified by the independent auditor if verification for the complete contents of the claim is being provided through the report or statement. If the independent review is being conducted for only one element of the claim, such as a manufacturer's cost of production per unit of product, supporting documentation must be submitted for all other elements of the claim. EPA reserves the right to request submission of (or to otherwise inspect) the information that formed the basis for the audits or reports, in order to verify the validity of the information submitted.

C. Composite Claim Lists

Registrants or suppliers who have recalled a product from their customers and who are assignees or are acting as legal representatives may submit composite lists for separate elements of the claim form identifying the product, product owner, quantities and units of pesticides, and other pertinent information indicated on the claim form. Documentation of the assignment, power of attorney, or other legal authorization from each former owner of the product listed in such composite list must be submitted. The legal documentation should identify the parties and product involved.

D. Confidential Business Information

As a general matter, businesses may assert claims of business confidentiality covering part or all of the information submitted in or with the Claim Form, in the manner described at 40 CFR 2.203(b). Any such assertions of confidentiality of business information must be supported by documentation of the reasons why disclosure of the information is likely to cause substantial harm to the business' competitive position. The information covered by the assertion will be disclosed by EPA only to the extent, and in accordance with the procedures, set forth in 40 CFR Part 2. If no such assertion and supporting documentation accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the business. See 40 CFR 2.203(a)(2).

EPA has determined that it will not afford confidential treatment to certain information requested on the Claim Form, because it must be disclosed to potential contractors in order to arrange for disposal of the pesticides. Confidentiality claims should not be made for the following information: the type, composition, and quantity of each pesticide product for which disposal is requested, the unit size of containers, and the product's location. If the Agency receives any confidentiality claims for this information, the claim for indemnification and disposal will not be considered and will be returned to the claimant.

E. Signing of Claim Required

The claimant, or his/her authorized representative, must sign the claim form. Signature of the form constitutes agreement to the following:

(1) That all statements made and information provided in the claim are true and correct to the best of the claimant's knowledge, and that the amount of the claim is an accurate statement of the cost of the product;

(2) That the claimant had no knowledge of facts which, in themselves, showed that the pesticide did not meet Federal registration requirements;

(3) That acceptance of any payment from EPA constitutes full satisfaction and final settlement of the claim;

(4) That by submission of the claim, the claimant grants permission to authorized agents of the United States Government to enter premises where records or product are retained to conduct whatever inspections, audits, or examinations are necessary to verify the contents of the claim;

(5) That by submission of the claim, the claimant waives any claim for confidential treatment of the types of information specified in Unit VIII.D. of this notice.

(6) That claimant has received no other payment for the cost of the pesticides for which indemnification is claimed and that should claimant receive such other payment, claimant agrees to promptly reimburse the EPA in such amount up to and including the full amount of the indemnification payment made under this program;

(7) That ownership of and responsibility for pesticide products for which indemnification payments are

made under this program remains with the claimants and/or the holders of the material unless and until the EPA accepts the material for disposal under section 19 of FIFRA;

(8) That neither payment of indemnification under section 15 of FIFRA nor acceptance of pesticides for disposal under section 19 of FIFRA in any way constitutes a finding or warranty by the United States with respect to the proper or safe storage, packaging, handling, transport or disposal of such products by the owners or holders of the products or by agents, employees, or other persons acting in their behalf;

(9) If the claim is filed by an assignee, that the United States may assert against the assignee any defenses, or right of setoff or counterclaim, applicable against the person who assigned the claim.

F Compliance With RCRA Requirements

Information submitted to the Office of Pesticide Programs in connection with an indemnification claim or disposal request may be provided to other Agency offices. Therefore, persons who intend to submit indemnification claims and/or disposal requests for 2,4,5-T or silvex products are advised that any products in their possession which are listed as acute hazardous waste in the regulation concerning dioxin-containing wastes promulgated by EPA under the Resource Conservation and Recovery Act (RCRA), 40 CFR 261.31 (Hazardous Waste F027), 50 FR 1978, January 14, 1985, must be managed in compliance with the management standards in that regulation.

Before materials can be hazardous wastes under RCRA, they must first be solid wastes. Remaining stocks of cancelled pesticide products containing 2,4,5-T or silvex are considered to be solid wastes subject to RCRA if they have been "discarded" or are intended for discard. In this context, "discarded" means either abandoned or used as a fuel or as a component of a fuel. See 40 CFR 261.2(a)(2)(i) and 261.33, 50 FR 637 January 4, 1985. Any 2,4,5-T or silvex product which the owner reasonably and legitimately intends to legally sell or use for a lawful pesticidal purpose is not yet a RCRA solid or hazardous waste. Except for sales to a foreign purchaser in conformity with FIFRA section 17(a), no canceled 2,4,5-T or silvex product may still be lawfully sold or distributed. However, 2,4,5-T and silvex products which are labeled for non-suspended uses and are currently held by the end user may still be used for such non-suspended uses.

Except for 2,4,5-T and silvex products which are "household wastes" as defined in 40 CFR 261.4(b)(1), all canceled 2,4,5-T and silvex products which have been discarded or are intended for discard are not only solid wastes but are also classified as "hazardous wastes" by the RCRA dioxin listing (Hazardous Waste F027). Among other things, the RCRA dioxin listing requires holders of the subject waste to notify EPA or an authorized State and establishes particular requirements concerning storage and disposal of such waste. Such waste must be stored in containers having secondary containment, containers must be kept in sound operating condition, and leaks and spills must be responded to (40 CFR Part 264, Subpart I). Tanks containing these wastes are subject to similar requirements (40 CFR Part 264, Subpart J). Storage of such waste by the generator for more than 90 days requires a permit (40 CFR 262.34). In general, such wastes may only be disposed of, or incinerated, at facilities having RCRA permits; thus, interim status disposal or incineration facilities may not ordinarily accept such waste.

In addition, persons holding any 2,4,5-T or silvex product which is or may become hazardous waste should be aware of additional constraints on land disposal of such wastes which will be effective on November 7 1988 (RCRA section 3004(e), 51 FR 40572, November 7 1986.) After that date, such wastes are prohibited from land disposal unless they meet the applicable treatment standards in 40 CFR 268.41, or are the subject of an approved petition under 40 CFR 268.6, an approved case-by-case extension under 40 CFR 268.5, or a variance from the treatment standard under 40 CFR 268.44. In addition, effective November 7 1988, storage of such wastes for over 1-year must be for the purpose of accumulating sufficient waste as necessary to facilitate treatment, recovery, or disposal of the waste (40 CFR 268.50(c)).

Persons holding stocks of canceled 2,4,5-T or silvex products who desire further information concerning the applicability of RCRA requirements to their products should contact one of the employees listed below:

Gerry Levy, EPA—Region I, John F Kennedy Federal Building, Boston, MA 02203, (617–223–4852).
Ernie Regna, EPA—Region II, Woodbridge Avenue, Edison, NJ 08837 (201–321–6765).
Larry Miller, Curtis Bldg., EPA—Region III, 841 Chestnut Street, Philadelphia, PA 19107 (215–597–8598).
Kirk Lucius, EPA—Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, (404–347–3222 or 3621).
Phyllis Reed, EPA—Region V, Federal Office Building, 230 South Dearborn Street, Chicago, IL 60604, (312–353–2291).
Dr. Norman Dryer, EPA—Region VI, 1201 Elm Street, 1st International Bldg., Dallas, TX 75270, (214–767–5311).
Leo Alderman, EPA—Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913–236–2835).
Al Yorke, EPA—Region VIII, 999 18th St., Suite 1300, Denver, CO 80202, (303–293–1730).
Richard Vaille, EPA—Region IX, 215 Fremont St., San Francisco, CA 94105, (415–974–8138).
Anita Frankel, EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, (206–442–1198).

IX. Where and When Claim Must be Filed

All claims must be submitted to the address listed at the beginning of this Notice, and must be postmarked no later than July 7 1987 All claims postmarked after that date will be denied.

EPA is imposing this time limitation on filing of claims because the information provided through the claims forms will enable the Agency to estimate the funds required for indemnification for and disposal of the products. Until the Agency is able to estimate with some certainty the total cost required for such activity, it will be unable to determine the adequacy of potential sources of funding, seek additional funds as required, and properly evaluate available options for disposal of eligible products.

If a claim is filed within the prescribed time period, but the Agency requests supporting documentation not included with the original claim, an appropriate period will be allowed for submission of the additional information required for consideration of the claim. If the requested information is not submitted within the grace period provided, and a response is not received stating why the information cannot be submitted within that time period, the claim will be denied.

A claim may be amended at any time before final action by EPA. All amendments must be submitted in writing and signed by the claimant or his/her authorized agent or legal representative.

X. How Claims Will be Processed

Upon receipt of a claim, EPA will assign it a claim number and all correspondence regarding the claim will reference that number. All claimants will be notified of receipt of the claim and, if necessary, of any additional information or verification required for consideration of the claim. If a claimant is unable to provide the documentation required for consideration of his/her

claim within the prescribed time period, the claim will be disallowed and will be returned to him.

The Agency plans to conduct random investigations of claims submitted for the purpose of establishing their veracity. In verifying claims, the Agency may seek to enter premises to examine any 2,4,5-T or silvex pesticide products being stored pending disposal; to examine records relevant to the claim, or to conduct whatever other examinations are necessary to audit the claim. EPA may reject claims if investigators are not permitted to enter the claimant's premises or are otherwise impeded in conducting an audit.

EPA determinations regarding eligibility of claims and amount of indemnity payable shall constitute final administrative action.

XI. EPA Disposal of Unused Pesticide Stocks

When discarded, most 2,4,5-T and silvex products eligible for Federal disposal will be classified as hazardous wastes. Any disposal of such waste by EPA (or any other person) must be in conformity with the standards included in the RCRA hazardous waste management regulations for dioxin-containing wastes (40 CFR 261.31, 50 FR 1978, January 14, 1985). At present, there is no legal disposal capacity available for waste which is subject to the listing. Unless such waste is formally delisted through EPA's delisting procedures (see 40 CFR 260.20 and 260.22), it must properly be stored until legal disposal capacity becomes available.

Dated: March 31, 1987

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticide and Toxic Substances.

[FR Doc. 87-7743 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-62007; FRL-3183-6]

Notice of Hearing Concerning Application To Modify the Final Suspension Order for Pesticide Products Containing Dinoseb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Hearing Under Subpart D of 40 CFR Part 164.

SUMMARY: On February 13 and March 23, 1987 the Department of Agriculture of the State of Oregon submitted applications for emergency exemptions under section 18 of the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA) to permit use of pesticide products containing dinoseb on a number of crops including dry peas, lentils, and chickpeas. Under Subpart D of 40 CFR Part 164, these applications constitute a petition to reconsider the Agency's final suspension order of October 7, 1986, concerning dinoseb products. Such a petition may not be granted without a formal adjudicatory hearing. EPA has concluded that the applications from the State of Oregon raise issues that, if substantiated in a hearing, may provide a basis for modification of the Agency's final order suspending use of dinoseb products. This Notice announces that EPA has decided to hold an expedited hearing to reconsider that order as it applies to use of dinoseb on dry peas, lentils, and chickpeas in Oregon, specifies the issues of fact and law to be considered at that hearing, and establishes a schedule for the hearing.

DATE: Requests to participate in the hearing announced by this notice must be received by the Office of the Hearing Clerk at the address given below by April 13, 1987. A pre-hearing conference will be held on the first business day thereafter.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Information supporting the Administrator's decision to hold a hearing will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Section, Management and Program Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Michael McDavit, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1014A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1787).

SUPPLEMENTARY INFORMATION:

I. Legal Authority

A. Standards for Maintaining a Registration

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by the Environmental Protection Agency. FIFRA sections 3(a) and 12(a)(1). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. A pesticide product may be registered or remain registered only if it performs its intended pesticidal function without causing "unreasonable adverse effects on the environment. FIFRA section 3(c)(5). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of [the] pesticide. FIFRA section 2(bb). The burden to demonstrate that a pesticide product satisfies the criteria for registration is on the proponents of initial or continued registration. *Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607 653 n.61 (1980); *Environmental Defense Fund* v. *Environmental Protection Agency*, 510 F.2d 1292, 1297, 1302 (D.C. Cir. 1975).

Under FIFRA section 6, the Agency may issue a notice of intent to cancel the registration of a pesticide product whenever it determines that the product no longer satisfies the statutory criteria for registration. The Agency may specify particular modifications in the terms and conditions of registration, such as deletion of particular uses or revisions of labeling, as an alternative to cancellation. If a hearing is requested by an alternative to cancellation. If a hearing is requested by an adversely affected person, the final order concerning cancellation of the product is not issued until after a formal administrative hearing.

B. Suspension of a Pesticide Product

The suspension provisions in FIFRA section 6(c) give the Administrator authority to take interim action until completion of the time-consuming procedures which may be required to reach a final cancellation decision. Under this section, the Administrator may suspend the registration of a product and prohibit its distribution, sale, or use during cancellation proceedings upon a finding that the pesticide poses an "imminent hazard" to humans or the environment. "Imminent hazard" is defined by FIFRA section 2(*l*) as:

> A situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under Pub. L. 91-135.

As noted above, "unreasonable adverse effects on the environment" means that the risks associated with use of a pesticide outweigh the benefits of its use. Thus, in order to find an "imminent hazard, the Agency must determine that the risks associated with continued registration during the period likely to be necessary to complete a cancellation proceeding appear to outweigh the benefits. The Agency may not suspend the registration of a pesticide unless it has previously issued, or simultaneously issues, a notice of intent to cancel the registration or change the classification of that pesticide.

Suspension is an interim remedy which enables the Agency to abate potential risks in advance of the full analysis of risks and benefits in a cancellation hearing. The function of suspension "is to make a preliminary assessment of evidence, and probabilities, not an ultimate resolution of difficult issues. *Environmental Defense Fund* v. *Environmental Protection Agency*, 465 F.2d 528, 537 (D.C. Cir. 1972). The courts have emphasized that suspension does not require a "crisis." Rather, "it is enough if there is *substantial likelihood* that serious harm will be experienced during the year or two required in any realistic projection of the administrative [cancellation] process. *Environmental Defense Fund* v. *Environmental Protection Agency*, 510 F.2d 1292, 1297 (D.C. Cir. 1975), quoting *Environmental Defense Fund* v. *Environmental Protection Agency*, 465 F.2d 528, 540 (D.C. Cir. 1972).

A notice of intent to suspend (unlike an emergency suspension order) does not take effect immediately. Registrants are notified and afforded 5 days from the date of receipt of the notification to request an expedited hearing on the question of imminent hazard. If no hearing is requested for a product, or a hearing request is submitted but subsequently withdrawn, the suspension of that product becomes final and is not reviewable by any court. If a hearing is requested, the final order concerning suspension of the product is not issued until after the completion of an expedited hearing.

C. Emergency Suspension

If the Administrator determines that (1) a pesticide poses an imminent hazard, and (2) that "an emergency exists that does not permit him to hold a hearing before suspending, FIFRA section 6(c)(3) provides that he may issue an emergency order immediately suspending registration of the pesticide.

The term "emergency" is not defined by FIFRA. The Agency interprets FIFRA section 6(c)(3) to mean that, if the threat of harm to humans or the environment associated with continued sale, distribution, or use of a pesticide is sufficiently serious and immediate that the risks would be likely to outweigh the benefits during the time required for a suspension hearing, the registration of that pesticide may be suspended immediately. Thus, the determination whether an emergency exists is even more preliminary than the determination concerning the question of imminent hazard, and an emergency order is analogous to a temporary restraining order issued by a court while it is determining whether to issue a preliminary injunction. *Dow Chemical Company* v. *Blum*, 469 F.Supp. 892, 901 (E.D. Mich. 1979).

An emergency suspension order may be issued without prior notice to affected registrants and is effective immediately upon issuance. Registrants are notified that an emergency order has been issued and may request an expedited hearing by submitting a valid hearing request within five days from receipt of the notification. If a registrant does not request an expedited hearing concerning a particular product, but does request a hearing concerning cancellation of that product, the emergency order becomes a final suspension order with respect to that product and the suspension of the product remains in effect until the completion of the cancellation proceeding. If an expedited hearing is held concerning any product, the hearing is confined solely to the question of imminent hazard, and the emergency order remains in effect during the pendency of the expedited hearing. When an expedited hearing is held following issuance of an emergency order, only registrants and the Agency may actively participate. However, other adversely affected parties such as users may file briefs. Following the expedited hearing, the Administrator issues a final order which may either retain, modify, or rescind the suspension during subsequent cancellation hearings.

D. Subpart D Proceedings

When the Agency receives an application to permit use of a pesticide in a manner inconsistent with a prior final suspension or cancellation decision, that application constitutes a petition to the Administrator to reconsider the final suspension or cancellation order. Because of the opportunity for notice and a formal adjudicatory hearing which precedes entry of a final suspension or cancellation order concerning a pesticide product, EPA has determined that such an order should not be modified or rescinded without affording interested parties a similar notice and opportunity for hearing concerning such modification or rescission. The procedures governing all applications to modify or reverse a previous final suspension or cancellation order are set forth in Subpart D of 40 CFR Part 164, 40 CFR 164.130 through 164.133.

When all opportunities for hearing and review with respect to an Agency decision to suspend or cancel a pesticide product have either been exercised or waived, and a final suspension or cancellation order has been entered, the Agency is entitled to rely on the finality of the order and the validity of the evidentiary rationale supporting it. Applicants seeking reconsideration of a final order should not be afforded a new adjudicatory hearing concerning the same matters which were considered or could have been considered during a prior hearing. Thus, 40 CFR 164.131(a) provides that the Administrator will grant a hearing to reconsider a prior final suspension or cancellation order when he finds that:

(1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination and (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.

In deciding whether to initiate a hearing, the Administrator does not need to determine that the evidence submitted by the petitioner would in fact justify modification of the prior order. Rather, a decision to initiate a hearing means only that the Administrator has determined that the evidence submitted, if substantiated on the record in the hearing, may "materially affect" the evidentiary rationale upon which the prior order was based. On the other hand, if the evidence submitted, even if substantiated on the record, would be unlikely to provide a basis for modification of the prior order, then a hearing would serve no purpose.

If the Administrator determines that a petitioner has met the criteria for a Subpart D hearing, he then publishes a notice in the **Federal Register** setting forth his determination, the rationale for that determination, a description of the issues of fact and law to be adjudicated in the hearing, and a schedule for the hearing. The purpose of the hearing is to

determine whether: (1) Substantial new evidence exists and (2) such substantial new evidence requires reversal or modification of the existing cancellation or suspension order. For purposes of any decision in the hearing, those portions of the substantive rationale for the existing order concerning which the petitioner did not submit substantial new evidence are assumed to be correct. Thus, the scope of any Subpart D hearing is intrinsically narrower than the proceeding which was held or could have been held concerning the order to be reconsidered.

In a Subpart D hearing, as in a suspension or cancellation hearing, the Administrative Law Judge transmits a recommended decision to the Administrator, who then issues a final decision retaining, modifying, or reversing the existing order.

II. Procedural History

On October 7 1986, I issued a decision and emergency suspension order immediately prohibiting all further sale, distribution, and use of pesticide products containing dinoseb (2-sec-butyl-4,6-dinitrophenol) in the United States. (51 FR 36634, October 14, 1986). My decision to issue that order was based on my determination that applicators and other populations with substantial dinoseb exposure would otherwise be at significant risk for teratogenic and other adverse health effects. The information and analysis upon which that determination was based is set forth in detail in the text of my decision. As required by FIFRA section 6(c)(1), I issued on the same day a notice announcing the Agency's intent to cancel and deny all registrations for pesticide products containing dinoseb.

Four registrants subsequently submitted timely requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazzard during the time required to conduct a cancellation hearing. These four registrants and two others also submitted timely requests for a cancellation hearing. All dinoseb products for which the registrants requested neither a suspension nor a cancellation hearing were subsequently cancelled by operation of law.

The expedited suspension hearing concerning dinoseb products commenced on October 20, 1986. On October 29, 1986, the FIFRA Science Advisory Panel met pursuant to FIFRA section 25(d) to consider the Agency's analysis of the impact of dinoseb use on health and the environment. On October 30, 1986, the four registrants who had requested an expedited hearing on the question of imminent hazard withdrew their hearing requests, resulting in the immediate entry pursuant to the terms of my October 7 decision of a final order suspending the registrations of their dinoseb products during the pendency of the cancellatiion hearing. On November 26, 1986, the Administrative Law Judge closed the docket in the expedited suspension hearing, thereby affirming that no valid requests for a hearing concerning the suspension of dinoseb products were still pending.

After the registrants withdrew their requests for a suspension hearing, the American Dry Pea and Lentil Association (ADPLA) wrote to the Agency seeking a decision which would permit continued use of dinoseb on dry peas, lentils, and chickpeas in the States of Washington and Idaho. On January 20 and January 29, 1987 the Agency received evidentiary submissions from the ADPLA in support of its request that the Agency reconsider the suspension of dinoseb as applied to use on dry peas, lentils, and chickpeas in the States of Washington and Idaho. On February 10, 1987 the Departments of Agriculture of the States of Washington and Idaho submitted applications for emergency exemptions under FIFRA section 18 to permit use of dinoseb products on peas, lentils, and chickpeas. Taken together, these submissions and applications constituted a petition under Subpart D to reconsider the final suspension of dinoseb as it applies to use on dry peas, lentils, and chickpeas in the States of Washington and Idaho.

Based on the information and applications submitted, Assistant Administrator for Pesticides and Toxic Substances John A. Moore recommended to me on February 11, 1987, that I initiate a Subpart D proceeding. After considering the Assistant Administrator's recommendation and the information supporting it, I decided to initiate a Subpart D hearing to reconsider the final suspension of dinoseb as it applies to use on dry peas, lentils, and chickpeas in Washington and Idaho. My decision was issued on February 11 and published in the **Federal Register** on February 18, 1987 (52 FR 4967). The Subpart D hearing commenced shortly thereafter (FIFRA Docket No. 612). On March 20, 1987 Administrative Law Judge J.F Greene submitted a 44-page Recommended Decision to me, which included extensive findings of fact and conclusions of law. On March 25, two of the parties to the Subpart D hearing submitted objections to Judge Greene's Recommended Decision.

Based on the record before me, I decided to modify my October 7, 1986, Suspension Order to allow emergency exemptions to be granted under FIFRA Section 18 to the States of Idaho and Washington for use of dinoseb on dry peas, lentils, and chickpeas during 1987 (Decision and Final Order Modifying Final Suspension of Pesticide Products Which Contain Dinoseb, March 30, 1987.) Emergency exemptions were issued to the States of Idaho and Washington by the EPA's Office of Pesticide Programs on April 1, 1987

By letter of February 13, 1987 the Department of Agriculture of the State of Oregon applied for an emergency exemption for statewide use of dinoseb on, *inter alia*, dry peas and chickpeas. Based upon Judge Greene's Recommended Decision of March 20, the State of Oregon submitted a new application on March 23 for emergency use of dinoseb on dry peas, chickpeas, and lentils in the Oregon counties of Morrow, Umatilla, and Union.

Because any direct communication with me concerning the registrability of dinoseb, except on the record of the pending cancellation hearing, would be an *ex parte* communication prohibited by 5 U.S.C. 557(d), all communications received by the Agency have been directed to appropriate officials in the Office of Pesticides and Toxic Substances. All petitioners and their representatives have been informed that any decision to permit the requested uses of dinoseb would be contrary to the final suspension decision concerning dinoseb products and would require the Agency to hold an adjudicatory hearing under Subpart D. In order to comply with the separation of functions requirements set forth in 5 U.S.C. 554(d), all recommendations from Assistant Administrator Moore and the information and record underlying those recommendations have been filed in the cancellation hearing record and served on each party to that proceeding at the same time they were transmitted to me for decision.

III. Analysis of the Oregon Petition

The application submitted on February 13, 1987 by the Department of Agriculture of the State of Oregon under FIFRA Section 18, as modified by the application submitted by the State on March 23, 1987 constitutes a petition under Subpart D of 40 CFR Part 164 to reconsider the final suspension order concerning dinoseb products. The Oregon applications make specific reference to the earlier submissions made by the ADPLA, the applications submitted by the States of Idaho and Washington under FIFRA Section 18, and the Recommended Decision issued

by Judge Greene in FIFRA Docket No. 612 on March 20, 1987. It is on the basis of that Recommended Decision, and the Decision and Final Order which followed, that the State of Oregon requests virtually identical relief to that granted to the States of Idaho and Washington with respect to dry peas, lentils, and chickpeas.

Oregon has not submitted any new information which would affect the validity of the Agency's analysis of the toxicity of dinoseb or the methodology used by the Agency to estimate exposure to dinoseb. Oregon did submit information concerning use practices for dry peas, lentils, and chickpeas which is virtually identical to that previously submitted by ADPLA. As such, although such information on prior dinoseb use practices and the practicality of additional use restrictions was helpful in making my earlier decision to modify the suspension order and was considered at length in the ADPLA hearing, the information on risk issues submitted by Oregon does not itself constitute substantial new evidence of the sort required to initiate a Subpart D proceeding.

The Oregon submissions include information on the benefits of dinoseb use on dry peas, lentils, and chickpeas which was not available to or considered by the Agency prior to entry of a final suspension order. The benefits claimed by Orgeon for these uses are generally much greater than indicated by the information available to the Agency at that time. The State provides crop loss estimates from university researchers ranging from 25–30% in dry peas, 50% in chickpeas, and 35–40% in lentils. Based on 5-year average yields, the State provides dollar loss estimates for 1987 of $1.92 million for dry pea producers, $127,680 for chickpea producers, and $7,920 for lentil growers. While the total economic losses sustained by all dry pea, lentil, and chickpea growers as a result of the unavailability of dinoseb may not be as great as for some major crops, the impact on individual growers could be unusually severe, as noted in my decision to initiate a hearing in response to the ADPLA petition.

Oregon makes claims with respect to the unavailability of effective chemical or mechanical alternatives to the use of dinoseb which are virtually identical to those made by the ADPLA submission. A maximum of 12,000 acres of dry peas, 1500 acres of chickpeas, and 100 acres of lentils would be treated with dinoseb under the emergency exemption as proposed.

Although the State has not fully substantiated some of its key assertions, the information on the benefits of dinoseb use for dry pea, lentil, and chickpea growers in Oregon appears to be substantial new evidence not available to the Agency at the time of the final suspension decision. Due to the similarity of the ADPLA and Oregon petitions, the basis for my conclusion regarding the Oregon petition is more fully set forth in the **Federal Register** notice of February 18, 1987 (52 FR 4967), which is incorporated herein by reference.

Subpart D—Determination

Under 40 CFR 164.131(a), the Administrator is to provide a hearing to reconsider a prior final suspension decision only if he determines that certain criteria have been met. Having concluded that the State of Oregon has presented substantial new evidence concerning the use of dinoseb on dry peas, lentils, and chickpeas which was not available to the Agency when the final suspension order went into effect, I must now determine whether that evidence "may materially affect" that order. I have concluded that, if the evidentiary record in a hearing were to substantiate Oregon's assertions concerning the short-term benefits of dinoseb use on dry peas, lentils, and chickpeas and the practicality of additional use restrictions, I might consider modifying the suspension decision to permit use on these crops while the cancellation hearing is pending. Thus, the first criterion in 40 CFR 164.131(a) has been met.

On the face of Oregon's petition, it is questionable whether the second criterion in 40 CFR 164.131(a), that the parties in the suspension proceeding could not have discovered the new evidence "through the exercise of due diligence," has been met. Arguably, Oregon could have provided the evidence in question to the parties in the suspension hearing, or the parties could have otherwise discovered it, prior to the entry of the final suspension order. However, given the particular circumstances at hand, including the fact that the State of Oregon had no right to actively participate in the expedited suspension hearing and the short period of time in which the information in question could have been presented to the parties prior to the withdrawal of the registrants from the hearing, I have concluded that the "due diligence" requirement is not apposite to these circumstances.

Based on the above analysis, I have decided to hold a hearing under Subpart D to reconsider the final suspension order for pesticide products containing dinoseb as it applies to use on dry peas, lentils, and chickpeas in the State of Oregon.

IV Hearing Procedures

A. Issues To Be Adjudicated

Pursuant to 40 CFR 164.131(c), I am specifying those issues of fact and law to be adjudicated in the hearing convened pursuant to this Notice. Because the purpose of such a hearing is only to reconsider certain aspects of my prior suspension decision, because the Agency has just concluded a Subpart D hearing concerning the use of dinoseb on the same crops and in the same geographic region as presented by the Oregon petition, because no useful purpose would be served and considerable resources of all parties would be wasted by reexamining at this time the issues of fact and law which have already been adjudicated in the previous Subpart D hearing, and because a prompt conclusion to the hearing is a requisite of meaningful relief for the petitioner, the evidentiary presentation in the hearing shall be strictly confined to the issues of fact and law which I have determined are presented by the Oregon submission.

The issue of fact to be adjudicated in the extent to which the use of dinoseb on dry peas, lentils, and chickpeas in the Oregon counties of Morrow, Umatilla, and Union presents factors significantly at variance from those considered in FIFRA Docket No. 612.

The issue of law to be adjudicated is whether the factors found to be at variance from those considered in FIFRA Docket No. 612 justify any different result from that set forth in the Decision and Final Order issued by the Administrator on March 30, 1987 in FIFRA Docket No. 612.

The sole objective of this hearing is to determine whether or not the order suspending all sale, distribution, and use of pesticide products containing dinoseb should be modified to permit use, and sale and distribution for use, on dry peas, lentils, and chickpeas in the Oregon counties of Morrow, Umatilla, and Union, while the cancellation hearing is pending. The ultimate registrability of dinoseb products for these uses and in these locations will be determined exclusively in the cancellation hearing.

B. Burden of Proof

As provided by 40 CFR 164.132, the burden of proof in this proceeding shall be on the proponent(s) of modification of the final suspension order and the petitioner shall proceed first. As in all formal adjudications, all testimony must

be presented and documents sponsored by a witness competent to be cross-examined on the material. It is the petitioner rather than the Agency who must make an evidentiary record substantiating the assertions in the Oregon submission. Of course, Agency counsel may also present testimony concerning the issues of fact and law to be adjudicated.

C. Hearing Requests

The petitioner and the Agency shall automatically be parties in the hearing. Any other person or party who seeks to participate in the hearing must submit a written hearing request describing the interest of that person or party in the proceeding and the nature and purpose of the participation sought. All requests for a hearing must be received by the Office of the Hearing Clerk within 5 calendar days from the date of publication of this Notice in the **Federal Register**. Any request received after that time will be denied. Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

D. Scheduling

As required by 40 CFR 164.131(c), I am specifying a schedule for this hearing. Any relief which the Agency may determine that the petitioner should receive would only be meaningful if my final decision is entered so as to permit use during the 1987 spring planting season. In recognition of the need for a prompt decision and of the narrow scope of the proceeding, I am establishing the following expedited schedule.

The Chief Administrative Law Judge shall appoint an Administrative Law Judge to preside at this proceeding within 5 calendar days from the date of publication of this Notice in the **Federal Register**. The hearing shall commence on the first business day thereafter, at which time the presiding Administrative Law Judge shall determine whether the parties are prepared to stipulate to proposed findings of fact and conclusions of law. The presiding Administrative Law Judge shall transmit recommended findings of fact and conclusions of law and the hearing record to me within 10 calendar days from the date of publication of this Notice in the **Federal Register**. The parties shall submit any objections to the recommended findings of fact and conclusions of law to me within 3 calendar days after issuance, and I will enter a final order as soon thereafter as possible.

I recognize that the Subpart D hearing initiated pursuant to this Notice could result in delays in, or divert resources from, the pending dinoseb cancellation hearing, *In re: Cedar Chemical Company, et al.*, FIFRA Docket Nos. 590, *et al.* Accordingly, I hereby authorize the Administrative Law Judge in that proceeding, in the exercise of her discretion, to extend the deadline for transmission of a recommended decision to me by up to 30 days from that previously authorized (52 FR 4967).

E. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in this proceeding: the Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

Dated: April 3, 1987

Lee M. Thomas,

Administrator.

[FR Doc. 87-7831 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180724; FRL-3179-9]

Emergency Exemptions; Control of Various Pests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the three States and one public health exemption to the Wyoming Department of Agriculture. Also listed are three crisis exemptions initiated by the Arizona Commission of Agriculture and Horticulture, California Department of Food and Agriculture, and the Florida Department of Agriculture and Consumer Services. The exemptions, issued during the month of January, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, public health exemption, and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name of the contact person. The following information applies to all contact persons. By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of metalaxyl on blackberries, boysenberries, evergreen thornless berries, and youngberries to control downy mildew; January 28, 1987 to April 30, 1987 (Jack F. Housenger)

2. Florida Department of Agriculture and Consumer Services for the use of benomyl on potatoes to control white mold; January 14, 1987 to April 30, 1987 (Jim Tompkins)

3. Michigan Department of Agriculture for the use of fluazifop-p-butyl on dry bulb onions to control grassy weeds; January 20, 1987 to September 15, 1987 (Libby Pemberton)

EPA has granted a public health exemption to the Wyoming Department of Agriculture for the use of strychnine in eggs to control rabid skunks throughout Wyoming; January 21, 1987 to January 21, 1988. A notice of receipt and solicitation of public comment was published in the **Federal Register** of December 5, 1986 (51 FR 43970); no comments were received.

The Agency, in its decision to grant the exemption, concluded that the incidence of rabies in various counties constituted an emergency to the public health and that the use of strychnine would reduce local populations of skunks. (Jack E. Housenger)

Crisis exemptions were initiated by the:

1. Arizona Commission of Agriculture and Horticulture on January 8, 1987, for the use of linuron on asparagus to control annual weeds. This program has ended. (Jack E. Housenger)

2. California Department of Food and Agriculture on September 19, 1986, for the use of malathion on persimmons to control oriental fruit fly. Since it was anticipated that this program would be needed for more than 15 days, California requested a quarantine exemption to continue it. The need for this program is expected to last until December 11, 1990. (Jim Tompkins)

3. Florida Department of Agriculture and Consumer Services on January 30, 1987 for the use of mancozeb on mangoes to control anthracnose. Since it was anticipated that this program would be needed for more than 15 days, Florida requested a specific exemption to continue it. The need for this program is expected to last until January 30, 1988. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: March 23, 1987

Edwin F. Tinsworth,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-7266 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59811, FRL-3182-8]

Certain Chemicals Premanufacture Notice

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 seven such PMN's and provides a summary of each.

DATES: Close of Review Period:

Y 87-128 and 87-129—April 9, 1987

Y 87-130, 87-131 and 87-134—April 13, 1987

Y 87-132 and 87-133—April 14, 1987

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. 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 exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-128

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) This is a polyurethane to be used in the plastic industry. Prod. range, Confidential.

Y 87-129

Manufacturer. Polychrome Chemical Corporation.

Chemical. (S) Polymer of vegetable oil fatty acid 1, 2-benzenedicarboxylic acid, benzoic acid, 2,2-dimethyl-1, 3-propanediol and 2-ethyl-2-(hydroxymethyl)-1, 3-Propanediol.

Use/Production. (S) Industrial resin for high solid baking paint enamels. Prod. range, 110,000 to 220,000 kg/yr.

Y 87-130

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (S) Industrial protective coating. Prod. range, 3,600 to 11,000 kg/yr.

Y 87-131

Manufacturer. Confidential.

Chemical. (G) Short oil alkyd.

Use/Production. (G) Resin for coatings. Prod. range, Confidential.

Y 87-132

Manufacturer. Confidential.

Chemical. (G) Saturated polyester resin.

Use/Production. (G) Manufacture of pigmented printing ink. Prod. range, Confidential.

Y 87-133

Manufacturer. Confidential.

Chemical. (G) Water reducible alkyd resin.

Use/Production. (S) Air-dry water reducible varnishes, stains and enamels. Prod. range, Confidential.

Y 87-134

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial and commercial coatings. Prod. range, Confidential.

Dated: March 30, 1987

Linda K. Smith,

Acting Division Director, Information Management Division.

[FR Doc. 87-7744 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51669; FRL-3182-7]

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 the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-eight such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-846 and 87-847—June 17, 1987

P 87-848, 87-849, 87-850, 87-851, 87-852, 87-853, 87-854, 87-855 and 87-856—June 20, 1987

P 87-857, 87-858, 87-859, 87-860, 87-861, 87-862, 87-863, 87-864, 87-865, 87-866, 87-867 87-868, 87-870, 87-876, 87-877 87-878, 87-879, 87-880, 87-881, 87-882, 87-883, 87-884 and 87-885—June 21, 1987

P 87-872 and 87-873—June 22, 1987

P 87-874 and 87-875—June 23, 1987

Written comments by:

P 87-846 and 87-847—May 18, 1987

P 87-848, 87-849, 87-850, 87-851, 87-852, 87-853, 87-854, 87-855 and 87-856—May 21, 1987

P 87-857 87-858, 87-859, 87-860, 87-861, 87-862, 87-863, 87-864, 87-865, 87-866, 87-867 87-868, 87-870, 87-876, 87-877 87-878, 87-879, 87-880, 87-881, 87-882, 87-883, 87-884 and 87-885—May 22, 1987

P 87-872 and 87-873, P 87-874 and 87-875—May 23, 1987

ADDRESS: Written comments, identified by the document control number "[OPTS-51669]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. 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 NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-846

Manufacturer. Arsynco, Incorporated.
Chemical. (G) Polyol polyacetate.
Use/Production. (G) Intermediate to produce polyols, destructive use. Prod. range: Confidential.

P 87-847

Manufacturer. Arsynco, Incorporated.
Chemical. (G) Polyol polyacetate.
Use/Production. (S) Chemical intermediate for manufacture of herbicides. Prod. range: Confidential.

P 87-848

Manufacturer. Confidential.
Chemical. (G) Substituted thioxotetrazole salt.
Use/Production. (G) Chemical. intermediate. Prod. range. 2,200 to 4,500 kg/yr.

P 87-849

Manufacturer. PMC Specialties Group.
Chemical. (G) Ultra-Cure ™ 200.
Use/Production. (S) Ultra-Violet curing of inks. Prod. range. Confidential.

P 87-850

Manufacturer. Mazer Chemicals, Incorporated.
Chemical. (G) Substituted melamine resin.
Use/Production. (G) Chemical intermediate. Prod. range. Confidential.

P 87-851

Manufacturer. Mazer Chemicals, Incorporated.
Chemical. (G) Substituted Melamine resin.
Use/Production. (G) Blend component. Prod. range. Confidential.

P 87-852

Manufacturer. Maxer Chemicals, Incorporated.
Chemical. (G) Substituted Melamine resin.
Use/Production. (G) Blend component. Prod. range. Confidential.

P 87-853

Manufacturer. Confidential.
Chemical. (G) Condensation of formaldehyde with sulfonated alkylphenol salt and substituted aryl substituted phenol.
Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

P 87-854

Manufacturer. Confidential.
Chemical. (G) Alkyl substitute 3,3-bis (phenyl) isobenzofuranone.
Use/Production. (G) Minor color-forming component in paper coatings. Prod. range. Confidential.

P 87-855

Manufacturer. Confidential.
Chemical. (G) Phenylmethyl substituted bis (phenyl isobenzofuranone.
Use/Production. (G) Minor color-forming component in paper coatings. Prod. range. Confidential.

P 87-856

Manufacturer. Rohm and Haas Company.
Chemical. (G) Modified polymethacrylate polymer.
Use/Production. (G) Polymeric dispersant. Prod. range. Confidential.

P 87-857

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amide substitute imidazolidines.
Use/Production. (G) Corrosion inhibitor. Prod. range. Confidential.

P 87-858

Manufacturer. Westvaco Corporation.
Chemical. (G) Rosin polymer with substituted phenols, formaldehyde and pentaerythritol.
Use/Production. (S) Industrial and commercial resin for lithographic ink. Prod. range. Confidential.

P 87-859

Importer. Confidential.
Chemical. (G) Isoindoline derivative.
Use/Import. (G) Colorant. Import range. Confidential.

P 87-860

Manufacturer. Rohm and Haas Company.
Chemical. (G) Modified polyacrylate polymer.
Use/Production. (G) Polymeric dispersant. Prod. range. Confidential.

P 87-861

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester polyurethane.
Use/Production. (S) Industrial and commercial general purpose coating and modifier for coatings and inks. Prod. range. Confidential.

P 87-862

Manufacturer. The Dow Chemical Company.
Chemical. (S) 1,1-methylenebis (4-isocyanatobenzene) trimellitic anhydride, isophthalic acid.
Use/Production. (S) Industrial molding resin for electronic applications and film for electronic applications. Prod. range. Confidential.

P 87-863

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine Substituted imidazolidines.
Use/Production. (G) Industrial intemediate for oil field chemicals. Prod. range. Confidential.

P 87-864

Importer. Confidential.
Chemical. (G) Fluorinated copolymer.
Use/Import. (G) Water and oil repellent. Import range. Confidential.
Toxicity Data. Acute oral. 5 ml/kg; Acute dermal, 0.5 ml/kg; Irritation. Skin-Non-irritant, Eye-Non-irritant.

P 87-865

Manufacturer. Confidential.
Chemical. (G) Polymeric sulfonate polymer.
Use/Production. (G) Oil well additive. Prod. range. Confidential.

P 87-866

Manufacturer. CIBA-CEIGY Corporation.
Chemical. (G) Tall oil fatty acid polyamide.
Use/Production. (S) Industrial hardener for high solids marine paints and industrial maintenance paints hardener for product finishing and civil engineering applications. Prod. range. Confidential.
Toxicity Data. Acute oral, 2,00 mg/kg; Acute dermal, 2,000 mg/kg; Irritation Skin-Slight.

P 87-867

Importer. Confidential.
Chemical. (G) Polyhydric phenol, polydiazo naphthoquinone sulfonate.
Use/Import. (G) Coating component. Import range. Confidential.

P 87-868

Manufacturer. Mazer Chemicals.
Chemical. (G) Alkyl silicone fluid.
Use/Production. (G) Surface treatment agent. Prod. range: Confidential.

P 87-870

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Resin is converted to paint. Prod. range: Confidential.

P 87-872

Manufacturer. Confidential.
Chemical. (G) Aliphatic alicyclic polyester.
Use/Production. (G) Industrial coating with a dispersive use. Prod. range: 9,000 to 45,000 kg/yr.

P 87-873

Manufacturer. Confidential.
Chemical. (G) Aromatic polyester polyurethane.
Use/Production. (S) Industrial, commerical and consumer laminating adhesive for vinyl films. Prod. range: Confidential.

P 87-874

Manufacturer. Confidential.
Chemical. (G) Substituted polyaminoamide.
Use/Production. (G) Additive in specialty formulation with open use. Prod. range: 500 to 2,000 kg/yr.

P 87-875

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Resin for coatings and inks and a modifier for coatings. Prod. range: Confidential.

P 87-876

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Industrial intermediate for oil field chemicals. Prod. range: Confidential.

P 87-877

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Industrial intermediate for oil field chemicals. Prod. range: Confidential.

P 87-878

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

P 87-879

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

P 87-880

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

P 87-881

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

P 87-882

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

P 87-883

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

P 87-884

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

P 87-885

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine substituted imidazolidines.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

Dated: March 30, 1987

Linda K. Smith,

Acting Division Director, Information Management Division.

[FR Doc. 87-7745 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-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, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002491-004.
Title: Long Beach Terminal Agreement.
Parties:
City of Long Beach
International Transportation Service, Inc.

Synopsis: The proposed amendment would revise the description of the assigned premises by deleting an area previously contained within Parcel 2 and by adding a new Parcel 5 and by adjusting the agreed compensation accordingly.

Agreement No.: 224-003829-002.
Title: New Orleans Terminal Agreement.
Parties:
Boad of Commissioners of the Port of New Orleans
Baton Rouge Marine Contractors, Inc.

Synopsis: The proposed amendment would change the rental basis on which the parties have been functioning.

Dated: April 3, 1987

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-7757 Filed 4-7-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Merchants National Corp., Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company

Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 17 1987

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1: *Merchants National Corporation*, Indianapolis, Indiana; to acquire 100 percent of a series of convertible nonvoting preferred shares of Indiana United Bancorp, Greensburg, Indiana, and thereby indirectly acquire Union Bank and Trust Co. of Greensburg, Greensburg, Indiana, and Peoples Bancshares Corp., Portland, Indiana; and thereby indirectly acquire Peoples Bank, Portland, Indiana.

Board of Governors of the Federal Reserve System, April 6, 1987

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7976 Filed 4-7-87 10:31 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Proposed Revisions to Government Auditing Standards

AGENCY: General Accounting Office.

ACTION: Public hearings.

SUMMARY: The United States General Accounting Office (GAO) has scheduled public hearings to obtain information from interested individuals and organizations on the proposed revisions to the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* contained in the exposure draft which the GAO made available to the public for comment on March 16, 1987. The hearings will be conducted by GAO's Accounting and Financial Management Division and members of the Auditing Standards Advisory Council appointed by the Comptroller General of the United States. The GAO encourages the participation of interested parties at the following public hearings:

June 3, 1987
Sheraton Washington, Washington, D.C.
June 9, 1987
The Pointe at Squaw Peak, Phoenix, Arizona
June 23, 1987
Loews Anatole Hotel, Dallas, Texas
July 2, 1987
The Fairmont Hotel, New Orleans, Louisiana.

Testimony Requirements

Individuals or organizations that want to testify at the public hearings should notify the GAO in writing and provide a brief summary not to exceed five pages of the testimony to be given by the dates specified below:

Hearing dates and locations	Due date for written notice of intent to testify	Due date for summary of testimony to be given
June 3, 1987, Washington, DC.	Apr. 24, 1987.....	May 19, 1987.
June 9, 1987, Phoenix, AZ.	May 1, 1987.....	May 25, 1987.
June 23, 1987, Dallas, TX.	May 14, 1987.....	June 8, 1987.
July 2, 1987, New Orleans, LA.	May 22, 1987.....	June 17, 1987.

Parties testifying at the hearings should submit their written statement at the time of their testimony. Both oral and written statements will be included in the record of the GAO's deliberations.

GAO will notify each individual or organization of the scheduled time of their testimony. The time allotted each individual or organization will be limited to approximately 10 minutes to summarize or elaborate on their detailed written statement. Sufficient time will also be given to respond to questions from those conducting the hearing. The GAO will hold a second day of hearings if needed, and will schedule parties for that date to accommodate the number of people testifying. The hearings will be open to the public, and interested parties are welcome to attend.

ADDRESS: Interested parties should send their notification of intent to testify and summary of testimony to be given to: W.A. Broadus, Jr., Accounting and Financial Management Division, U.S. General Accounting Office, 441 G Street NW Room 6106, Washington, DC 20548. Telephone inquiries: (202) 275-9425.

Dated: April 3, 1987

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 87-7717 Filed 4-7-87; 8:45 am]

BILLING CODE 1610-01-M

Proposed Revisions to Government Auditing Standards

AGENCY: General Accounting Office.

ACTION: Request for comments on proposed revised standards contained in exposure draft.

SUMMARY: The General Accounting Office (GAO) is soliciting comments on an exposure draft containing proposed revisions to the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, also known as the "yellow book" or "generally accepted government auditing standards." The proposed revised standards expand and clarify explanations of standards in response to questions and recommendations GAO has received from users of the standards, expand and clarify the responsibilities of the auditor relative to certain standards, and add requirements for quality control. The GAO developed the exposure draft as part of its continuing effort to obtain public input into the revised government auditing standards the Comptroller General of the United States should issue. By this notice, the GAO invites interested parties to participate in this process by commenting on the proposed revisions presented in the exposure draft.

DATES: Written comments must be received on or before June 30, 1987

ADDRESS: Comments should be sent to: W.A. Broadus, Jr., Accounting and Financial Management Division, U.S. General Accounting Office, 441 G Street NW., Room 6106, Washington, DC 20548.

To Receive the Exposure Draft and for Further Information Contact: W.A. Broadus, Jr., Group Director, (202) 275-9425.

Background Information: In 1972 the GAO issued *Standards for Audit of Governmental Organizations, Programs, Activities & Functions*. The standards as issued in 1972 and subsequently revised in 1981 have proved to be sound and durable and have been generally accepted by all levels of government as well as by the accounting profession. The standards have also been adopted and/or modified for adoption by several nations.

The Inspector General Act requires that the federal inspectors general comply with audit standards established by the Comptroller General for audits of

federal establishments, organizations, programs, activities, and functions. The act further states that the inspectors general should take appropriate steps to ensure than any work relating to federal organizations, programs, activities, and functions performed by nonfederal auditors complies with these standards. The Office of Management and Budget (OMB) included these standards as basic audit criteria for federal executive departments and agencies in OMB Circular A-73.

Further, the Single Audit Act of 1984 requires that audits of state and local governments receiving federal financial assistance be conducted in accordance with the standards.

The audit standards are also recommended for other audits of state and local government organizations, programs, activities, and functions performed by state or local government auditors or by public accountants.

Auditors performing governmental audits under certain agreements or contracts also may be required to comply wit the audit standards under the terms of the agreement or contract.

As part of the GAO project to revise the standards, the Comptroller General appointed an Auditing Standards Advisory Council to provide advice on the drafting of the proposed revisions. The council members include representatives from all levels of government, public accounting, and academia.

The GAO prepared the exposure draft to solicit public comment on the proposed revisions to the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*. The exposure draft contains an introduction, and chapters on the scope of audit work standard, general standards, field work and reporting standards for financial audits, field work and reporting standards for performance audits. The major proposed revisions to the standards:

Incorporate references to the Single Audit Act of 1984.

Include guidance on the procurement of audit services.

Clarify the types of assignments that a government audit organization might perform.

Expand the requirements for continuing professional education and training.

Include a requirement for an internal quality control system and the participation in an external quality control review program.

- Expand on audit risk and materiality in governmental auditing.
- Clarify the auditor's responsibility for followup on findings and recommendations.

Clarify the auditor's responsibility for detecting and reporting on fraud, abuse and illegal acts.

Clarify the auditor's responsibility on the study and evaluation of internal controls and reporting thereon.

Clarify the auditor's responsibility when auditing computer-based systems and/or using computer-processed data in an audit.

Include guidance for relying on the results of other's work.

The exposure draft is being mailed directly to audit officials at all levels of government, the public accounting profession, academia, professional organizations, and public interest groups. This notice invites other interested parties to request copies of the exposure draft and submit written comments on the exposure draft.

Dated: April 3, 1987

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 87-7718 Filed 4-7-87; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Fatal Accident Circumstances and Epidemiology (FACE) Worker Control and Job Stress; Open Meeting

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Fatal Accident Circumstances and Epidemiology (FACE)

Date: April 29-30, 1987

Time: 9 a.m. to 5 p.m., each day.

Place: Room 138, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Purpose: The purpose of this meeting is to discuss the research protocol for the Fatal Accident Circumstances and Epidemiology project.

Additional information may be obtained from: Peter M. Bochnak, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4010; Commercial: 304/291-4010.

Worker Control and Job Stress (Analysis of Controllability in Job Stress)

Date: May 18, 1987

Time: 7:45 a.m.—4:30 p.m.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: The purpose of this meeting is to conduct a critical scientific appraisal of the role of job control in the mitigation of job stress and related occupational health problems.

Additional information may be obtained from: Steven L. Sauter, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8293; Commercial: 513/533-8293.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: April 2, 1987

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-7689 Filed 4-7-87; 8:45 am]

BILLING CODE 4160-19-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Sections SP.00, SP.10 and SP.20 of the SSA statement, describe the mission, organization and functions of SSA's Office of Central Operations (OCO). Notice is given that Sections SP.10 and SP.20 are amended to reflect the deletion of the Office of SSA Program Service Centers (OPSC) (SPR) and the realignment of the Office of Operations Analysis and Support (OOAS) (SPN). This realignment consolidates the existing staff structure of OOAS and adds some functions previously performed within OPSC. The OCO material is amended as follows:

Section SP.10 *The Office of Central Operations—(Organization):*

D. The Office of Operations Analysis and Support (SPN). Delete:

1. The Financial Management Staff (SPN1).

2. The Management Analysis and Services Staff (SPN2).

3. The Operations Planning Staff (SPN3).

4. The Operations Analysis Staff (SPN4).

5. The Micrographics and Special Equipment Staff (SPN5).

F The Office of Program Service Centers (SPR) in its entirety.

Add: F The SSA International Program Service Center ( ) (located at SSA Headquarters).

G. The SSA Program Service Centers ( ) (located at six SSA field locations geographically dispersed throughout the United States.)

Subsection G. *The Office of Disability Operations* (SPT) should be relabeled as H.

Section SP.20 *The Office of Central Operations—(Functions):*

Delete: D. The Office of Operations Analysis and Support (SPN) in its entirety.

F The Office of SSA Program Service Centers (SPR) in its entirety.

1. The Immediate Office of the Director (SPR) in its entirety.

Add: D. The Office of Operations Analysis and Support (SPN):

The Office of Operations Analysis and Support (OOAS) directs operational analysis and internal administrative activities in support of OCO. It designs and conducts studies to measure the effectiveness and efficiency of overall OCO processes and interactions. The Office directs and coordinates the implementation of process changes together with other OCO components and identifies and directs the timely resolution of major problems and issues. It establishes management objectives and monitors progress to assure their timely implementation. The office prepares responses to Congressional and sensitive correspondence requiring the Associate Commissioner's personal attention. The Office is assigned the following functions:

Directing the financial management activities of OCO, consistent with overall SSA and Office of Management and Budget policy, including budget development, analysis, planning, coordination and execution. Directing the analysis of OCO needs for management resources in such areas as manpower, training and office space.

Directing the development of long- and short-range objectives and goals.

Directing the analysis of the impact on OCO Of proposed policies and procedures and the analysis of ongoing operations throughout OCO.

Directing the analysis of systems development issues, office automation implementation and technology related issues throughout OCO.

Subsection F.2. *The SSA International Program Service Center* ( ) should be relabeled as F.

Subsection F.3. *SSA Program Service Centers* ( ) should be relabeled as G.

Subsection G. *The Office of Disability Operations* SPT) should be relabeled as H.

Dated: March 24, 1987

Nelson J. Sabatini,

Deputy Commissioner for Management and Assessment.

[FR Doc. 87-7734 Filed 4-7-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-942-06-4520-12]

March 31, 1987

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., March 31, 1987

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 11 N., R. 73 W Sixth Principal Meridian, Colorado, Group No. 816, was accepted March 18, 1987

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the First Standard Parallel South (south boundary, T. 5 S., R. 89 W.) and subdivisional lines, and the survey of the subdivision of section 2, T. 6 S., R. 90 W Sixth Principal Meridian, Colorado, Group No. 752, was accepted March 10, 1987

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87-4811 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-JB-M

[CA-940-07-4212-24; CA 10153; Cash Certificate No. 456]

Order Providing for Opening of Toiyabe National Forest Lands; California

In a patent correction application processed under the provisions of section 316 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1746), the following described land was reconveyed to the United States:

Mount Diablo Meridian, California

T. 7 N., R. 25 E.,
Sec. 33, Lots 12 and 13.

The area described contains 160 acres in Mono County. (Lots 12 and 13 said Sec. 33 are now described as Lots 20 and 21 said Sec. 33.)

Upon acceptance of title to such lands, they became a part of the Toiyabe National Forest and are subject to all the laws, rules and regulations applicable thereto.

At 10 a.m. on May 11, 1987 the lands shall be open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning the lands should be addressed to the Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431.

Dated: March 31, 1987

Sharon N. Janis,

Chief, Branch of Adjudication and Records.

[FR Doc. 87-7711 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-40-M

[AZ-010-07-4212-12; 4310-32; A-20348a]

Realty Action—Exchange of Federal Lands for State Lands in Mohave and Coconino Counties, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The following described public land has been determined to be suitable for disposal by state exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Selected Public Lands

Gila & Salt River Meridian, Mohave County, Arizona, 80.00 acres
T. 41 N., R. 12 W.,
Sec. 6, S½NE¼.
Gila & Salt River Meridian, Coconino County, Arizona, 1,260.83 acres
T. 41 N., R. 2 W.,
Sec. 9, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 21, Lots 1 & 3, NE¼, NE¼SE¼;
Sec. 27 All.

In exchange for the above described 1,340.83 acres of public land in Mohave and Coconino Counties, the Bureau of Land Management will receive an acreage of equal value from the Arizona State Land Department. These lands are located in Mohave County and listed below:

Offered State Lands

Gila & Salt River Meridian, Mohavo County, Arizona, 4,629.27 acres
T. 34 N., R. 7 W.,
Sec. 32, All.
T. 40 N., R. 15 W.,
Sec. 16, W½NE¼, W½SE¼NE¼, SE¼;

Sec. 32, All.
T. 40 N., R. 16 W.,
Sec. 16, N½;
Sec. 26, E½SE¼.
T. 41 N., R. 7 W.,
Sec. 13, NW¼, N½SW¼, SW¼SW¼.
T. 41 N., R. 13 W.,
Sec. 2, All.
T. 41 N., R. 15 W.,
Sec. 2, All;
Sec. 30, Lots 1, 2, 3 & 4, SW¼SW¼NE¼, W½E½NW¼, SE¼SE¼NW¼, E½SW¼, SW¼NE¼SE¼, W½NW¼SE¼, SE¼NW¼SE¼, SW¼SE¼, W½SE¼SE¼.
T. 41 N., R. 16 W.,
Sec. 2, All.
T. 42 N., R. 16 W.,
Sec. 36, Lots 1, 2 & 3.

The Public land to be conveyed to the State of Arizona will be subject to the following reservations and exceptions:

A. Excepting and Reserving to the United States

rights-of-way thereon for ditches and canals constructed by the authority of the United States: Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

B. Subject to

All valid existing rights of record.

This exchange will be on an equal value basis. A final appraisal will be completed to determine the value of the disposal and acquired lands. On the basis of the appraisal, all or a portion of the lands will be exchanged to provide an equal value exchange.

Publication of this Notice will segregate the subject lands from all appropriations under the public lands laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon issuance of a patent or two years from the date of publication of this Notice in the **Federal Register**, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Shivwits Resource Area Office, 225 North Bluff Street, St., George, UT 84770. Within forty-five (45) days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, Arizona Strip District Office, 196 East Tabernacle, St. George, UT 84770. Any adverse comments will be evaluated by the Arizona State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

G. William Lamb,

Arizona Strip District Manager.

March 30, 1987

[FR Doc. 87-7733 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-07-4212-11; N-45126; N-45126]

Realty Action; Lease/Purchase for Recreation and Public Purposes; Nye County, NV

The following described public land in Amargosa Valley Nye County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 16 S., R. 49 E.
Sec. 16, NW¼NE¼.

This parcel of land contains approximately 40 acres. The County intends to use the land for park purposes. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such desposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Nye County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action, including Cultural Resources Report No. 5-1587 is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: March 20, 1987

Ben F. Collins,

District Manager, Las Vegas, NV

[FR Doc. 87-7723 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-940-87-4220-10; A-22647]

Proposed Withdrawal; Opportunity for Public Meeting

March 31, 1987

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed application for withdrawal of 40 acres of land from location and entry under the United States mining laws to allow the Smithsonian Institution to develop a multi-purpose facility. The area proposed for withdrawal is within the boundaries of the Coronado National Forest.

DATE: Comments and requests for a public meeting should be received by June 30, 1987

ADDRESS: Comments should be sent to Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office; (602) 241-5534.

SUPPLEMENTARY INFORMATION: On March 11, 1987 the Forest Service filed an application to withdraw the following land from location and entry under the mining laws only, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

Coronado National Forest

Gila and Salt River Meridian

T. 20 S., R. 14 E.

Sec. 19, S½N½NE¼SW¼, S½NE¼SW¼, N½N½SE¼SW¼.

The area described aggregates 40 acres in Santa Cruz County, Arizona.

The purpose of the withdrawal is for the use of the land by the Smithsonian Institute to build a base camp including a visitor center, administrative offices and a motor pool on the site. These facilities will serve as the base camp for the Fred Lawrence Whipple Observatory on Mt. Hopkins, as well as meet demands for information-education services and public recreation opportunities.

Effective on the date of publication, this land is segregated from operation of the United States mining laws. The land will remain open to mineral leasing and to Forest Service management.

For a period of 90 days, from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned office of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is offered in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned office within 90 days from the date of publication of this notice. Upon determination by the State Director, Bureau of Land Management, that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in Title 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the operation of the General Mining Laws unless the application is rejected prior to that date. Current administrative jurisdiction over the segregated land will not be affected by the temporary segregation.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-7710 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8140, Block A-101, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on March 30, 1987

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 31, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-7712 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3087 Block 620, Matagorda Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on March 30, 1987

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 31, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-7709 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-406-11]

Ammonium Paratungstate and Tungstic Acid From the People's Republic of China; Correction

Correction

In the Federal Register of Thursday, March 19, 1987 FR Doc. 87-5861, Summary, Line 10, "471.40" is changed to "417.40"

Issued: April 1, 1987

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7792 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-259]

Certain Battery-Powered Smoke Detectors; Decision To Review and Modify Initial Determination Granting a Motion To Amend Complaint To Join a Respondent

AGENCY: International Trade Commission.

ACTION: Review and modification of the ALJ's initial determination granting a motion to amend the complaint to add Mott, Inc. (Mott) as a respondent. On review the Commission determined to amend the notice of investigation as well as the complaint to add Mott as a respondent.

SUMMARY: Notice is hereby given that the Commission has determined to review and modify an initial determination (ID) (Order No. 16) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ALJ granted the motion of complainants BRK/Colorado and Pittway Corp. to add Mott as a respondent and denied complainants' motion to add seven other firms as respondents. The Commission determined to modify the ID to include amending the notice of investigation as well as the complaint to add Mott as a respondent.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1693.

SUPPLEMENTARY INFORMATION: On November 13, 1986, the Commission instituted the above-captioned investigation. On January 30, 1987 complainants BRK/Colorado, Inc. and Pittway Corp. filed a Substitute Motion to Amend Complaint to Add Eight Respondents. The proposed respondents included Mott. The presiding ALJ issued an ID (Order No. 16) on February 26, 1987 granting the motion as to Mott, and denying the motion as to the other proposed respondents.

Mott filed a petition for review of the ID on the grounds that the ALJ had made an error of fact in finding that Mott was the successor to interest to Gateway Scientific, Inc., a respondent already named in the investigation, and an error of law in concluding that Mott would not be prejudiced by being named as a respondent at this stage of the litigation. Mott further argued that the ALJ's conduct constituted an abuse of discretion.

Responses to the petition for review were filed by the complainants and the Commission investigative attorney. No Government agency comments were received.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C 1337) and in §§ 210.53 through 210.56 of the Commission's rules (19 CFR 210.53 through 210.56).

Copies of the ID and all other nonconfidential documents on the record of the investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: March 30, 1987

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7794 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-183]

Certain Indomethacin; Commission Decision Not To Review Initial Determinations Terminating Seven Respondents for Non-Participation in Ancillary Proceeding

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determinations terminating for non-participation respondents GYMA Laboratories of America (GYMA), Industrie Chimiche Farmaceutiche Italiana S.p.A. (ICFI), ACIC Ltd. (ACIC), Henley & Co. (Henley), B.T.B. Industrie Chimical S.p.A. (BTB), Pharma Development Corp. (Pharma), and European Manufacturers Associates, Ltd. (EMA).

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding adminstrative law judge's (ALJ) initial determinations (IDs) terminating respondents GYMA, ICFI, ACIC, Henley, BTB, Pharma, and EMA for non-participation in the above-captioned ancillary proceeding.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

SUPPLEMENTARY INFORMATION: On December 30, 1986, the Commission certified to the ALJ ten respondents' motions and the Commission investigative attorney's (IA) response alleging that complainant Merck & Co., Inc. (Merck) abused Commission process in Inv. No. 337-TA-183. *See* 52 FR 611 (January 7 1987). On February 4, 1987, complainant Merck filed a "Motion for Limiting Participating Parties and Service List" (Motion No. 183-98). Two respondents, Agvar Chemicals (Agvar) and Ellis Pharmaceuticals, Inc. (Ellis), and the IA filed responses opposing Merck's motion in part.

On February 25, 1987 the ALJ issued an Id (Order No. 59) terminating and striking from the service list respondents GYMA, ICFI, ACIC, Henley, Pharma, and EMA for non-participation. On March 2, 1987 the ALJ issued an ID (Order No. 64) striking from the service list and terminating respondent BTB for non-participation. Three respondents, Lederle Laboratories, Ellis, and Agvar, and the IA are still participating in the proceeding.

No petitions for review were filed nor were any comments received from other government agencies.

Copies of the ALJ's IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: March 31, 1987

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7793 Filed 4-7-87 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-243]

Certain Luggage Products; Commission Decision To Affirm Administrative Law Judge's Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Determination of no violation of section 337 of the Tariff Act of 1930.

SUMMARY: The Commission has determined to affirm the initial determination (ID) of the presiding administrative law judge (ALJ) that there is no violation of section 337 in the importation and sale of certain luggage products in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261.

SUPPLEMENTARY INFORMATION: On December 29, 1987 the presiding ALJ issued an initial determination (ID) finding that there is no violation of section 337 in the importation and domestic sale of certain luggage products which were alleged to infringe complainant's common law trademarks in the overall configuration of its luggage products. On February 13, 1987 the Commission determined to review the ALJ's ID on the issue of secondary meaning and on the issues of domestic industry and injury to the extent that such review was required by the Commission's review of the secondary meaning issue. The Commission received briefs on the issues under review and on the issues of remedy, the public interest, and bonding. Submissions were received from complainant Lenox, Inc., respondent Star Leather Products, Ltd., and the Commission investigative attorney. No submissions from the public or government agencies were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.54 through 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.54 through 210.56).

Notice of this investigation was published in the **Federal Register** on March 27 1986. (51 FR 10580).

Copies of the Commission opinion in support of its determination, the nonconfidential version of the ALJ's ID and all other nonconfidential document filed in connection with this investigation will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: March 27, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7745 Filed 4-7-87 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-343 (Final)]

Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Japan

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hearby gives notice of the institution of final antidumping investigation No. 731-TA-343 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of tapered roller bearings and parts thereof provided for in Tariff Schedules of the United States (TSUS) items 680.30 and 680.39; flange, take-up, cartridge, and hanger units incorporating tapered roller bearings, provided for in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, provided for in item 692.32 or elsewhere in the TSUS, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before June 8, 1987 and the Commission will make its final injury determinations by July 22, 1987 (see sections 735(a) and 735(b) of the Act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207 (19 CFR Part 207), Subparts A and C, and Part 201 (19 CFR Part 201), Subparts A through C and Subpart E.

EFFECTIVE DATE: March 23, 1987

FOR FURTHER INFORMATION CONTACT: Maria Papadakis (202-523-0439), Office of Investigations, U.S. International Trade Commission, 701 E Street NW Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). This investigation was requested in a petition filed on August 25, 1986, by the Timken Company, Canton, OH, in which Timken alleged that imports of tapered roller bearings and parts thereof, and certain housings containing tapered rollers from Hungary, Italy, Japan, the People's Republic of China, Romania, and Yugoslavia were being sold in the United States at less than fair value.

In response to that petition, the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 36874). On February 11, 1987 the Commission instituted final antidumping investigations on imports of the subject merchandise from Hungary (Inv. No. 731-TA-341), Italy (Inv. No. 731-TA-342), the People s Republic of China (Inv. No. 731-TA-344), Romania (Inv. No.

731-TA-345), and Yugoslavia (Inv. No. 731-TA-346) (52 FR 5841, Feb. 26, 1987).[1]

Participation in the investigations

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b) of the Commission's rules (19 CFR 201.11(b)), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on April 28, 1987 pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation and investigations 731-TA-341, 342, 344, 345, and 346 (Final) beginning at 9:30 a.m. on May 12, 1987 at the U.S. International Trade Commission Building, 701 E Street NW Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 16, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 21, 1987 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 8, 1987

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 19, 1987 In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 19, 1987

A period for submitting supplemental briefs will be provided for Parties in conjunction with investigation No. 731-TA-343; details concerning the date and nature of the filing of such supplemental briefs will be provided at the Commission's hearing on May 12, 1987

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information. Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: April 2, 1987

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7790 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

[1] The date of Commerce's preliminary determinations for all of the countries subject to investigation, except Japan, was February 6, 1987. However, the Department of Commerce determined that the investigation involving Japan was "extraordinarily complicated" and, accordingly, extended the date for its preliminary less-than-fair-value determination to March 23, 1987.

[Investigations Nos. 731-TA-342 and 346 (Final)]

Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Italy and Yugoslavia

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: March 30, 1987

FOR FURTHER INFORMATION CONTACT: Maria Papadakis (202-523-0439), Office of Investigations, U.S. International Trade Commission, 701 E Street NW Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION: On Feb. 11, 1987 the Commission instituted the subject investigations and established a schedule for their conduct (52 FR 5841, Feb. 26, 1987). Subsequently, the Department of Commerce extended the date for its final determinations in these investigations from April 20, 1987 to June 22, 1987 (52 FR 6361, 6366). The Commission, therefore, is revising its schedule in these investigations to conform with Commerce's new schedule.

The date of the Commission's public hearing on these investigations remains unchanged as scheduled in its notice of institution (52 FR 5841, February 26, 1987). This schedule is as follows: requests to appear at the hearing are to be filed with the Secretary to the Commission not later than the close of business April 16, 1987; the prehearing conference will be held in room 117 of the U.S. International Trade

Commission Building on April 21, 1987 at 9:30 a.m., the public version of the prehearing staff report will be placed on the public record on April 28, 1987; the deadline for filing prehearing briefs is May 8, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building on May 12, 1987 at 9:30 a.m., and the deadline for filing posthearing briefs is the close of business on May 19, 1987.

A period for submitting additional briefs will be provided for parties in conjunction with investigations Nos. 731-TA-342 and 346; the deadline for filing supplemental briefs is July 29, 1987. Such supplemental briefs should be limited to information not available at the time the posthearing brief was submitted, and should be filed in accordance with the Commission's rules.

For further information concerning these investigations see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207 (19 CFR Part 207), Subparts A and C; and Part 201 (19 CFR Part 201), Subparts A through C and Subpart E.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: April 2, 1987

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7791 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-375 (Preliminary)]

Certain Line Pipes and Tubes From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of line pipes and tubes [3] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On February 11, 1987 a petition was filed with the Commission and the Department of Commerce by counsel for Tex-Tube Division of Cyclops Corp., Houston, TX, and Maverick Tube Corp., Chesterfield, MO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of line pipes and tubes from Canada. Accordingly, effective February 11, 1987 the Commission instituted preliminary antidumping investigation No. 731-TA-375 (Preliminary).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 30, 1987. The views of the Commission are contained in USITC Publication 1965 (March 1987), entitled "Certain Line Pipes and Tubes from Canada: Determination of the Commission in Investigation No. 375 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

March 30, 1987

[FR Doc. 87-7789 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-281 (Final)]

Stainless Steel Pipes and Tubes From Sweden

Determinations

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Sweden of seamless stainless steel pipes, tubes, hollow bars, and blanks therefor, all of the foregoing of circular cross section, provided for in items 610.51 and 610.52 of the Tariff Schedules of the United States (TSUS). The Commission further determines [2] that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Sweden of welded stainless steel pipes, tubes, and blanks therefor, all of the foregoing of circular cross section, provided for in TSUS items 610.37 and 610.52, that have been found by the Department of Commerce to be subsidized by the Government of Sweden.

Background

The Commission instituted this investigation effective December 5, 1986, following a preliminary determination by the Department of Commerce that imports of certain stainless steel hollow products from Sweden were being subsidized within the meaning of section 701 of the Act (19 U.S.C. § 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 29, 1986 (51 FR 46946). The hearing was held in Washington, DC, on February 26, 1987 and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 3, 1987. The views of the Commission are contained in USITC Publication 1966 (April 1987), entitled "Stainless Steel Pipes and Tubes from Sweden: Determination of the Commission in Investigation No. 701-TA-281 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation.

Issued: April 3, 1987

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7788 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes determines there is reasonable indication that an industry in the United States is threatened with material injury by reason of imports of line pipes and tubes from Canada that are allegedly sold in the United States at less than fair value.

[3] For purposes of this investigation, the term "line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to API specifications for line pipe, provided for in items 610.3208 and 610.3209 of the *Tariff Schedules of the United States Annotated* (1987) (*TSUSA*).

The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

[2] Commissioners Eckes and Lodwick determine that an industry in the United States is materially injured by reason of imports from Sweden of welded stainless steel pipes and tubes that have been found by the Department of Commerce to be subsidized by the Government of Sweden.

DEPARTMENT OF JUSTICE

U.S. v. Art-Lloyd Metal Products Corp., Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that a proposed Consent Judgment in *United States v. Art-Lloyd Metal Products Corporation,* Civil Action No. CV-84-4862 has been lodged in the United States District Court for the Eastern District of New York on March 17 1987

The proposed Judgment concerns alleged violations of the Clean Air Act ("Act"), 42 U.S.C. 741 *et seq.*, and provisions of the New State Implementation Plan ("SIP"), established pursuant to section 110 of the Act, 42 U.S.C. 7410. The alleged violations occurred during Art-Lloyd's manufacture of metal office furniture in Brooklyn, New York. During the manufacturing process, coatings containing volatile organic compounds ("VOC") were applied in excess of the amounts permitted by the New York SIP Manufacturing operations at the Brooklyn facility have ceased. The proposed Judgment requires the company to comply with the New York SIP if manufacturing operations resume. Stipulated penalties for future violations are also provided. Finally, the proposed Judgment requires Art-Lloyd to pay a $26,500 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Judgment. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Art-Lloyd Metal Products Corporation,* D.J. Ref. No 90-5-2-1-749.

The proposed Judgment may be examined at the Office of the United States Attorney, 225 Cadman Plaza East, Brooklyn, New York 11201, and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the proposed Judgment may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW Washington, DC 20530. A copy of the proposed Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F Henry Habicht II,

Assistant Attorney General Land and Natural Resources Division, Department of Justice, Washington, DC 20530.

[FR Doc. 87-7700 Filed 4-7-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Board and Committees; Meetings and Agenda

The regular Spring meetings of the Board and Committees of the Business Research Advisory Council will be held on April 22 and 23, 1987 All of the meetings will be held in the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 22, 1987

10:00 a.m.—Committee on Price Indexes

Room N3437 A & B

1. Status Reports:
a. Consumer Price Index.
b. Producer Price Index.
c. Export and Import Price Indexes.
d. Service Sector Initiative.
e. Consumer Expenditures.
2. Other business.

1:30 p.m.—Committee on Occupational Safety and Health Statistics

Room S-4215 A & B

1. Recordkeeping.
2. National Academy of Sciences Panel.
3. Congressional hearings.
4. Annual survey—fatalities.
5. Supplemental data systems.
6. Work injury reports.
7 Health studies.
8. Other business.

2:00 p.m.—Committee on Productivity/ Foreign Labor

Room N-3437 A & B

1. Developments in U.S. productivity.
2. New industry multi-factor productivity measures.
3. Cost-function models accounting for growth in U.S. manufacturing.
4. International Productivity Symposium 3—Status Report.
5. Other business.

Thursday, April 23, 1987

10:00 a.m.—Committee on Employment and Unemployment Statistics

Room S-4215 A, B & C

1. Status of dislocated workers' statistics:
a. Review of use of dislocated worker data in report of Secretary's Task Force on Economic Adjustment and Worker Dislocation.
b. Plant closing and mass layoff data system: first annual report.
2. Issues in employer practices and workforce trends:
a. Temporary help industry.
b. Part-time employment.
c. Hours and employment.
3. Discussion of BLS survey of child care in industry.
4. Discussion of cognitive aspects of survey design.
5. Review of BLS policy for release and dissemination of data to businesses.
6. Other business.

2:00 p.m.—BRAC Board

Room S-4215 A, B, & C

1. Chairperson's Opening Remarks.
2. Commissioner's Remarks—Janet L. Norwood.
3. Committee Reports:
a. Price Indexes.
b. Occupational Safety and Health Statistics.
c. Productivity/Foreign Labor.
d. Employment and Unemployment Statistics.
4. Other Business.
5. Chairperson's Closing Remarks.

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523-1347

Signed at Washington, DC this 2nd day of April 1987

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 87-7705 Filed 4-7-87; 8:45 am]

BILLING CODE 4510-24-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-32)]

NASA Advisory Council; 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 (NAC).

DATE AND TIME: May 4, 1987 8:30 a.m. to 5 p.m., and May 5, 1987 8:30 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, George C. Marshall Space Flight Center (MSFC), Building 4200, Room P-110, Marshall Space Flight Center, AL 35812.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8335.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of 25 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities.

This meeting will be closed to the public from 8:30 a.m. to 9:30 a.m. on May 5 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 110 persons including Council members and other participants. Visitors will be requested to sign a visitors' register.

Type of meeting: Open—except for a closed session as noted in the agenda below.

Agenda

May 4, 1987

8:30 a.m.—Introductory Remarks
8:45 a.m.—Space Transportation System Recovery Status
10:15 a.m.—MSFC Future Technology Program
1 p.m.—Status Report on Recent Scientific Events
2 p.m.—Advanced X-Ray Astronomical Facility
3 p.m.—Microgravity Activities
4 p.m.—NAC Committee Reports
5 p.m.—Adjourn

May 5, 1987

8:30 a.m.—Closed Session, Council Membership
9:30 a.m.—NASA Organization
10:30 a.m.—Lyndon B. Johnson Space Center Future Technology Program
1 p.m.—Tours of MSFC Areas of Interest
5 p.m.—Adjourn

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

April 1, 1987

[FR Doc. 87-7715 Filed 4-7-87 8:45 am]

BILLING CODE 7510-01-M

[Notice (87-33)]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); 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, Informal Advisory Subcommittee on Microgravity Science and Applications.

DATE AND TIME: April 22, 1987 8:30 a.m.-5 p.m., April 23, 1987 8:30 a.m.-5 p.m.

ADDRESS: NASA Headquarters, 226B, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EE, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Microgravity Science and Applications will meet to continue its review of NASA's extramural microgravity research and to collect comments on the Interim Report on Extramural Centers. The Committee is chaired by Dr. Simon Ostrach and is composed of 9 members. The meeting will be closed April 22, 8:30 a.m. to 5 p.m. to allow for a discussion on performance evaluations of individuals associated with the extramural research centers. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 15 persons including committee members and other participants).

Meeting: Open—except for a closed session as noted in the agenda below.

AGENDA:

April 22, 1987

8:30 a.m. Discussion on performance evaluations (closed session)
5 p.m. Adjourn

April 23, 1987

8:30 a.m. Prioritize science questions.
10 a.m. Overlay matrix with center emphasis. Discussion to identify open areas.
2 p.m. Plan for Summer Study.
5 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

April 1, 1987.

[FR Doc. 87-7716 Filed 4-7-87 8:45 am]

BILLING CODE 7510-01-M

[Notice (87-34)]

Performance Review Board; Senior Executive Service

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Pub. L. 95-454 (Section 405) requires that appointments of individual members to a Performance Review Board by published in the **Federal Register.**

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals are serving on the Committee and the Board:

Senior Executive Committee

Dale D. Myers, Chairperson
Willis H. Shapley (Acting member)
June Gibbs Brown

Thomas P Murphy, Assistant Chief Administrative Officer, Prince George's County Government, Maryland

Performance Review Board

Willis H. Shapley, (Acting Chairperson)
Ann P. Bradley, Executive Secretary
Dale L. Compton (Term expires February 1988)
Louis B. DeAngelis (Term expires November 1988)
Edward A. Frankle (Indefinite Term)
Thomas E. Utsman (Term expires November 1989)
Paul F Holloway (Term expires November 1989)
John J. Quann (Term expires November 1988)
Robert Rosen (Term expires November 1989)
Franklin D. Martin (Term expires November 1989)
Richard J. Wisniewski (Term expires February 1988)
Charles T. Force (Term expires November 1989)
Thomas N. Tate, Special Assistant to the Chairman, Committee on Science and Technology, House of Representatives (Indefinite Term)

James C. Fletcher,

Administrator.

March 30, 1987.

[FR Doc. 87-7714 Filed 4-7-87; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on March 25, 1987 (52 FR 9559) through March 30, 1987

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 8, 1987 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved:

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: October 17 1986.

Description of amendment request: The following proposed technical specification (TS) changes complete the response to the BG&E application dated October 17 1986 as supplemented January 12, 1987 The proposed TS changes are: (1) Change the definition of the phrase "fuel reload cycle" from 18 months to 24 months for the surveillance interval of TS Surveillance Requirement 4.6.4.1.5 which requires that the containment purge isolation valve seals be replaced at a frequency such that no individual seal remains in service greater than two consecutive fuel reload cycles. (2) Modify TS Surveillance Requirements 4.6.3.1.b and d for verifying containment iodine filter train operability by changing the surveillance interval from at least once per 18 months to at least once per refueling interval where a refueling interval is defined as 24 months. (3) Change the surveillance interval from at least once per 18 months to at least once per refueling interval (24 months) for TS Surveillance Requirements 4.5.1.e and 4.5.2.e which demonstrate the operability of the reactor coolant system safety injection tanks and the operability of the independent emergency core cooling systems (ECCS), respectively.

Basis for proposed no significant hazards consideration determination: Change No. 1 proposes changing the definition of the phrase "fuel reload cycle" from 18 months to 24 months for TS surveillance requirement 4.6.4.1.5. This would permit an individual containment purge isolation valve seal to remain in service for up to 48 months rather than the 36-month service life that is currently permitted.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated

This proposal only affects events requiring the establishment of containment isolation by extending the containment purge isolation valve seal replacement schedule from at least every 36 months to at least every 48 months.

The seal replacement program was established because the licensee was experiencing difficulty in performing containment purge isolation valve leakage tests while operating due to a thermal gradient existing across the test boundary. As a consequence, the licensee was permitted to leak test the containment purge isolation valves every 18 months rather than every 6 months in combination with a seal replacement program.

Since 1982, the licensee has replaced these seals on each unit at a frequency of approximately every 36 months. The seals that were replaced showed no signs of material degradation. The seal manufacturer recommends a 5-year service life.

Extension of the seal replacement schedule by 12 months to a total service life of 4 years would not significantly increase the probability of seal degradation. The service history demonstrates that the rate of material degradation with time apparently is small. Also, the proposed service life is only 80% of that expected for these seals by their manufacturer. As the probability of seal degradation is only minimally increased by this proposed extension, the probability or consequences of a loss of containment isolation due to purge isolation valve leakage therefore, would not be significantly increased.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated

This proposal would not change system design, operation or operability requirements other than extending the service life of the containment purge isolation valve seals from 3 years to 4 years. The containment isolation function would remain unchanged and the decrease in containment isolation reliability due to seal deterioration would be minimal. Consequently, this proposed extension in the surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety

As the only consequence of the extension of the seal service life by 12 months is a minimal material degradation of the containment purge valve seals and, therefore, the concurrent minimal degradation in containment isolation reliability, the reduction in the margin to the 10 CFR Part 100 limits for site boundary dose rates, for any event requiring containment isolation, would not be significant.

Based upon the above, the NRC staff proposes to determine that the requested change in the phrase "fuel reload cycle" in TS 4.6.4.1.5 involves no significant hazards considerations.

Change No. 2 proposes to change the surveillance frequency of the Units 1 and 2 TS 4.6.3.1.b and d for demonstrating the operability of the containment iodine filter trains from at least once per 18 months to at least once per refueling interval. A refueling interval shall be defined as 24 months. The surveillance period of 18 months matches the current refueling cycle interval. The proposed extension to 24 months is requested to facilitate a 24-month operating cycle.

The parameters tested at the 18-month surveillance interval are as follows:

a. Halogenated hydrocarbon removal efficiency of charcoal absorbers

b. DOP removal efficiency of HEPA filter banks

c. Laboratory test analysis of removal efficiency of carbon samples

d. Filter train flow rate

e. Pressure drop across the HEPA filters and the charcoal absorber banks

f. Filter train actuation on a containment isolation test signal.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated

This proposal only affects events that release iodine to the containment atmosphere while the reactor coolant system (RCS) temperature is above 200°F The bounding event for iodine release would be the loss of coolant accident (LOCA). Each unit has three 50% capacity recirculation containment iodine filter trains. Each of these trains normally operates between 600 and 800 hours during an 18-month cycle.

A review of plant surveillance history as, provided below, indicates that the iodine filter trains' performance and materials do not significantly degrade with time and, therefore, an extension of the surveillance interval for these tests by six months to a total surveillance interval of 24 months would not significantly reduce the performance of iodine filter trains:

a. There are 60 charcoal filter elements in each of the three iodine filter trains. Since 1977 each filter element has been tested for its removal efficiency of halogenated hydrocarbons eight times (seven times) on Unit 1 (2). In this total of 2700 filter element tests, only one test yielded unsatisfactory results. This was due to a leak at the gasketed surface between the filter element and the housing. The combined filter element removal efficiency for each train has always been above 99%.

b. There are 20 HEPA filter elements in each of the three iodine filter trains. Since 1976, each filter element has been tested for DOP removal efficiency seven times (six times) on Unit 1 (2). Of this total of 780 HEPA filter element tests performed, only three tests have yielded unsatisfactory results. Two of these tests had gasket leaks and the third filter failure was due to a materially damaged HEPA filter element. The combined filter element removal efficiency for each train experiencing a failed HEPA filter element was always at least 95%. In all other tests the removal efficiency was at least 99%.

c. The 17 laboratory test analyses as performed on Unit 1 and 2 combined of the removal efficiency of the iodine filter train carbon samples have always yielded satisfactory results with demonstrated efficiencies of at least 98%. The minimum removal efficiency permitted is 95%. In addition, over the 10-year period of these tests, the charcoal was never changed out but remained the originally installed charcoal. This shows a degradation of less than 2% over a 10-year span.

d. The total of 39 surveillances on Units 1 and 2 combined over the past 10 years, to verify the proper filter train flow rate have always yielded satisfactory results with the exception of one Unit 2 test on June 1984 when the flow was too low due to inadequate lubrication of the fan motor bearings. Since this failure, maintenance is performed to lubricate the fan motor bearings for each filter train during each refueling outage.

e. The 39 surveillances conducted to determine the filter train differential pressure and the 45 surveillances performed to verify automatic filter train actuation on a test containment isolation signal have always yielded satisfactory results.

In addition, if the iodine filter train run time exceeds 720 hours, the laboratory test analysis of the carbon sample and the removal efficiency of the charcoal absorbers for halogenated hydrocarbons must be performed to permit continued operation above 200°F RCS temperature.

This plant surveillance history and the 720-hour run time surveillance provide mitigation for the proposed extension of the surveillance interval to 24 months and, as such, indicate that this 6-month surveillance interval extension would not cause any significant additional degradation of the containment iodine filter trains and, as such, the probability or consequences of an iodine release from a LOCA or any other accident previously evaluated would not be significantly increased.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated

This proposal would not change any system design, operation, or operability requirements other than extending the period between performances of iodine filter train operability determinations. The reliability of the iodine filter trains function would be only negligibly reduced as these trains apparently do not suffer much degredation with time and as only two of the three trains need to be operable to provide 100% recirculation capability. Consequently, this proposed extension in the surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety

The only margin of safety which could be affected by this proposed change would be the increase in site boundary dose limits as prescribed by 10 CFR Part 100 due to an increased probability of failure or degraded reliability or capability of the iodine filter trains. As previously discussed, plant surveillance history indicates that the likelihood of iodine filter train degradation or failure does not significantly increase over time. Consequently, the margin of safety to the site boundary limits or to any other margin of safety would not be significantly reduced by this proposed 6-month extension in the surveillance interval.

Based upon the above, the NRC staff agrees, with the licensee's evaluation and proposes to determine that the proposed changes to TS 4.6.3.1. b and d involve no significant hazards considerations.

Change No. 3 proposes to modify the surveillance interval from 18 to 24 months for the Units 1 and 2 TS 4.5.1.e and 4.5.2.e which do the following:

a. Verify the opening of the safety injection tank (SIT) isolation valves

when RCS pressure exceeds 300 psia and upon receipt of a safety injection test signal

b. Verify automatic isolation and interlock action of the shutdown cooling system (SDCS) from the RCS when RCS pressure exceeds 300 psia

c. Visually inspect the containment sump for debris and degradation

d. Verify a minimum of 100 cubic feet of trisodium phosphate dodecahydrate (TSP) is maintained in the TSP storage baskets and that dissolution of a sample of TSP in borated water will raise the solution's pH, as appropriate.

The current surveillance period for these tests is 18 months which corresponds to the current refueling cycle. The extension in the surveillance interval to 24 months is requested to facilitate a 24-month operating cycle.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated

The safety injection systems are designed to supply emergency core cooling in the event of a LOCA. The surveillance that verifies the opening of the SIT isolation valves when RCS pressure exceeds 300 psia or when a safety injection test signal is received is performed to ensure that in the event of a LOCA, the safety injection system will be capable of supplying emergency core cooling.

A review of plant history of these surveillances as performed since 1977 a total of 10 tests, indicates that the operability of these SIT isolation valves does not significantly degrade with time as no failures of the valves to open have been noted on either reaching 300 psia RCS pressure or upon the receipt of a test safety injection signal. No system response degradation was noted as resulting from the previous 6-month surveillance interval extension from 12 to 18 months.

The automatic isolation and interlock actions of the SDCS from the RCS when RCS pressure exceeds 300 psia is provided to prevent the SDCS from exceeding design temperatures and pressure thereby preventing a possible LOCA via the SDCS. In addition, this prevents the inadvertent operation of the SDCS while at normal operating temperatures and pressures which could result in a cooldown event.

A review of plant history of these surveillances as performed since 1977, a total of 13 tests, indicates that these automatic isolation and interlock actions do not significantly degrade over time as no failures were noted in the performance of these surveillances. No system response degradation was noted as a consequence of the previous 6-month surveillance interval extension from 12 to 18 months.

The containment sump is inspected for debris and corrosion to ensure that the recirculation mode of emergency cooling will function properly in continuing to provide cooling water to the core in the event of a LOCA. This surveillance has been performed on each unit a minimum of seven times. Only once, during the pre-operational examination of Unit 2 in 1986, was any debris noted in the sump. This debris was left in place by the construction staff. No debris has been noted since then. No sump degradation has been noted during any performance of this surveillance. Debris accumulation in the containment sump would generally be the result of refueling outage work. The probability of debris accumulating in the sump during the operating cycle is not significant. Sump degradation could occur at any time, but the previous surveillance results have shown that this degradation is not significantly time dependent as the degradation mechanisms would generally require much more time than 24 months. As such, the results of these surveillances are not expected to significantly degrade with an extension in their surveillance interval.

TSP is provided in the containment sump to prevent chloride stress corrosion cracking of certain metal components (generally post-LOCA support systems) located inside containment during operation of the emergency core cooling system. The boric acid solution injected has a pH of approximately 5. The TSP is provided to buffer this acid solution and to raise the pH to approximately 7 (neutral solution). This neutralization of the boric acid solution reduces the probability of chloride stress corrosion cracking.

TSP is a weakly basic, ionic, crystalline salt of phosphoric acid with high melting and boiling points and an extremely low vapor pressure. The TSP is very stable both chemically and physically, resulting in a shelf life that is estimated to be significantly longer than the operating life of the reactor plant. Due to the properties of the TSP the environmental conditions inside containment during reactor operations should have only very negligible effects upon the quantity or quality of the TSP stored inside containment. Hence, an extension of this surveillance interval by 6 months would have only negligible effects upon the results of these surveillances.

The plant history for these surveillances and the properties of TSP indicate that this proposed extension of these surveillance intervals by 6 months to a total interval of 24 months would not cause any further significant degradation in system components or functions and as such, no significant increase in the probability or consequences of accidents previously analyzed would result.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated

This proposal would not change any system design, operation, or operability requirements other than extending the period between performances of the surveillances by 6 months to a total interval of 24 months. Consequently, this proposed extension in the surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety

The only margins of safety which these proposals could reduce would be the availability of emergency core cooling after a LOCA and post-LOCA support system operability. As the satisfactory performance of these surveillances has been demonstrated to be relatively time independent by the plant history and as only minimal additional degradation in the results of these surveillances is expected to occur due to the extended surveillance interval, these margins of safety would not be significantly reduced by this proposal.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed changes to TS 4.5.1.e and 4.5.2.e involve no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Ashok C. Thadani.

Carolina Power & Light Company, Dockets Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 2, 1987

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for

Brunswick Steam Electric Plant, Units 1 and 2 relative to the definition of OPERABLE in TS Sections 1.0, 3.0.3, 3.0.5 and 3.8.1.1.

The current definition of OPERABLE in the Brunswick TS states:

A system, subsystem, train, component, or device shall be *Operable* or have *Operability* when it is capable of performing its specified function(s). Implicit in this definition shall be the assumption that all necessary attendant instrumentation, controls, normal and emergency electric power sources, cooling or seal water, lubrication or other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its function(s) are also capable of performing their related support function(s).

The proposed revision would replace the phrase "normal and emergency electrical power sources" in the above definition with the words "electrical power. Specific requirements for the type of electrical power sources would continue to be controlled by TS Section 3.8.1.1.

Specification 3.0.3 provides actions to be taken when a Limiting Condition for Operation and/or the associated action requirements cannot be satisfied. Currently, under these circumstances, the unit must be placed in *Hot Shutdown* within 6 hours and achieve *Cold Shutdown* within the following 30 hours unless corrective measures are completed. The proposed revision requires the unit to be placed in *Startup* within 6 hours, in *Hot Shutdown* within the following 6 hours, and in *Cold Shutdown* within the subsequent 24 hours. As in the current Specification 3.0.3, the provisions of the proposed specification require the unit to achieve *Cold Shutdown* within 36 hours. However, the revised specification provides an increase in operational safety by allowing an orderly progression from *Power Operation* to *Startup* to *Hot Shutdown* to *Cold Shutdown*, thereby possibly avoiding a manual reactor scram should any difficulties (such as a rod block) arise while shutting the unit down.

The final change addressed in this request involves the relocation of the requirements of Specification 3.0.5 into the action statements for Specification 3.8.1.1 (AC Sources). Specification 3.0.5 was incorporated into the Brunswick TS to preserve the single failure criterion for systems that are relied upon in the Safety Analysis Report. Two conditions are provided in Specification 3.0.5 which must be met in order to declare equipment operable should this equipment be inoperable solely due to a loss of its emergency or normal power source: (1) The corresponding normal or emergency power source must be operable, (2) all redundant systems, subsystems, trains, components, and devices must be operable. If these conditions are not met, the unit must be placed in *Hot Shutdown* within 6 hours and in *Cold Shutdown* within the following 30 hours. In order to provide better control of system operability when a power source is lost, Specification 3.0.5 has been rewritten in *Action* format and incorporated as *Actions* a.2 and b.2 of Specification 3.8.1.1. Merging the actions required in the event of an inoperable emergency power source into the *Action* statements dealing with this situation prevents the possible oversight of the Specification 3.0.5 requirements.

In addition, *Actions* a.2 and b.2 include: (1) An allowance of 2 hours for the operator to verify operability of the required systems, subsystems, trains, components, and devices which are powered from the remaining diesel generators, and (2) an extension of 6 hours to the shutdown schedule for achieving *Hot Shutdown*. *Cold Shutdown* will still be achieved within 36 hours as is required by the current Specification 3.0.5. These schedules allow sufficient time to verify that the required equipment is operable and provide for a more orderly shutdown should it be required. This shutdown schedule is consistent with that proposed for Specification 3.0.3.

The *Action* statements for Specification 3.8.1.1 have been reformatted to provide easier identification of required actions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a signficant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The license has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Deleting the reference to normal and emergency power from the definition of *Operable* has no affect on operation of the Brunswick Plant. Revised *Action* statements of specification 3.8.1.1 ensure that upon loss of a power source, the alternate power supply is operable and that the redundant equipment is operable. As such, this change does not affect the redundancy of required safety systems and, therefore, does not increase the probability or consequences of an accident previously evaluated.

The schedules for shutdown provided in the revised Specification 3.0.3 require the unit to achieve *Cold Shutdown* within 36 hours. This is consistent with the current requirements of Specification 3.0.3. However, operational safety is increased by allowing an orderly progression from *Power Operation* to *Startup* to *Hot Shutdown* to *Cold Shutdown*. This reduces the possibility of having to scram the reactor in order to achieve *Hot Shutdown* within the required time frame should some difficulty such as a rod block occur. This, in turn, reduces challenges to required safety systems and ultimately reduces the probability or consequences of an accident previously evaluated.

Incorporation of the requirements of Specification 3.0.5 into the *Action* statements for Specification 3.8.1.1 reduces the possibility that they will be overlooked should a diesel generator or an off-site power source become inoperable and, as such, reduces the possibility of operating outside the limits of the Technical Specifications. The revised schedule proposed in *Actions* a.2 and b.2 ensure redundant equipment is operable and provides for a more orderly shutdown should it be required. These factors increase operational flexibility and reduce the chances of operating the unit in a degraded condition, thereby reducing the probability and consequences of previously evaluated accidents.

Other changes made in this amendment are administrative in nature and, therefore, cannot result in an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the changes do not affect the method in which any equipment performs its intended safety function. The requirements of Specification 3.0.5 associated with inoperable normal or emergency power sources have been incorporated into Specification 3.8.1.1. Therefore, deleting the reference to normal and emergency power from the definition of *Operable* power does not affect the redundancy of required safety systems. Expanding the shutdown schedules in Specifications 3.0.3 and 3.8.1.1, *Actions* a.2 and b.2, provide increased operational safety by allowing a more controlled shutdown of the unit.

Other changes made in this amendment are administrative in nature and, therefore, cannot create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The revisions result in: (1) Increased operational safety and flexibility, (2) a reduction in the possibility of operating the plant in a degraded condition due to missed action requirements, and (3) a simplification of the specification through merging of action requirements and reformatting, thereby reducing the possibility of operator confusion. As such, this revision does not involve a significant reduction in a margin of safety.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee s no significant hazards consideration determination and agrees with the licensee s analysis. Based on this review, the staff therefore proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: Thomas A Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Daniel R. Muller.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: March 6, 1987

Description of amendment Request: The proposed amendments to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the La Salle, Units 1 and 2 Technical Specifications to: (a) eliminate the ammonia detectors because of recent surveys conducted to supplement the past data; and (b) provide additional information needed to perform quantitative analyses of the station control room habitability and exposure risk due to accidental release of anhydrous ammonia. Regulatory Guide 1.78, Assumptions for Evaluating the Habitability of a Nuclear Power Plant Control Room during a Postulated Hazardous Chemical Release, establishes criteria for assessing ammonia as a hazardous chemical and, when the chemical is deemed hazardous, requires a habitability analysis in case there is an accidental ammonia release from stationary or mobile sources near the plant. Position 1 of Regulatory Guide 1.78 states that ammonia stored or situated at distances greater than five miles from the control room would not need to be considered in evaluating the habitability of the control room. The recent surveys were used as the basis for a quantitative analysis of the La Salle County Station, Units 1 and 2, control room habitability and exposure risk due to accidental release of anhydrous ammonia. A probability analysis considered the statistical data required to cause the development of toxic concentrations in the control room. The licensee determined by these analyses that the toxic hazard created by the accidental release of ammonia in the vicinity of La Salle County Station is not a significant risk to the safe operation of the station. Spurious operation of the existing detection system has caused operation of safety systems, such as the filter system serving the control room. The licensee, therefore, expects a net improvement in safety with regards to these proposed changes to the La Salle, Units 1 and 2 design as a result of the reduction in challenges to the engineered safety features systems.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident from any accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff proposes to agree, that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the probability of ammonia gas reaching the control room ventilation intake is very low. The operators can place the control room ventilation system in the recirculation mode manually, if necessary. Also, the operators have an emergency breathing air supply readily available to them in the control room. The likelihood of an ammonia release causing an accident, as described in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR), is remote.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because ammonia gas does not contribute to, cause, or change any type of accident analysis in Chapter 15 of the UFSAR. Removal of the ammonia detectors will only affect the possibility of an ammonia release rendering the control room uninhabitable. The probability of this occurrence has been analyzed and determined to be sufficiently low.

(3) Involve a significant reduction in the margin of safety because the probability of an ammonia gas release reaching the control room ventilation system intake and incapacitating the operators is small.

Accordingly, the Commission proposes to determinte that the changes would create no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Beale, 1120 Connecticut Avenue, NW., Suite 840, Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: February 25, 1987

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to revise the Recirculation Actuation System (RAS) logic from a two-out-of-four logic to one-out-of-two taken twice. This change to the TS would reflect the actual RAS logic currently in place at the plant as a result of a design deficiency identified and corrected during the 1986-1987 maintenance outage. The change would provide clarifications to appropriate sections and impose operability requirements for the safety injection and refueling water (SIRW) tank low level switches consistent with the modified logic.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a

margin of safety. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

As a result of a design deficiency identified during the 1986–1987 maintenance outage, the RAS actuation logic was changed from two-out-of-four to one-out-of-two taken twice, thereby removing the single failure potential in which a premature RAS could occur. The proposed change to the TS's is required to cause the modifications provided for the RAS logic to be reflected in the specifications and provide clarifications to appropriate sections. The proposed change also would impose operability requirements for the SIRW tank low level switches consistent with the modified logic. Specifically, with the new logic and a single channel in bypass, a time limit of 7 days is proposed to restrict the period in which the potential for a single failure to occur would prevent an automatic RAS actuation at the proper time. The failure to achieve an RAS is not considered to be as significant a malfunction as an early actuation, as it is believed that sufficient time and awareness is available for a failure to actuate to be recognized and any adverse consequences prevented via manual actions.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated as the changes result in a more restrictive specification in that the potential for a premature RAS actuation is eliminated and the allowable time in a degraded condition is restricted. Previously, the specifications allowed operation for an unlimited time period with two SIRW tank low level switches inoperable.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

While the proposed TS does introduce the potential for failure to achieve an RAS, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the resultant consequence, lack of safety injection (the same resultant consequence of a premature RAS), could be overcome as a result of the belief that sufficient time and awareness is available for a failure to actuate to be recognized and any adverse consequences prevented via manual actions. Therefore, the proposed changes reduce the potential for a failure as could occur with the current TS's.

(3) Involve a significant reduction in a margin of safety.

The proposed change adapts the specifications to reflect the modification of the RAS actuation logic. Appropriate restrictions are provided to reduce the chance of the failures previously found in the RAS logic. Therefore, the margin of safety is not being compromised or changed.

Based on the above analysis, the staff proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Ashok C. Thadani.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 9, 1987 (VP-No.-87-0005).

Brief description of amendment: The proposed amendment, if approved, would revise the Fermi-2 Operating License No. NPF-43 Plant Technical Specifications as follows:

1. *Specification 3/4.2.2*—amend the APRM Setpoint action statement extending the action time limit for control rod withdrawal from two to six hours before setdown action is required to (1) establish target patterns, (2) achieve a reasonable power distribution at full power with equilibrium xenon, and (3) ensure that no combination of the Maximum Fraction of Limiting Power Density (MFLPD) and Fraction of Rated Thermal Power (FRTP) would result in a Linear Heat Generating Ratio (LHGR) transient peaking factor beyond the one percent plastic strain limit.

2. *Specification 3/4.3.6*—amend the control rod block instrumentation Table 3.3.6-2 to delete the asterisks in the "TRIP SETPOINT" and "ALLOWABLE VALUE" columns for Item 1.a to correct a typographical error (the asterisk does not apply to Item 1.a) and to add "APRM" to the same footnote.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that:

1. The proposed change to Specification 3/4.2.2, "APRM SETPOINT"

(a) Does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change does not involve a physical modification to the plant, or a change in the limiting conditions for plant operation. The control rod target patterns are designed to achieve a reasonable power distribution at full power with equilibrium xenon. Because a skewed power distribution may occur due to non-equilibrium xenon, or from the fact that the control rods have not been pulled to their target positions, extension of the action time limit from two hours to six hours would allow the normal startup progression to continue withdrawing control rods until the target patterns are achieved; and this change would also allow sufficient time for additional xenon to build up. The proposed action time limit extension would further tend to flatten any core peaking and ensure bringing local power densities within allowable limits. In addition, because the causative factor of skewed power distribution is almost always xenon, utilizing control rod movements to reduce counter-productive core peaking factors, which would be attained by allowing the proposed change, would eliminate the possibility of optimizing the power shape at higher power levels due to preconditioning.

(b) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change will not eliminate the flow-biased rod block or flowbiased APRM scram setpoints, or the setdown adjustments. The trip setdown adjustments would continue to ensure that no combination of MFLPD and FRTP would result in a LHGR transient peaking factor beyond the one percent plastic strain limit. Operationally, the setdown adjustment enforces an optimal upper bound on the core total peaking factor, which in turn ensures conformance with LHGR limits at full power control rod patterns.

(c) Does not involve a significant reduction in a margin of safety because the maximum xenon depletion that would bound the transient event occurs during the first two hours after control

rod movement. Extending the action time limit from two to six hours allows more time for additional xenon buildup, minimizing its effect on a transient and effectively reducing the peaking factor concern as is stated in (1.a) above.

2. The change proposed to Specification 3/4.3.6, control rod block instrumentation:

(a) Does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change to Technical Specification Table 3.3.6-2 removes an asterisk in both the "TRIP SETPOINT" and ALLOWABLE VALUE" columns for Item 1.a which does not apply to Item 1.a; and adds APRM" to the single asterisk footnote unintentionally omitted. The change, which is administrative in nature and does not involve a physical change to the plant, or change a limiting condition of operation, or change any plant operating practice, is to correct a typographical error. Neither will the safety analysis or design basis for Fermi-2, as analyzed in the FSAR, be affected by the proposed administrative change.

(b) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because, as is stated in (2.a) above, the proposed change is administrative in nature and will not involve any physical or operational change to the plant.

(c) Does not involve a significant reduction in the margin of safety because, as is stated in (2.a) above, the proposed change is administrative in nature and will not affect plant operation.

The Commission agrees with the licensee's determination and proposes to determine that the changes requested to Technical Specification 3/4.2.2, and Technical Specification 3/4.3.6, as described above, do not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Public Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for the licensee: John Flynn, Esq., The Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Elinor G. Adensam.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 9, 1987 (VP-No-87-0020).

Brief description of amendment: The proposed amendment, if approved, would revise Operating License No. NPF-43 Plant Technical Specifications to make editorial and typographical error corrections to Specification 3/4.8.4.3 (MOV Thermal Overload Protection), Specification 3/4.5.1 (ECCS-Operating) and Specification 3/4.6.1.2 (the Bases for Primary Containment Leakage).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the changes proposed to Technical Specifications 3/4.8.4.2, 3/4.5.1 and 3/4.6.1.2:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes proposed to these specifications do not involve a physical change to the plant, or change a limiting condition of operation, or change any operating practices. In addition, implementation of the editorial/typographical error corrections proposed does not change any safety analysis or design basis for Fermi-2. The specific nature of the proposed change to each of these specifications, upon which this determination has been made follows:

(a) *3/4.8.4.3*—the current MOV Thermal Overload Protection Table 3.8.4.3-1, Item 12, lists the Condensate Storage and Transfer System valve (PII-F616) for *Channel Calibration.* It was discovered during the required 18-month MOV thermal overload channel calibration that the valve in question was no longer applicable to the design as a result of a design change implemented prior to finalization of the Fermi-2 Plant Technical Specifications for plant licensing. At that time, all of the requisite documents and drawings were changed, and the FSAR updated to reflect the change. The Fermi-2 Plant Technical Specifications were being drafted at the time this design was being effected; but, because of an oversight, Table 3.8.4.3-1 did not reflect the change made in drawings or the FSAR.

(b) *3/4.5.1*—the current ECCS-Operating ACTIONS b.2 and b.3 under Section 3.5.1 have been found to be out of sequence. The proposed change to this Specification would resequence the action statements, by replacing *Action* b.2 with *Action* b.3 and by replacing *Action* b.3 with *Action* b.2.

(c) *BASES 3/4.6.1.2*—the current BASES statements relative to primary containment leakage reference American National Standard (ANS), document N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." The proposed change would correct this typographical error to read N45.5-1972, the correct standard.

(2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated, because as stated in (1) above, the changes are either editorial or typographical error corrections, administrative in nature, and are needed to achieve consistency throughout the Technical Specifications. Additionally, the proposed changes fall into the category of amendments that are considered unlikely to involve a significant hazards consideration as documented in 51 FR 7744.

(3) Do not involve a significant reduction in a margin of safety for the reason stated in (1) and (2) above. The editorial changes and typographical error corrections do not alter any safety analysis or design basis which would reduce any margin of safety under which the Fermi-2 plant was licensed to operate.

The Commission agrees with the licensee's determinations, and proposes to determine that the changes requested to Technical Specification 3/4.8.4.3, 3/4.5.1 and 3/4.6.1.2, as described above, do not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for the licensee: John Flynn, Esq., The Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Elinor G. Adensam.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 9, 1986, February 18, and March 23, 1987

Description of amendment request: The proposed amendments would revise Technical Specification (TSI 3.4.6.2 to modify the actions taken in the event an unidentified leak, between one and three gallons per minute (gpm), occurs in the reactor coolant system (RCS) while it is hot and pressurized.

For unidentified leakage in excess of 1 gpm, action statements in the current TS allow the licensee 4 hours to reduce the leak rate to within limits. Otherwise, the plant is required to be in at least Hot Standby (Mode 3) within the next 6 hours and in Cold Shutdown (Mode 5) within the following 30 hours. The proposed amendments would not modify the 4 hours allowed to reduce the leak or the 6 hours to be in Mode 3, but would extend by 72 hours the 30 hours presently allowed to achieve Mode 5 conditions provided the unidentified leakage is not more than 3 gpm. This would result in 72 additional hours allowed in Mode 3 to provide the licensee sufficient time to identify the leak under elevated temperature and pressure conditions while the reactor is subcritical.

The licensee stated that the proposed change is needed because a small leak, (between 1 and 3 gpm when at Power Operation (Mode 1). or Startup (Mode 2)), becomes virtually undetectable at Cold Shutdown conditions (Mode 5). On several previous occasions, the licensee requested and was granted authorization by the NRC staff to extend the time before the Catawba Station would be required to achieve Mode 5 conditions when leaks in the 1–2 gpm range were present. From this experience, the licensee has determined that the average time needed to identify such a leak pathway was about 61 hours. For an unidentified leak greater than 3 gpm, requirements of the existing action statements would remain unchanged.

Also, the licensee requested the addition of an action statement to TS 3.4.6.2 regarding the standby makeup pump flow. This statement would require that the total of identified, unidentified, and RCS pump seal leaks must not be greater than 26 gpm or the pump is to be declared inoperable. This requirement is already included in the existing Catawba TS 3.7.13.

Furthermore, the licensee proposed deleting a footnote on page 3/4 4–20 because its applicability expired on October 23, 1985, and it is no longer needed.

TS Bases 3/4.4.6.2 "Operational Leakage" would be supplemented to explain the above changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The portion of the request regarding actions for unidentified leakage from 1 to 3 gpm and the standby makeup pump flow does not match any of those examples. However, the staff has reviewed the licensee's request and has determined that should this portion of the request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change related to the unidentified leakage would have no effect on the existing action statement until 10 hours into the event (i.e., until the transition to cold shutdown would otherwise begin); the only credible change in probability thereafter is that the opportunity for a loss of coolant accident (LOCA) occurring while the reactor is in hot standby is increased somewhat because of the additional 72 hours which would be allowed prior to starting cold shutdown. From prior analyses recognizing the fracture mechanics principles of pipe failure (i.e., "leak-before-break" studies), the licensee stated that the flaw size associated with a leak of 3 gpm (about 5 inches) is less than the critical flaw size (32.5 inches) necessary for crack propagation. For this reason, and because the period prior to cold shutdown would be increased by no more than 72 hours, no significant increase in probability of a LOCA would occur. The consequences of LOCAs have been analyzed in the FSAR, for a spectrum of pipe break sizes, including the double-ended rupture of the primary piping. The consequences of any leak affected by these changes would continue to be bounded by these analyses. Also, the addition of the action statement regarding the standby makeup pump flow would tend to decrease the probability or consequences of an accident previously analyzed because it would alert the operators to verify the pump flow.

Also, this portion of the licensee's proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because no new or novel features would be added to plant design. As noted above, the only accident associated with the changes related to the unidentified leakage is a LOCA, and any LOCA would continue to be bounded by the FSAR analyses. The addition of the action for the standby makeup pump does not affect the design or operation of the plant because this action already exists in TS 3.7.13.

Finally, this portion of the licensee's proposed changes would not (3) involve a significant reduction in a margin of safety because, as noted above, a flaw associated with a 3 gpm unidentified leak would not propagate within the limited time period that would be allowed by the proposed changes; and the addition of the action for the standby makeup pump does not affect the design or operation of the plant.

One of the Commission's examples in 51 FR 7744 of actions likely to involve no significant hazards considerations is (i), "a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change to delete a footnote on page 3/4 4–20 because its applicability expired on October 23, 1985, and it is no longer needed represents a change that meets the guidance provided by this example.

Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 17 1986.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Table 4.4–5 to show that Surveillance Capsule "Z" was pulled at the first refueling outage in lieu of surveillance capsule "U" which will be used as a standby. During Unit 1 refueling outage, an attempt was made to remove Capsule "U" in accordance with TS Table 4.4–5 but the tools available could not reach it. Based on discussion with Westinghouse, the licensee concluded that Capsule "Z" would produce similar results because it has an identical Lead Factor, identical composition and was exposed to a similar neutron flux profile. The licensee plans to modify the tools utilized to withdraw capsule "U" at a later refueling outage, if necessary.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that

should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the accident analyses will not be significantly affected by this change. Pulling capsule "Z" in lieu of Capsule "U" will not affect the normal operation of the station. Furthermore, Capsule "Z" will produce similar results as Capsule "U"

Also, the licensee's proposed revision would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the design and operation of the facility will not be significantly affected.

Finally, the proposed revisions would not (3) involve a significant reduction in a margin of safety because the characteristics of Capsule "Z" are identical to Capsule "U" and their neutron flux profiles are similar.

Accordingly, the Commission has determined that the above change involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 9, 1986, February 18, and March 23, 1987

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.4.6.2 to modify the actions taken in the event an unidentified leak, between one and three gallons per minute (gpm), occurs in the reactor coolant system (RCS) while it is hot and pressurized.

For unidentified leakage in excess of 1 gpm, action statements in the current TS allow the licensee 4 hours to reduce the leak rate to within limits. Otherwise, the plant is required to be in at least Hot Standby (Mode 3) within the next 6 hours and in Cold Shutdown (Mode 5) within the following 30 hours. The proposed amendments would not modify the 4 hours allowed to reduce the leak or the 6 hours to be in Mode 3, but would extend by 72 hours the 30 hours presently allowed to achieve Mode 5 conditions provided the unidentified leakage is not more than 3 gpm. This would result in 72 additional hours allowed in Mode 3 to provide the licensee sufficient time to identify the leak under elevated temperature and pressure conditions while the reactor is subcritical.

The licensee stated that the proposed change is needed because a small leak, (between 1 and 3 gpm when at Power Operation (Mode 1) or Startup (Mode 2)) becomes virtually undetectable at Cold Shutdown conditions (Mode 5). On several previous occasions, the licensee requested and was granted authorization by the NRC staff to extend the time before a similar plant, the Catawba Station, would be required to achieve Mode 5 conditions when leaks in the 1-2 gpm range were present. From this experience, the licensee has determined that the average time needed to identify such a leak pathway was about 61 hours. For an unidentified leak greater than 3 gpm, requirements of the existing action statements would remain unchanged.

The licensee also requested the addition of an action statement regarding the standby makeup pump flow. This statement would require that the total of identified, unidentified, and RCS pump seal leaks must not be greater than 26 gpm or the pump is to be declared inoperable. This requirement is not included in existing McGuire TSs.

TS Bases 3/4.4.6.2 "Operational Leakage" would be supplemented to explain the above changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request regarding action for unidentified leakage from 1 to 3 gpm does not match any of those examples. However, the staff has reviewed the licensee's request and has determined that should this portion of the request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes would have no effect on the existing action statement until 10 hours into the event (i.e., until the transition to cold shutdown would otherwise begin); the only credible change in probability thereafter is that the opportunity for a loss of coolant accident occurring while the reactor is in hot standby is increased somewhat because of the additional 72 hours which would be allowed prior to starting cold shutdown. From prior analyses recognizing the fracture mechanics principles of pipe failure (i.e., "leak-before-break" studies), the licensee stated that the flaw size associated with a leak of 3 gpm (about 5 inches) is less than the critical flaw size (32.5 inches) necessary for crack propagation. For this reason, and because the period prior to cold shutdown would be increased by no more than 72 hours, no significant increase in probability of a LOCA would occur. The consequences of LOCAs have been analyzed in the FSAR, for a spectrum of pipe break sizes, including the double-ended rupture of the primary piping. The consequences of any leak affected by these changes would continue to be bounded by these analyses.

This portion of the licensee's proposed changes also, would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because no new or novel features would be added to plant design. As noted above, the only accident associated with the change is a LOCA, and any LOCA would continue to be bounded by the FSAR analyses.

This portion of the licensee's proposed changes also, would not (3) involve a significant reduction in a margin of safety because as noted above, a flaw associated with a 3 gpm leak would not propagate within the limited time period that would be allowed by the proposed change.

One of the Commission's examples in 51 FR 7744 of actions likely to involve no significant hazards considerations is (ii), "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The proposed change to add an action statement so as to limit the total identified, unidentified and RCS pump seal leakage represents an additional limitation not in the existing TS, and therefore matches this example.

Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 17 1987

Description of amendment request: The proposed change would add the

Noble Gas Monitor (EMF-39) to Technical Specification (TS) Tables 3.3-3 "Engineered Safety Features Actuation System Instrumentation" and 4.3-2 "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements. This addition would be new item 4) under table item 3c "Containment Purge and Exhaust Isolation.

The proposed change would also correct Surveillance Specification 4.11.2.4.2 which presently requires that the installed Gaseous Radwaste Treatment System be demonstrated operable by meeting Specifications 3.11.2.1 and 3.11.2.2 "or" 3.11.2.3. The error would be corrected by specifying 3.11.2.1 and 3.11.2.2 "and" 3.11.2.3.

Other proposed changes in the licensee's letter of February 17 1987 will be handled separately.

Basis for proposed no significant hazards consideration determination: EMF-39 is used in trip logic which causes isolation of the containment purge system and termination of containment atmosphere release to the environment through the unit vent in the event of abnormal levels of gaseous activity inside containment. Therefore, TS 3.3.3.9 "Radioactive Gaseous Effluent Monitoring Instrumentation" and referenced Table 3.3-13 appropriately require that EMF-39 be operable at all times. For this same reason and for consistency, Tables 3.3-3 and 4.3-2 should also include EMF-39 as part of the engineered safety features instrumentation required for containment purge and exhaust isolation. The proposed change would correct this omission. Because EMF-39 is not presently included in Tables 3.3-3 and 4.3-2, the proposed change is also a more restrictive requirement.

TS 3.11.2.1 specifies limits for the allowable dose rate due to radioactive materials released in gaseous effluents from the site to areas at and beyond the site boundary. TS 3.11.2.2 specifies limits for the allowable air dose due to noble gases released in gaseous effluents to areas at and beyond the site boundary. TS 3.11.2.3 specifies limits for the allowable dose to a member of the public from Iodine-131 and -133, tritium, and all radioactive materials in particulate form with half-lives greater than 8 days in gaseous effluents released to areas at and beyond the site boundary. These limits are based upon the Commission's regulations. To be considered operable, the Gaseous Radwaste Treatment System must demonstrate each of the three limits, rather than two of the three or just one. The proposed change is, therefore, a more restrictive requirement and corrects the TS consistent with the Commission's regulations.

The Commission has provided guidance concerning the application of standards for no significant hazards consideration determinations by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a change that is administrative in nature, intended to achieve consistency or correct an error. Another example, (ii), is "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. As noted above, the proposed changes are both corrective and more restrictive; they, therefore, match those examples.

Accordingly, the Commission proposes to determine that the change does not involve significant hazards considerations.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC) Station, North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: February 10, 1987

Description of amendment request: The licensee has submitted an amendment request to revise five radiation monitoring instrumentation setpoints in Technical Specification Table 3.3-6. The amendment would also revise the meteorological monitoring instrumentation operability requirements in Table 3.3-8 to include both the primary and redundant instruments, and would revise Action Statements 27 and 29 in Technical Specification Table 3.3-13 to allow an alternative to grab sampling by providing for initiation of continuous monitoring by alternate monitoring equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The changes to the radiation monitor alarm setpoints would be incorporated to provide consistency with the revised Emergency Action Levels (EAL) and thus, improve response actions. These instruments provide alarms only and do not perform control functions. The addition of the redundant meteorological monitoring instruments would provide an additional set of instruments to allow more flexibility when satisfying the minimum instrument operability requirements. The minimum number of instruments required to be operable would be increased to include the additional instruments and the surveillance requirements would remain unchanged. The revised Action Statements of Table 3.3-13 would incorporate an option to allow monitoring with comparable alternate monitoring instruments. Surveillance requirements that would have been applied to the primary Technical Specification channel would then be applied to the alternate monitoring instruments. This will thus ensure that operability of the alternate monitoring instruments is comparable to that required for the Technical Specification instruments. Therefore, there would be no reduction in the quality of the instruments monitoring these effluent pathways. These changes would not significantly increase the probability of occurrence or the consequences of an accident previously evaluated and would not affect the UFSAR accident analysis of Section 14.

The proposed revisions would not create the possibility of a new or different kind of accident from any accident previously evaluated because the instruments addressed by the proposed changes do not perform control functions. The alarm setpoint changes would provide consistency with the associated Emergency Action Levels to provide improved emergency response actions. The revised Action Statements would provide only an option to the use of grab samples when an effluent monitor is inoperable. These changes would not affect the UFSAR system descriptions of Section 11.

The proposed changes would not involve a significant reduction in the margin of safety since the applicable radiation and meteorological monitoring instruments will continue to perform the

intended functions, will be maintained in accordance with design requirements, and will not affect the Bases for any Technical Specification. Accordingly, the Commission proposes to determine that these changes do not involve significant hazards consideration.

Local Public Document Room location: B. F Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Lester S. Rubenstein.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: February 11, 1987

Description of amendment request: The amendment would revise the Technical Specification Reactor Coolant System (RCS) heatup and cooldown limit curves and the Bases for these limit curves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c))1. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed revisions to the Technical Specification and Bases entail incorporation of data taken from the summary report (WCAP 10867) on the second surveillance capsule evaluated in conjunction with the BVPS–1 Reactor Vessel Material Surveillance Program. All the reactor coolant system components are designed to withstand the effects of normal cycle loads due to temperature and pressure changes, as well as the loads associated with the postulated faulted conditions. The fracture mechanics analysis performed to verify the fracture toughness of the reactor vessel is amended to account for the irradiation effects determined by the analysis of the surveillance capsules, and the operating limits of the plant are adjusted accordingly to offset any observed changes in the material. Therefore, the probability of a previously analyzed accident occurring is not significantly increased by the incorporation of new heatup and cooldown limit curves.

In addition, the consequences of an accident previously evaluated in the FSAR will not be significantly increased since the integrity of the reactor vessel is ensured by accounting for the irradiation effect.

The amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical changes in the reactor coolant system will result from the proposed Technical Specification changes. Additionally, the revisions do not result in a significant reduction in a margin of safety since the incorporation of new limit curves ensures that the conditions under which the reactor vessel is operated are such that an adequate margin of safety is maintained.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: B.F Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Lester S. Rubenstein.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: March 17 1987

Description of amendment request: The licensee proposes to change the Reactor Coolant System Pressure/Temperature (P/T) limit figures. The removal of the St. Lucie Plant, Unit No. 1 thermal shield a few years ago resulted in a reduction in the period of applicability of the current P/T figures (curves) from 10 years of full power operation or 8 Effective Full Power Years (EFPY) to 7.4 EFPY. As a result, at 7.4 EFPY, the existing Low Temperature Overpressure Protection (LTOP) system, which is designed based upon current P/T limitations, will be inadequate for LTOP for the reactor coolant system. Thus, LTOP-related technical specifications are also proposed to be changed.

The licensee specifically proposes to delete existing P/T limit Figures 3.4–2a, 3.4–2b, and 3.4–2c as contained in TS 3/4.4.9.1—Pressure/Temperature Limits—Reactor Coolant System. These figures contain the P/T limit curves for up to 5 years of Full Power Operation (FPO), up to 10 years of FPO, and up to 40 years of FPO, respectively. Proposed Figure 3.4–2a will contain the heatup and core critical P/T curve for up to 10 EFPY, while proposed Figure 3.4–2b will contain the cooldown and inservice test P/T curve for up to 10 EFPY. The allowable heatup rates will be included in Figure 3.4–2a, but the allowable cooldown rates will not be included in Figure 3.4–2b. Thus, Figure 3.4–3 is proposed to be added to specify the allowable cooldown rates. The limits will now be a function of EFPY instead of calendar years of operation. Thirty-two EFPY equals 40 calendar years of operation.

The licensee also proposes to further change the RCS heatup and cooldown rates for certain conditions of operation. The modified rates are contained in proposed Figure 3.1–1b entitled "Maximum Allowable Heatup and Cooldown Rates, Single HPSI Pump in Operation." The conditions are when: (1) The flow path from the refueling water tank to the RCS via a single High Pressure Safety Injection (HPSI) pump is in effect, and (2) all charging pumps are disabled. This change is contained in proposed amended TS 3/4.1.2.1 (Boration System—Flow Paths—Shutdown) and TS 3/4.1.2.3 (Charging Pump—Shutdown).

Since the P/T curves are changing, there are a number of other Technical Specification changes necessary as follows. The power operated relief valves low temperature protection setpoints are proposed to be changed (TS 3/4.4.13—Power Operated Relief Valves). The licensee proposes a setpoint of less than or equal to 350 psia during: (a) Cooldown when the temperature of any RCS cold leg is less than or equal to 200 °F and (b) heatup and isothermal conditions when the temperature of any cold leg is less than or equal to 180 °F The licensee also proposes an elevated setpoint of less than or equal to 530 psia during (a) cooldown when the temperature of any RCS cold leg is greater than 200 °F and less than or equal to 334 °F and (b) heatup and isothermal conditions when the temperature of any cold leg is greater than or equal to 180 °F and less than or equal to 334 °F

The steam generator water temperature to reactor coolant system water temperature delta temperature is proposed to be changed (TS 3/4.4.14—Reactor Coolant Pump Start and 3/4.1.4.1—Reactor Coolant Pump Start). The licensee proposes a delta

temperature of 30 °F versus the current 45 °F

The HPSI pump disable temperatures are proposed to be changed (TS 3/4.5.3—ECCS Subsystems, T_{ave} less than 325 °F). A maximum of only one HPSI pump may be operable below a RCS temperature of 253 °F versus the current 215 °F All HPSI pumps must be disabled when the RCS temperature is below 220 °F versus the current 165 °F

Finally, bases statements associated with the above changes are proposed to be changed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In addition, the licensee provided a safety evaluation to support the changes, and this included an in-depth analysis by the licensee's consultant, Combustion Engineering, Inc. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure/temperature (P/T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR 50 Appendix G as supplemented by the ASME Code Section III, Appendix G. The RT_{NDT} values for the revised curves are based on Regulatory Guide 1.99, Revision 02 (Draft) shift correlations and Combustion Engineering's flux attenuation factors. The analysis of reactor vessel material irradiation surveillance specimens are used to verify the validity of the fluence predictions and the P/T limit curves. Use of the revised curves in conjunction with the surveillance specimen program ensures that the reactor coolant pressure boundary will behave in a non-brittle manner and that the possibility of rapidly propagating fracture is minimized.

In conjunction with revising the P/T limit curves, a low temperature overpressure protection analysis has been performed to establish the configuration and PORV setpoints of the St. Lucie Unit 1 low temperature overpressure protection system.

To ensure compliance with the P/T limit curves, overpressure protection is provided to keep the RCS pressure below the P/T limits for any given temperature after the initiation of assumed pressure transients (energy-addition and mass-addition transients) while operating below the temperature at which the pressurizer safety valves provide overpressure protection during heatup and cooldown.

The revised P/T curves and LTOP system do not represent a significant change in the configuration or operation of the plant. The results of the LTOP analysis show that the limiting pressures for a given temperature are not exceeded for the assumed transients and that reactor vessel integrity is maintained. Thus, the proposed amendment does not involve an increase in the probability or consequences of accidents previously evaluated.

In connection with the second standard, the licensee states that:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The evaluation performed has resulted in revised P/T limits based on the fracture toughness requirements of 10 CFR Part 50 Appendix G, and in a revised low temperature overpressure protection system based on standard energy and mass addition transients. Since there is no significant change in the configuration or operation of the facility as a result of the proposed amendment, the use of revised P/T limits and/or PORV setpoints will not create the possibility of a new or different kind of accident from any accident previously evaluated.

In connection with the third standard, the licensee states:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed amendment will not involve a significant reduction in a margin of safety, because the fracture toughness requirements of 10 CFR Part 50 Appendix G are satisfied and conservative operating restrictions are applied for the purpose of low temperature overpressure protection.

The staff has reviewed the licensee's no significant hazards consideration determination analysis, as supported by the licensee's safety evaluation and consultant's report. Based on this review, it appears that the proposed amendment does not involve an increase in the probability or consequences of events previously evaluated and that the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated because the licensee did address the usual technical areas of concern in updating the P/T limit figures and changing the related specifications for low temperature overpressurization protection. Likewise, it does not appear that the margin of safety is reduced because the licensee used Appendix G in the formulation of the figure changes and it does appear that conservative operating restrictions were applied for the purpose of low temperature overpressure protection.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Indiana and Michigan Electric Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: February 20, 1987 as supplemented by letter dated March 13, 1987

Description of amendment request: The proposed amendment would revise the Technical Specification to modify the heat flux hot channel factor and the axial power distribution to allow an increase in the peak pellet exposure for Advanced Nuclear Fuel Corp. (formally Exxon Nuclear Company) fuel from its present valve of 48.0 MwD/kg to 48.7 MwD/kg.

Basis for proposed no significant hazards consideration determination: The Commission's standard for determining whether a significant hazards consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The Advanced Nuclear Fuel Corp. (ANF) fuel in Unit 1 constitutes one third of the core and is due to be discharged at the next refueling outage currently scheduled to begin after May 24, 1987 The unit has been operating at 90% power due to steam generator tube corrosion problems and this reduction in power has extended the fuel cycle and increased the peak pellet exposure of ANF fuel to near its approved limit. The proposed changes in the licensee's February 20, 1987 letter would allow the peak pellet exposure to be increased to

51.0MwD/kg and the unit to finish the fuel cycle with full utilization of the fuel before it is discharged. The supportable basis, however, is limited by mechanical consideration to 48.7 MwD/kg. The licensee's letter dated March 13, 1987 provides the revised Technical Specification for consideration.

The licensee has performed loss-of-coolant accident (LOCA) and fuel mechanical design analyses to demonstrate that the exposures will not violate any applicable safety limits or design criteria. The analyses were accomplished with methods previously used in the D.C. Cook fuel reloads and found acceptable. Acceptance criteria for the technical specifications are not significantly changed, therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Operation and use of the fuel will not change; only the residence time in the core. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated and with the small increase in the exposure level, the change does not involve a significant reduction in a margin of safety.

Based on the above consideration, the staff proposes to determine that the changes do not involve a significant hazards determination.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 18, 1986 which supersedes an April 5, 1985 request.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center(DAEC) Technical Specifications (TS) to assure periodic verification that the opening angle of the purge/vent valves is restricted to 30° which was found by the NRC staff to assure valve closure against a postulated design basis loss-of-coolant accident (LOCA) pressure in the containment. The licensee is modifying its Standby Gas Treatment System (SGTS) to provide overpressure protection. This modification will protect both trains of SGTS against the pressure pulse and moisture in the containment due to a postulated design basis accident, when purge/vent valves are open.

The licensee states that as a result of limiting valve opening angle and protecting SGTS trains against design basis LOCA, the current numerical restriction of 90 hours duration of annual purge/vent operation is no longer necessary. Accordingly, the licensee has proposed to delete the TS restriction limiting the valve operation to 90 hours per year. Instead the licensee has proposed to operate the purge/vent valves in such a way as not to create a flow path to the environment while primary containment is required, except for inerting, deinerting, testing, or pressure control.

In addition, subsection 3.7.D.2 of the TS is being revised to reflect more closely the wording of the Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment as follows:

In accordance with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based upon the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

a. Eliminating the requirement to limit purge time through containment vent/purge valves (CV-4302, CV-4303, CV-4300, CV-4301, CV-4307, CV-4309 and CV-4310) does not increase the probability or consequences of an accident. The requirement to limit purge time to 90 hours per year as currently described in Specification 3.7.A.9 was added to reduce the probability of a DBA/LOCA occurring while the vent/purge valves are open, which could have prevented the valves from closing and result in an uncontrolled release of containment atmosphere to the environs.

On October 1, 1984, the NRC issued a Safety Evaluation to the DAEC which demonstrated that the containment purge and vent valves, as modified, could close against the buildup of containment pressure in the event of a DBA/LOCA. The Safety Evaluation also closed out NUREG-0737 Action Item II.E.4.2.6 for the DAEC. Because the vent/purge valves, as modified, have been demonstrated to be able to close against DBA/LOCA pressures, the probability of occurrence of an accident has not been increased by deleting the 90 hour purge requirement from Specification 3.7.A.9.

Given the fact that the vent/purge valves are capable of closing against DBA/LOCA pressures, only, two factors related to this Technical Specification change affect the consequences of such an accident: The radiological release from the primary containment during the five-second closing time of the vent/purge valves and the potential destruction of both trains of the Standby Gas Treatment (SGTS) from overpressurization or moisture during the five-second closing of the valves.

The NRC issued a Safety Evaluation on December 29, 1983, in which the staff concluded that the radiological consequences of a hypothetical DBA/LOCA, while the containment is in the purge mode and the reactor is at full power operation, do not exceed the requirements of 10 CFR Part 100 and do not alter the NRC's previous conclusions reached in the original Safety Evaluation Report for the DAEC.

The DAEC has modified the SGTS to provide it with overpressure protection to prevent damage to either train of the SGTS from a hypothetical DBA/LOCA during purging.

The new wording of Specification 3.7.A.9 limits the operation of vent/purge valves to certain evolutions already allowed or required by the Technical Specifications and UFSAR.

Based on the discussion above, the rewording of Specification 3.7.A.9 will not increase the consequences of an accident or malfunction of equipment previously evaluated in the DAEC UFSAR.

b. Adding the requirement to limit the opening angle of the vent/purge valves to 30 degrees by mechanical means to the Technical Specifications provides additional assurance that this modification will remain functional. The DAEC has demonstrated to the NRC that these vent/purge valves are capable of closing against the buildup of containment pressure in the event of a DBA/LOCA if the valves are limited mechanically to a maximum opening angle of 30 degrees. Therefore, this Technical Specification change does not increase the probability of occurrence of an accident or the consequences of an accident.

c. The revision of subsection 3.7.D.2 does not change the requirement to isolate lines which contain inoperable valves. It provides specific guidance regarding acceptable methods for isolating affected lines or permits restoration of the inoperable valve to OPERABLE status within 4 hours. The deletion of the surveillance requirement (subsection 4.7.D.2) does not adversely affect the function of this specification, since isolation of affected lines will be controlled administratively. The provision allowing opening of isolation valves on an intermittent basis will allow for testing of other valves in

the line under administrative control while preventing the line from being isolated for an excessive period. These changes do not increase the probability of occurrence of an accident or the consequences of an accident.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

a. The rewording of Specification 3.7.A.9 merely allows the DAEC more flexibility to perform plant evolutions which are already allowed by Technical Specifications and the UFSAR. Therefore, the possibility for an accident different from any previously evaluated is not created.

b. Adding the 30 degree opening limit for vent/purge valves to the Technical Specifications provides additional assurance that these valves will perform as designed and, therefore, does not create the possibility for an accident different from those previously evaluated.

c. The revision of subsection 3.7.D.2 to clarify the acceptable methods of isolating affected lines and the deletion of subsection 4.7.D.2 do not change the functional requirements of the Technical Specifications for isolating lines which contain inoperable valves, and, therefore, do not create the possibility for an accident different from those previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

a. According to the discussion in (1)a. above, the DAEC vent/purge valves and SGTS will remain functional during and after a DBA/LOCA. Therefore, the rewording of Specification 3.7.A.9 does not prevent the containment isolation systems or SGTS from performing their intended function as designed. Therefore, the margin of safety is not reduced.

b. Adding the 30 degree opening limit for vent/purge valves to the Technical Specifications provides additional assurance that these valves will perform their function as designed. Therefore, the margin of safety is not reduced.

c. The clarification of the acceptable methods of isolating the lines with inoperable valves and the notation that the isolated valves may be opened intermittently under administrative control do not change the functional requirements of the Technical Specification to limit the time during which the plant is operated with a line containing an inoperable isolation valve unisolated. The deletion of the surveillance requirement for recording the position of the other valve in the line on a daily basis does not change the functional requirement of the Technical Specification because the isolation of the lines must still be controlled administratively. Therefore, the margin of safety is not reduced.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analyses. Therefore, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: February 24, 1987

Description of amendment request: The proposed changes to the Technical Specifications (TS) concern the Semiannual Radioactive Effluent Release Report (SRERR) and the Special Report (SR). The change to TS concerning SRERR would allow additional time for the filing of supplemental dose and meteorological summary reports. The proposed change to the TS concerning SRERR would ensure that the specification references are consistent with current TS.

The change to the TS concerning SRERR would provide the added time necessary for preparing the annual summaries of meteorological history, and estimated dose commitments resulting from plant operation. These reports would be required to be submitted within 90 days after January 1 of each year. This has been accomplished by dividing the TS concerning SRERR into two sections. Section one contains the requirements for the SRERR and Section two outlines the requirements for submitting annual reports of the Estimated Dose and Meteorological Summary. This change will not affect the submittal of plant radioactive effluent data required by 10 CFR 50.36a, paragraph (a)(2).

The proposed change to TS concerning SR would update the references for the Excessive Radioactive Release Report. Presently the TS concerning SR refers to an incorrect TS section. This TS change would correct that situation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes to the Technical Specifications for the Cycle 10 operation of the Maine Yankee plant against the standards of 10 CFR 50.92 and has determined they do not involve a significant hazards consideration. The licensee's discussion is as follows.

These proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The division of the TS concerning SPERR into two sections and the request for additional time to prepare the supplemental dose and meteorological summary reports is strictly of an administrative nature and does not affect either the type of information submitted or the methods used to prepare it. The change to the TS concerning SR is also of an administrative nature as its purpose is to clarify which sections of TS 3.16 and 3.17 require special reports subject to the TS concerning SR. Thus, these changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Both of these changes are of an administrative nature and affect the requirements for reporting data. One of the changes to specifications concerns the timing of a report; the other will ensure that references within Technical Specifications are consistent. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

These changes are concerned with the timing of reports and references to reports in Technical Specifications. These changes do not affect the contents of the reports or the methods used to prepare them. Therefore, there is no reduction in a margin of safety.

Based on the above discussion, the staff agrees with the licensee's evaluation and proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Ashok C. Thadani.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: February 20, 1987

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Section 6.3.1 and Figure 6.2-2 to reflect the combined nuclear site organization for Nine Mile Point Unit 1 and Unit 2. The proposed change also represents a restructuring of the Chemistry and Radiation Management Organization.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). The licensee has presented its determination of no significant hazards consideration as follows:

The proposed amendment to Figure 6.2-2 of the Technical Specifications reflects the combined nuclear site organization for Nine Mile Point Unit 1 and Unit 2. The change also represents a restructuring of the Chemistry and Radiation Management Organization. The position of Supervisor Chemistry and Radiation Protection has been divided into two separate positions. The newly created positions are Supervisor Chemistry and Radiochemistry, and Radiation Protection Manager. This change was made to improve the efficiency and effectiveness of the Chemistry and Radiation Management Organization.

The proposed revision to Section 6.3.1 requires the Radiation Protection Manager to meet or exceed the qualifications of Regulatory Guide 1.8, September 1975. This change clarifies the qualifications for the Radiation Protection Manager and provides consistency between the Nine Mile Point Unit 1 and Unit 2 Technical Specifications.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates a management organizational change in the Chemistry and Radiation Management Organization to improve the overall performance of Nine Mile Point Unit 1. The other proposed changes are purely administrative in nature. Therefore, the proposed amendment will not increase the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment reflects a change in the site organization. The functions and responsibilities of the site organization will remain the same. Therefore, this change does not create any new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes do not affect the limiting conditions for operations as defined in the Technical Specifications.

The margin of safety for Nine Mile Point Unit 1 will therefore be unaffected.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, DC 20006.

NRC Acting Project Director: Marshall Grotenhuis.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Scriba New York

Dates of amendment request: March 11, 1987, as supplemented March 16, 1987

Description of amendment request: The proposed amendment to the Operating License No. NPF-54 included a request to delete license condition 2.C.(14) concerning the main steam isolation valves (MSIVs). Additional changes requested in the referenced request will be addressed in a later notice. This change, to delete license condition 2.C.(14), would remove the requirements for the licensee to report on prototype testing of the MSIV ball valves and to perform extra leak testing of the MSIV ball valves as required by the license condition and has been requested to support the change from MSIV ball valves to MSIV wye-pattern globe valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change regarding deletion of license condition 2.C.(14) against these standards specified in 10 CFR 50.92(c) and determined that no significant hazards considerations exist for the reasons discussed below. The staff agrees with these reasons.

As discussed in Section 6.2.4 of Supplement 5 to the Safety Evaluation Report for NMP-2, the prototype test program and confirmatory leak testing were to provide confirmation of the adequacy of the MSIV ball valves to meet the design and operating requirements. License condition 2.C.(14) of OL NPF-54 required implementation of this program and reporting. The deletion of the requirements for additional testing of these valves and reporting in this license condition is administrative in nature and will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety because these valves will no longer be used.

Accordingly, the Commission proposes to determine that the proposed change to the License involves no significant hazards considerations.

Local Public Document Room location: Penfield Library, State University College, Oswego, New York 13126.

Attorney for licensee: Mr. Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Elinor G. Adensam.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit I, Montgomery County, Pennsylvania

Date of amendment request: January 13, 1987 as supplemented by letter dated March 25, 1987

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs), in accordance with the licensee's application for amendment dated January 13, 1987 as supplemented by

letter dated March 25, 1987 to permit the licensee to complete the physical modifications, testing and other actions to facilitate connection of the standby gas treatment system (SGTSI to the refueling floor area. These changes to the TS would enable the licensee to establish the operability of the SGTS service to the refueling floor area in response to the requirements of License Condition No. 2.C(14).

The SGTS has been operable in support of the Unit 1 reactor enclosure secondary containment integrity since the issuance of the Unit 1 operating license. A secondary containment completely encloses the Unit 1 and the Unit 2 primary containments and is provided to contain any leakage from the primary containments for processing by filtration systems prior to release. The secondary containment is divided into three separate ventilation zones. Zones I and II consist of the reactor enclosures which surround the primary containments of Units 1 and 2, respectively, below the floor at elevation 352 feet. Zone III consists of the common refueling area above the floor at elevation 352 feet. A design basis of the secondary containment is that the conditions that could exist following a loss-of-coolant-accident (LOCA) or fuel handling accident require the control of any fission products that may leak into secondary containment. Accordingly, a standby gas treatment system is provided to collect and exhaust sufficient filtered air from the reactor enclosure or refueling area to maintain a negative pressure in the affected volumes during secondary containment isolation.

The NRC staff concurred in SER Supplement Nos. 2 and 3 with a request by the licensee for a scheduled delay in completion of the connection of the SGTS to the refueling floor area (Zone III). The staff concurred on the basis that Zone III is completely isolated from the Unit 1 reactor enclosure secondary containment zone; and that Zone III SGTS operation is relied upon during fuel handling and that there would be no irradiated fuel in the spent fuel pool until the first refueling outage. The staff also established License Condition No. 2.C(14) which prohibited any movement of irradiated fuel within the refueling floor volume prior to connection of the SGTS. License Condition No. 2.C(14) would be completely satisfied upon a demonstration of SGTS operability pursuant to the proposed Technical Specifications prior to the movement of any irradiated fuel and prior to removal of the reactor vessel head.

The proposed changes to the TS consist of the following:

(a) The Refueling Area Ventilation Exhaust Duct—Radiation High signal (R signal) and the Outside Atmosphere to Refueling Area Differential Pressure-Low signal (T signal) are presently included in both the primary and the secondary containment isolation actuation instrumentation sections of the TS Tables 3.3.2–1, 3.3.2–2 and 4.3.2.1–1. To eliminate the confusion which could arise among plant operators from having the P and T signals reflected in the primary and secondary containment isolation sections of these Tables, once the refueling floor area is served by the SGTS, the licensee proposes to delete the R and T signals from the primary containment isolation section of these Tables. The generation of the R and T signals would be indicative of conditions in the reactor enclosure or refueling floor area secondary containments requiring isolation. The licensee states that these signals have no relevance to primary containment isolation. Some of the primary containment isolation valves serve a dual role in that they assist in establishing the isolation boundary for the secondary containment as well as the isolation boundary for the primary containment. Therefore, to avoid the confusion which could arise in determining the instrumentation operability requirements for the primary containment isolation function based on operability concerns affecting only the secondary containment isolation function, the licensee proposes to delete operability requirements for R and T signals from the primary containment isolation function in these TS Tables. No change is made to the physical design or hardware of the primary containment isolation system and the R and T signals will actuate all isolation valves required for secondary containment isolation including those valves which serve a dual role as primary containment isolation valves. The specification for the R and T signals, the setpoints, the response times and the surveillance requirements will continue to be included in the secondary containment isolation section of TS Tables 3.3.2–1, 3.3.2–2, 3.3.2–3 and 4.3.3.1–1.

(b) With the proposed changes, the SGTS will be prepared to serve the Unit 1 and the Unit 2 Reactor Enclosure Secondary Containment (Zones I and II) and the Refueling Floor Area (Zone III). Accordingly, the single Manual Isolation Signal in TS Tables 3.3.2–1, 3.3.2–2, 3.3.2–3 and 4.3.2.1–1 is proposed to be divided into a Reactor Enclosure Manual Initiation and a Refueling Area Manual Initiation signal.

(c) Signals R and T are provided to actuate containment isolation valves for the drywell purge supply and exhaust lines and for the suppression pool purge supply and exhaust lines and several associated notes are updated in TS Table 3.6.3–1. These signals are provided to isolate these primary containment lines and thus permit alignment of the SGTS to the refueling area in the event of conditions in the refueling area which require the SGTS to process effluent from the refueling area. Four of these valves, as indicated by the addition of Note 33, also assist in establishing the refueling area secondary containment isolation boundary as well as assist in establishing the primary containment isolation boundary in response to other signals.

(d) Slide gate dampers are proposed to be added to Specification 3/4.6.5 to manually isolate any zone from the SGTS in the event that its secondary isolation system is not in service, thus preventing any valve failures from connecting the SGTS to an area which cannot be brought under SGTS pressure control.

(e) Signals R and T are provided to two of the drywell purge exhaust valves listed in both Table 3.6.5.2.1–1 and Table 3.6.5.2.2–1. The R and T signals are provided to these valves since they assist in establishing the secondary containment isolation boundary and enable the SGTS to be aligned to the appropriate secondary containment when required.

(f) Eight drywell and suppression pool inboard and outboard exhaust line isolation valves and their isolation signals are added to Table 3.6.5.2.2–1 to complete the establishment of the refueling area secondary containment boundary. Four of these valves are Unit 1 valves which serve a dual role in establishing the refueling area secondary containment isolation boundary as well as the primary containment isolation boundary as designated by Note 33 in Table 3.6.3–1. Four of these valves are Unit 2 valves in lines that are sealed off by blind flanges while Unit 2 construction is ongoing and therefore are not required to be active, operable valves until Unit 2 construction is completed.

(g) The surveillance requirements in TS 4.6.5.3 are revised to reflect the required SGTS flowrates, pressure drop, drawdown vacuum and drawdown time for SGTS serving the Unit 1 and 2 reactor enclosures (Zones I and II) and refueling area (Zone III). The

specification for the Unit 2 reactor enclosure will become effective upon completion of construction and licensing of Unit 2 as noted by a footnote at the bottom of page 3/4 6-53.

(h) The BASES to the TS are also modified to reflect the SGTS capability to serve Unit 1 and 2 reactor enclosure (Zones I and II) and the refueling area (Zone III).

The licensee added a vent in the SGTS ductwork to balance the SGTS airflow from the reactor enclosure and refueling area when both zones are connected to the common SGTS at the same time. The licensee states that this vent does not change any response modes or design bases of the SGTS. The licensee also relocated the HPCI Barometric Condenser Vacuum Pump Discharge from the SGTS duct to the reactor enclosure equipment compartment exhaust system. The licensee states that this relocation would not result in radiological consequences greater than previously evaluated.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff has made a preliminary review of the licensee's submittal. The staff's evaluation of the proposed changes is provided below.

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The accidents that are relevant to the proposed changes are the loss-of-coolant-accident (LOCA) and the fuel handling accident which were previously analyzed in FSAR sections 15.6 and 15.7 respectively. The proposed changes would result in completion of construction of the SGTS to Zone III by the installation of ductwork, dampers, controls, filters, instrumentation and reflection of the requirements for this equipment in the TS. The SGTS fans would also be increased in capacity to enable the SGTS to serve all zones simultaneously, if required.

The principal SGTS factors affecting the consequences of a LOCA are not changed significantly. The minimum flow rate analysis basis for each reactor enclosure secondary containment is maintained at 2800 cfm, the drawdown time proposed for the modified SGTS for Zones I and II is maintained at the 121 second value as in the previous safety analysis, the drawdown vacuum is unchanged and the SGTS filter efficiencies are maintained. Therefore, the results of the licensee's analysis of the LOCA consequences in the FSAR are unchanged. None of the proposed changes are proposed to affect the integrity or the operation of the reactor coolant pressure boundary. On these bases the staff concludes that the proposed changes do not increase the probability or consequences of a LOCA. The principal SGTS factors affecting the consequences of a fuel handling accident are also not changed significantly as sufficient SGTS flow rate is provided to drawdown the refueling floor area to the previously specified negative pressure and the SGTS filter efficiencies are maintained. The additional instrumentation and revised surveillance requirements serve to ensure that the containment isolation system and SGTS design basis specified in the FSAR to isolate affected areas and process any releases will be met. None of the proposed SGTS changes would significantly increase the probability of a fuel handling accident since the proposed changes do not impact the handling frequencies, the design of systems, procedures or other factors relevant to the handling of fuel.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated.

The loss-of-coolant-accident and the fuel handling accident for which the SGTS is designed to respond were previously analyzed in the FSAR. The proposed changes will extend the capability of the SGTS from the Unit 1 reactor enclosure secondary containment to the Unit 2 reactor enclosure secondary containment (when it is declared operable) and to the refueling area as analyzed in the FSAR and are also consistent with the design basis set forth in the FSAR. The response of the SGTS to the LOCA and the fuel handling accidents will not be significantly different from the response defined in the FSAR. The proposed TS changes reflect the upgraded SGTS fan capability, the instrumentation required for an operable SGTS refueling area capability and clarifications. No other changes to the plant design, operation or limiting conditions for operation are involved. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction In a Margin of Safety.

The principal factors affecting the margin of safety are not changed significantly from those described in the FSAR and the current TS. Proposed SGTS operation for the reactor enclosure secondary containments would involve the same fan flow rate basis, the same drawdown time, the same drawdown negative pressure, essentially equivalent filter efficiencies and equivalent containment isolation capabilities. Proposed SGTS operation for the refueling area involves sufficient fan flow rate to ensure the same drawdown negative pressure, essentially equivalent filter efficiencies and the addition of containment isolation signals to the appropriate valves to ensure meeting the FSAR isolation design basis. The licensee states that reviews have been performed which support its conclusions that there will be no effect on the post-LOCA doses previously evaluated in the FSAR and that the safety related mode of the SGTS following a LOCA or fuel handling accident will not be affected. Therefore, operation of the facility in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

On the bases discussed above the staff proposes to determine that the application for amendment involves no significant hazard consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: February 11, 1987

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Limerick Generating Station, Unit 1 by revising the current requirement of TS 3.9.2 and Table 3.3.6-1 for a minimum Source Range Monitor (SRM) detector count rate when 16 or fewer fuel assemblies are in the reactors.

The licensee has scheduled the first refueling outage to begin on May 16,

1987 During the outage, a complete core offloading is planned in order to more efficiently complete and accommodate refueling outage work. The fuel assemblies adjacent to the Source Range Monitors (SRMs), being the last fuel assemblies to be removed, would cause the loss of SRM detector count rate contrary to the requirements of the current TS 3/4.9.2, which requires that a minimum SRM detector count rate be maintained at all times during core alterations. This application requests a revision to the requirement for a minimum SRM count rate when sixteen or fewer assemblies are in the core so as to permit complete core offloading. The proposed TS changes consist of a footnote to be added to the bottom of pages 3/4 3-59, 3/4 9-3 and 3/4 9-4. The footnote allows the SRM count rate to decrease below 3.0 cps (0.7 cps when the signal-to-noise ratio is greater than or equal to 2) whenever sixteen or fewer fuel assemblies are in the core adjacent to the SRMs. A change is also made to the TS BASES 3/4.9.2 which further describes how the fuel is to be offloaded and reloaded without the currently required minimum SRM count rate.

The licensee states that the SRM system provides neutron flux information during startup and low flux level operations, monitors neutron flux level during refueling operations, provides protection against high neutron flux during the approach to criticality and monitors neutron flux through the overlap into the Intermediate Range Monitoring System. The SRM functions addressed by the proposed amendment are related to its use in the refueling mode.

The licensee states that the necessity for maintaining a minimum count on the SRMs *at all times* is based on the most conservative evaluation which includes fresh fuel loaded in the initial fuel cycle. A multiplying medium with no neutrons present forms the basis for an accident scenario in which reactivity is gradually but inadvertently added until the medium is highly supercritical. No neutron flux would be evident since there are no neutrons present to be multiplied. The introduction of some neutrons at this point would cause the core to undergo a sudden power burst, rather than a gradual startup, with no warning from the nuclear instrumentation. The licensee states that this scenario is of great concern when loading fresh fuel, but is of much lesser concern when loading irradiated fuel. Irradiated fuel continuously produces neutrons by spontaneous fission of certain plutonium isotopes, photofission, and photo disintegration of deuterium naturally present in the moderator. The neutron production in irradiated fuel is normally great enough to meet the minimum count for a full core after a refueling outage with the neutron startup source removed.

The licensee states that the proposed amendment guarantees the indication of the presence of neutrons in the core because it requires the first assemblies, which will always be loaded next to the SRMs, to produce the minimum required count rate on that SRM. If the first four assemblies fail to produce the minimum required count rate on that SRM, the loading operation must be stopped in the quadrant.

During the refueling, the refueling operations system interlocks and the design of the control rod provide the primary assurance that inadvertent criticality does not occur. Inadvertent criticality was evaluated in Chapter 15 of the Final Safety Analysis Report which analyzed four reactivity anomalies as discussed below. The licensee further states that lack of the minimum required count rate on the Source Range Monitors, whenever sixteen or fewer fuel assemblies are in the core, does not decrease the margin of safety during core offloading/reloading because the control rod design rather than the SRMs precludes removal of a control rod prior to first removing the four adjacent fuel assemblies and because the refueling system interlocks, rather than the SRM, also preclude inadvertent criticality.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a *margin of safety.*

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

(1) Core offloading, reloading and operation of the plant in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Inadvertent criticality concerns were evaluated in the Limerick Generating Station Final Safety Analysis Report (Chapter 15), including the following anomalies:

A Control Rod Removal Error During Refueling
A Second Control Rod Removal or Withdrawal
A Fuel insertion with the Control Rod Withdrawn
A Control Rod Removal Without the Fuel *Removed*

The design of the control rods, coupled with the existing refueling system interlocks, precludes inadvertent criticality in each of the above cases. The evaluation of each case did not take credit for the Source Range Monitors, nor does the control rod design or the refueling system interlocks depend on the Source Range Monitors for safe operation.

Therefore, amending the Technical Specifications to allow the SRM indication to drop below the minimum required count rate whenever there are sixteen or fewer fuel assemblies in the core does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Core offloading, reloading and operation of the plant in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SRMs assure that the neutron flux level information is always available during startup and when core alterations are being accomplished. By stipulating that fuel assemblies remain adjacent to each SRM until all other fuel assemblies have been removed from that quadrant, neutron flux information remains available until the lack of fuel eliminates the need for such information. During reloading, irradiated fuel assemblies are first placed adjacent to the SRMs so that flux information is available as fuel is loaded. Elimination of the requirement to maintain a source of information when the need for the information would no longer be required does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Core offloading, reloading and operation of the plant in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

After all fuel assemblies in a quadrant have been removed from the core (except for those adjacent to the SRMs), the SRMs would no longer be required in that quadrant. During reloading, two, three or four irradiated fuel assemblies are placed adjacent to each SRM until neutron flux indication is obtained.

Because of the physical configuration of the velocity limiter which was incorporated into the control rod design, removing the control rod prior to removing the adjacent fuel assemblies is not physically possible with the existing refueling equipment. Further, the refueling system interlocks prevent a second control rod withdrawal if one control rod is already withdrawn. Shutdown margin demonstrations at the beginning of fuel cycle conditions assures subcriticality with the most reactive control rod fully withdrawn. This reactivity characteristic has been a basic assumption in the analysis of plant

performance and was demonstrated at the time of initial fuel loading. (See Technical Specification Bases, page B 3/4 1-1.) All control rods must be fully inserted during reloading to preclude placing fuel in a cell which does not contain a control rod. Interlocks prevent fuel movement when a control rod is withdrawn and also blocks rod motion if the refueling platform is over the core.

Therefore, based on the discussions above, allowing the SRM count rate to drop below the minimum required count rate when there are sixteen or fewer fuel assemblies in the core, does not involve a significant reduction in a margin of safety because the control rod design and the refueling system interlocks, rather than the SRMs, preclude inadvertent criticality.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: February 25, 1987

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Limerick Generating Station, Unit 1 by providing an extension of 30 days in the current 60 day requirement of TS 6.9.1.8 for filing the SemiAnnual Effluent Release Report. The Current Technical Specification 6.9.1.8 requires that the Semiannual Effluent Release Report covering the previous six months of operation shall be submitted within 60 days after January 1 and July 1 of each year. The licensee states that the extension is appropriate for the following reasons:

This schedule presents difficulties in that the data from which this report is developed is dependent on the analyses of certain isotopes which may take a significant period of time to complete. The length of time which it takes to deliver, analyze and receive the results of the analyses does not provide sufficient time for Licensee's proper preparation and final review of the report within the required 60 day period.

For example, a time period of approximately one week is required for the collection, packaging, and shipment of the sample to the vendor's laboratory located off-site. The time period from receipt of the effluent sample by the analytical laboratory to the issue of final data to Licensee is approximately 45 days. This turn-around time is typical of an analysis of this type because of the time required to perform certain portions of the analysis. Additionally, this analysis is performed during a time of heavier than normal workload for the laboratory due to receipt of similar samples from many other utilities requiring similar analysis to meet the same semiannual deadlines. Any unforeseen delay in the analyses would result in the necessity to submit an incomplete report in order to meet the 60 day reporting period. A follow-up report containing the delayed data can be provided but does impose an added dimension to docketing, filing and later recovery of all the data by interested parties.

For the reason discussed above Licensee requests that the time period in Technical Specification 6.9.1.8 on page 6-17 and on page 6-18 be changed from 60 days to 90 days. The additional 30 days to submit the Semiannual Effluent Release Report will ensure that an adequate period of time is available to analyze the samples, receive and review the data, prepare a report, and provide a reasonable amount of time for review by Licensee's management and technical staffs and to identify and correct errors. This additional time period will eliminate the need for follow-up reports and reduce errors and omissions caused by compressed review time.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

Operation of the Limerick Generating Station Unit 1 in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the collection and analysis of routine plant data, and the preparation time to transmit the information to the NRC is independent of plant design and operational characteristics that can impact potential accidents. Significant increases in radiological effluent releases that may be indicative of an inherent defect in plant design or operation, are reported promptly under the provisions of 10 CFR 50.72, 10 CFR 20.403 and 10 CFR 50.73 and are therefore not impacted by this amendment request;

2. Create the possibility of a new or different kind of accident from any previously analyzed because the routine collection and transmittal of data does not establish a potential new accident precursor;

3. Involve a significant reduction in a margin of safety because the transmittal of these routine plant data does not impact the health and safety of the public.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff, therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

Public Service Company of Colorado, Docket No. 50-267 Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: September 24, 1986.

Description of amendment request: This proposed change separates the "loss of off-site power" test described in Surveillance Requirement 5.6.1 into two portions. In one portion of the test, the automatic start feature of the diesel generator is tested. In the second portion, the load sequencers are tested. The purpose of this change is to improve plant reliability by not introducing transients into the electrical power system during plant operation.

Basis for proposed no significant hazards consideration determination: Neither the probability nor consequences of accidents previously evaluated have been affected by this proposed Technical Specification change. The frequency of performing the presently required surveillance is reduced from twice annually to once per refueling cycle. The emergency diesel generator surveillance verifying

automatic start and run features, but not requiring load shedding and subsequent reenergization of loads, is still proposed to be performed twice annually. Thus, emergency generator operability is affirmed semiannually by proper operation of the loss of power sensing circuits and auto-start capability.

The possibility of a new or different kind of accident from those previously evaluated has not been introduced. The proposed testing still verifies diesel generator operability using previously used and understood tests, but reduces the frequency of power disruptions to essential loads.

No margins of safety have been reduced as a result of the proposed surveillance changes. The proposed changes in surveillance testing involve testing already performed with well understood effects on the plant.

Based on the evaluation provided above, it is the staff's initial determination that operation of Fort St. Vrain in accordance with the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in any margin of safety. Therefore, the staff proposes to determine that this proposed change would involve no significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201-0840.

NRC Project Director: Herbert N. Berkow.

Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: October 3, 1986.

Description of amendments request: Section 5.3.1 of the Technical Specifications identifies a maximum total fuel rod weight of 1766 grams of uranium. Recent improvements to the fuel design (including chamfered pellets with a reduced dish and a nominal density increase) have increased fuel rod weight slightly. The weight increases have caused the maximum fuel rod weight to exceed the specified maximum value of 1766 grams. This proposed change would delete the specified maximum weight limit to allow the current fuel to be in compliance with the Salem 1 and 2 Technical Specifications.

The proposed change would permit the use of assemblies with fuel rods over the weight limit and also reflects the relative insensitivities of this technical specification parameter in the safety analyses. It is judged that this weight difference does not have a significant impact on the safety analyses. Therefore, deletion of the Design Features fuel rod weight limit is not significant to the safe operation of the plant.

Basis for proposed no significant hazards consideration determination: Public Service Electric and Gas Company and Westinghouse Electric Corporation have performed analyses justifying the use of assemblies with fuel rods over the weight limit. These analyses were provided in our letter NLR-N86057 dated April 25, 1986.

In support of this proposed change to Technical Specification 5.3.1, Westinghouse has performed an additional evaluation, which finds that the weight limit is not significant to the safe operation of the plant.

Although a number of safety analyses are affected indirectly by fuel weight, the analyses are more sensitive to fuel configuration, length, enrichment and physical design, which are also specified in the plant Technical Specifications. The Technical Specifications limit power and power distribution, thus controlling the fission rate and the rate of decay heat production. Fuel rod weight does not have any direct bearing on the power limits, power operating level, or decay heat rate. The composition of the fuel is closely monitored to assure acceptable fuel performance. The fuel weight changes that could be made without Technical Specification limit are not of sufficient magnitude to cause a significant difference in fuel performance as analyzed by Westinghouse. There are no expected observable changes in normal operation due to the noted fuel rod weight changes, and the remaining fuel parameters listed in the Technical Specifications are considered in the Reload Safety Evaluation.

Therefore, the proposed change would not involve a significant hazards consideration because facility operation in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The deletion of the fuel rod uranium weight limit does not significantly increase the probability or consequences of previously evaluated accidents. The variation in fuel rod weight that can occur even without a Technical Specification limit is small based on other fuel design constraints, e.g., rod diameter, gap size, UO-2 density and active fuel length, all of which provide some limit on the variation in rod weight. The current safety analyses are not based directly on the fuel rod weight, but rather on design parameters such as power and fuel dimensions. These parameters are either not affected at all by fuel rod weight, or are only slightly affected. However, a review of design parameters which may be affected indicates that such an insignificant change in fuel weight does not cause other design parameters to exceed the values assumed in the various safety analyses, or cause acceptance criteria to be exceeded. The effects are not significant with respect to measured nuclear parameters (power, power distribution, nuclear coefficients), which remain within their Technical Specification limits. Thus, it is concluded that the Technical Specification modification does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The creation of a new, different kind of accident from any previously evaluated accident is not considered a possibility. All of the fuel contained in the fuel rod is similar to and designed to function similar to previous fuel.

3. Involve a reduction in a margin of safety. The margin of safety is maintained by adherence to other fuel-related Technical Specification limits and the FSAR design bases. The deletion of 5.3.1 does not directly affect any safety system or the safety limits, and thus does not affect the plant margin of safety.

Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Victor Nerses, Acting Director.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: February 11, 1987

Description of amendment request: The proposed changes in the Technical Specifications (TS) would revise the limiting conditions for operations (LCO) to require that a later standard be used for iodine testing and analysis of charcoal filter samples. More specifically, the proposed TS change would reference test method ASTM D3803 instead of ANSI N510-1975 now currently specified in the Browns Ferry

TS for laboratory tests to demonstrate methyl iodide removal by carbon filter samples. The requested change is needed to reflect the proper test method since the current reference test procedure (ANSI N510–1975) is for new charcoal filters whereas the NRC Regulatory Guide 1.52 refers to ASTM D3803 for testing samples of both new and used charcoal filters and their iodine filtering capacity. This issue was raised by the NRC staff in Inspection and Enforcement Report 85–57 These tests are required by the TS for charcoal filters in the Standby Gas Treatment System, Control Room Emergency Ventilation, and Primary Containment Purge System in order to determine when charcoal filters need replacement.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards of determing whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

This proposed amendment does not affect the probability or possibility of any accident previously evaluated since it only deals with a test method for laboratory analysis of charcoal filter samples. No plant equipment or operational procedures will be modified as a result of this amendment. The proposed amendment will not involve a significant increase in the consequences of an accident since it will only result in more accurate surveillance testing of the iodide removal capabilities of the charcoal filters. The margin of safety will not be reduced since the Technical Specifications will only be changed to reference a proper testing method which provides more accurate and conservative results.

The NRC staff has reviewed the licensee's no significant hazards consideration and agrees with the licensee's analysis.

The staff, therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC TVA Projects Assistant Director: John A. Zwolinski.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 26, 1986.

Description of amendment request: The proposed amendment would revise the Vermont Yankee Technical Specifications with respect to certain surveillance requirements and Limiting Conditions for Operation. These changes would:

1. Revise Emergency Core Cooling System actuation instrumentation requirements (Table 3.2.1 and 4.2.1) to provide actual instrument numbers rather than an undefined number, and make the trip setting the same for common instruments which provide inputs to different systems.

2. Revise calibration requirements for the Reactor Vessel Shroud instrumentation input to the Emergency Core Cooling Systems to reflect the replacement of level and pressure switches with analog loops.

3. Delete an inapplicable reference note from the Table of Test and Calibration Frequencies. (Table 4.2.1 through 4.2.6)

4. Revise the Limiting Condition for Operation and Bases for operation with one of the Pressure Suppression Chamber—Reactor Building Vacuum Breaker Systems out of service to better clarify the intent of the requirement.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed changes to Tables 3.2.1 and 4.2.1 provide instrument tag numbers which will improve the clarity of the Technical Specifications. The revisions to the trip level setpoints listed in Table 3.2.1 of the Technical Specifications also reflect the replacement of level and pressure switches with analog instruments. This change improves the consistency of the Technical Specifications for instruments common to more than one system. Replacement of switches with more reliable instrumentation improves plant reliability and does not change the design basis, protective function, redundancy, or logic of the original system. As such, this change does not impact the probability or consequences of any accident previously evaluated, nor does it create the possibility of a new or different kind of accident from any accident previously considered. Further, no change in any plant safety margin is required for the reasons stated above.

2. The proposed changes to [Reactor Vessel Shroud Instrumentation Input] revise the surveillance and calibration requirements in Table 4.2.1 to reflect the replacement of level and pressure switches with analog instrumentation. These modified requirements are consistent with those previously approved for similar analog instrumentation utilized at Vermont Yankee The previous requirement of once every three months was appropriate for level and pressure switches. The revised requirement of once every operating cycle is appropriate for the new analog loops because of the reduced setpoint drift. As such, there is no impact in the probability or consequences of [any] accident previously evaluated by this change since it does not involve safety system or primary system boundaries. Similarly, no new kinds of accidents involving safety-related systems are created by this change, nor are any changes required in plant operating or design safety margins.

3. The proposed changes delete a reference to Note 2 in Tables 4.2.1 through 4.2.6 in order to improve and simplify the Technical Specifications. Because the note only applies to those systems which have pilot valves, reference to it is being deleted from those systems for which it is not applicable. The deletion of an inapplicable reference to a table notation has no bearing on any accident previously evaluated, nor does it create the possibility of a new or different kind of accident. Similarly, no changes in any plant operating or design bases safety margins are required by the deletion.

4. The proposed changes revise Section 3.7.A.5.b of the Technical Specifications to better reflect the intent of the requirements [with respect to] the Limiting Conditions for Operation (LCO) of the pressure suppression Chamber-Reactor Building vacuum breakers. The previous LCO required locking the vacuum breakers closed if it was inoperable. The revised LCO specifies that a valve in the failed line must be verified to be in the isolation condition allowing greater flexibility in meeting the intent of the Technical Specification requirements. The new requirement meets the intent to isolate the failed vacuum breaker and also improves consistency between LCOs in the Technical Specifications.

Because these changes provide greater flexibility in meeting an existing requirement and improve consistency with other containment isolation requirements in the Technical Specifications, the probability or consequences of any accident previously evaluated is not significantly increased. Additionally, the possibility of a new or different kind of accident from any accident previously evaluated is not created and no significant reduction [in a] margin of safety is involved.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Daniel R. Muller.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 12, 1987

Description of amendment request: The amendment would revise the Technical Specifications to reflect the addition of redundant post-accident instrumentation and associated limiting conditions for operation and surveillance requirements, a range change, and several minor corrective updates for currently installed instrumentation. More specifically these changes would include:

I. Tables 3.2.6 and 4.2.6 are revised as follows:

(A) The torus pressure parameter was upgraded to provide two (2) redundant, fully qualified instrument channels. The Table 3.2.6 drywell pressure parameter type of indication is accordingly revised to identify the two (2) 0-80 psia pressure indicators.

(B) Based on the torus pressure instrumentation upgrade, the calibration frequency listed in Table 4.2.6, was revised to read Once/Operating Cycle to reflect the installation of analog transmitters. This is consistent with the calibration frequency for other analog instrumentation in the plant.

(C) The torus air temperature instrument channel was upgraded to include a redundant fully qualified instrument channel. A temperature indicator, with a range of 50-300°F is accordingly added to Table 3.2.6.

(D) The reactor vessel water level instrumentation range was upgraded to provide an expanded range indication from (−150)-0-(±150) inches of water to (−200)-0-(±200) inches of water. Accordingly, the Table 3.2.6 reactor vessel water level parameter indication instrumentation range is being changed.

II. NUREG-0737 Supplement 1 required symptom-based Emergency Operating Procedures (EOPs). These EOPs require the ability to measure water level to at least 22.4 feet in the torus. Therefore, the torus water level instrumentation was changed to provide a range of 0-25 feet. Accordingly, revisions to Table 3.2.6 and to Section 3.2 Bases are proposed to reflect this indication change.

III. A corrective update to Table 3.2.6 is proposed for the drywell pressure indicators because containment pressure indication is provided by Meters PI-16-19-12A, B and not by Meters 16-19-29 A, B as presently indicated in Table 3.2.6. 16-19-29A, B are the identification numbers of the transmitters which supply the signal to the indicators. Additionally, the indication recorder number for the drywell atmospheric temperature parameter on Table 3.2.6 is revised to better specify the actual indication recorder number.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

Proposed Changes I(A), I(B), I(C), and I(D) involve the addition of redundant, environmentally, and seismically qualified instrumentation, an associated calibration frequency change and an expanded indicator range. These changes enhance the safety of the plant by assuring the upgraded/qualified instrumentation will operate properly following a Loss of Coolant Accident (LOCA) or High Energy Line Break (HELB). The calibration frequency change to Table 4.2.6 from every six months to once per operating cycle reflects the increased reliability and reduced setpoint drift of the upgraded instrumentation, and is consistent with the existing Technical Specification calibration frequency for other similar equipment in the plant. The equipment added and modified in these changes complies with NRC accepted design and installation standards. In addition it has been selected to enhance operator interface and support emergency operating procedures. As such, this change does not increase in the probability or consequences of accidents previously evaluated. Similarly, no new or different kinds of accidents involving safety-related systems are created by this change, nor are any changes required in plant operating or design safety margins.

Proposed Change II involves the modification of the torus water level instrumentation range to envelope, with margin, the Emergency Operating Procedure requirement to measure at least 22.4 feet in the torus. The torus water level instrumentation is redundant, environmentally, and seismically qualified analog instrumentation. The change assures that qualified instrumentation will operate properly following a LOCA or HELB and will support operator procedural steps. As such, this change does not impact the probability or consequences of accidents previously evaluated. Similarly, no new or different kinds of accidents are created by this change, nor is any plant safety margin impacted.

Proposed Change III involves corrective updates to Table 3.2.6. As such, there is no increase in the probability or consequences of accidents previously evaluated. Similarly, no new or different kinds of accidents are created by this change, nor is any margin of safety reduced.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Daniel R. Muller.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 16, 1987

Description of amendment request: The proposed amendment would change the Technical Specifications for the

Vermont Yankee Nuclear Power Station by (1) adding a reporting level to the RETS for Co–60 in sediment samples taken from the north storm drain outfall, and (2) requiring the inclusion of the revision number on each page of the Off–Site Dose Calculation Manual (ODCM) in place of an approval and date box on each page.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a request for amendment involves a significant hazards consideration (10 CFR 50.92). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria as follows:

The change proposed to Table 3.9.4 involves the addition of a sediment reporting level requirement which enhances the Vermont Yankee Radiological Environmental Monitoring Program. As described in the referenced amendment request [Reference (b)], enhancements to the Environmental Monitoring Program as described in NRC guidance and requested in this supplemental proposed change are not related to accident analyses or plant safety. As such, this change does not impact the probability or consequences of any accident previously evaluated, nor does it create the possibility of a new or different kind of accident previously considered. Since the change concerns only environmental monitoring reporting levels, no change in any plant safety margin is required.

The change proposed to Section 6.13.A.1.a involves a change to achieve consistency with Vermont Yankee's practices for updating controlled documents. As such, this change is purely administrative and thus creates no significant change in the probability or consequences of an accident previously evaluated, nor creates a new or different accident. No significant changes in any plant operating or design basis safety margins are required by this administrative change.

Based on an evaluation of the above licensee analysis, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Daniel R. Muller.

Virginia Electric and Power Company, et al., Docket No. 50–339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: February 19, 1987

Brief description of amendment: The proposed change would modify the NA–2 Facility Operating License Condition 2.C.(15)(c) which requires the inspection of the recirculation spray pumps inside containment at least once every five years. Specifically, the proposed change would permit the second inspection to be performed during the forthcoming NA–2 refueling outage which is scheduled to commence on July 31, 1987 The inspection is currently required to be performed on May 27 1987 and would require a plant shutdown. Therefore, the proposed change would allow the second inspection to take place during the refueling outage after an additional 64 days had transpired from the presently specified date for the second inspection.

Supplement 10 to NUREG–0053, Final Safety Evaluation Report, NA–1&2, Section 6.3.3 concerns the testing performed on the Inside Recirculation Spray Pumps. Paragraph 3 of Section 6.3.3 states: "We also require that these pumps be removed and inspected at the first planned major outage. The pump bearings should be replaced if necessary. Paragraph 4 adds " We require a similar inspection of the pumps at least once every five years.

[and] [t]he Technical Specifications (TS) will reflect these requirements." By stating that the TS will reflect these requirements, Supplement 10 to NUREG–0053 indicates that these inspections will be subject to the same requirements regarding time intervals and allowable extensions as specified in the NA–2 TS 4.0.2.

The NA–2 TS 4.0.2 specifies (in part) that "Each surveillance requirement shall be performed within the specified time interval with a maximum allowable extension in time not to exceed 25% of the surveillance interval." Twenty-five percent of the five year surveillance interval (1825 days) is 456 days and thus, the licensee's request to exceed the five year testing interval by an additional 64 days to the forthcoming refueling outage is well within the allowable extension in time specified in the NA–2 TS 4.0.2.

It is noted that during the first refueling outage for NA–2, the inside recirculation spray pumps were removed and inspected. The inspections revealed no significant degradation of the pump bearings.

Section 6.2.2.5.2 of the Updated Final Safety Analysis Report describes the instrumentation available in the control room to monitor system parameters during the operation of the recirculation spray pumps. This includes: pump discharge pressure; containment sump and recirculation pump discharge water temperature; vibration alarms; and indication of shaft rotation. Also, NA–2 TS 3.6.2.2 requires that "four separate and independent containment recirculation spray subsystems, each composed of a spray pump, associated heat exchanger and flow path" shall be *Operable* during *Modes* 1, 2, 3, and 4. In addition, station periodic test procedures require that the inside recirculation spray pump be run every 3 months to determine *Operability*. This is accomplished by verifying that the pump achieves a speed greater than 100 rpm as indicated by a rotation sensor. No problems related to the bearings have been identified as a result of these periodic tests.

Based upon the satisfactory results of the inspection of the bearings during the first refueling outage, the diverse instrumentation available in the control room to detect system degradation during emergency operation, the current NA–2 TS requirements for system operability, and the periodic testing of the pumps for *Operability* determination, there is adequate assurance that the inside recirculation spray pumps will remain operable during the requested extension of time to the surveillance interval.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety. The proposed change will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The

testing requirements will not change, only the required surveillance interval. The requested extension in the surveillance interval is in accordance with the surveillance requirements of the other NA-2 TS. Previous inspections have not shown any significant degradation of the pump bearings and periodic testing of the pumps for *Operability* have not indicated any problems. The NA-2 *Operability* requirement for the containment recirculation spray system has not been changed. Therefore, there is no significant increase in the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously identified. The testing requirements will not change, only the required surveillance interval; consequently, no new or different kind of accident is created.

(3) Involve a significant reduction in a margin of safety. The testing requirements will not change, only the required surveillance interval. The requested extension in the surveillance interval is in accordance with the surveillance requirements of the other TS. Previous inspections have not shown any significant degradation of the pump bearings. In addition, periodic testing of the pumps for *Operability* (every 3 months over the last 5 years) have not indicated any problems.

The TS *Operability* requirement for the containment recirculation spray system has not been changed. Therefore, there is no significant reduction in a margin of safety.

Therefore, the proposed change meets criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed change involves no significant hazards considerations, and that operation of the facility in accordance with the proposed change would not involve a significant hazards consideration.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Virginia Electric and Power Company, Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of amendment request: February 20, 1987

Description of amendment request: The proposed change in the form of a license condition for North Anna, Unit 1 (NA-1) would permit the use of two (2) fuel assemblies containing advanced cladding materials. The licensee plans to insert two Westinghouse fuel assemblies containing fuel rods clad with advanced cladding material (zirconium base alloy) into the NA-1 Cycle 7 core which is scheduled for startup in the second quarter of 1987 The fuel assemblies will contain a number of fuel rods clad with a zirconium base alloy instead of the presently used Zircaloy-4 to obtain further confirmation of the alloy clad's improved corrosion performance at reactor conditions. The two fuel assemblies have removable top nozzles which allow access to all fuel rods for inspection. The fuel rods with the alloy cladding will contain nominally 95% dense UO_2 pellets and will have the same rod dimensions as other fuel rods presently in the core. The fuel rods will have Zircaloy-4 end plugs, and will be pressurized with helium.

The NA-1 Technical Specification 5.3.1 describes the reactor core as consisting of assemblies containing 264 fuel rods clad with Zircaloy-4. In order to allow for the insertion of fuel rods clad with a zirconium base alloy in the two fuel assemblies, a license condition would specify NRC approval for the use of the two fuel assemblies containing fuel rods clad with the advanced cladding material (zirconium base alloy).

Fuel rods clad with the zirconium base alloy clad have been irradiated in a foreign reactor at linear power levels up to 17 kilowatts per foot (kw/ft) and at burnups greater than those planned for the NA-1 fuel assemblies. Corrosion and hydriding data obtained on the alloy cladding were compared with reference Zircaloy-4 cladding of fuel rods irradiated as controls in the same test assemblies. Based on the irradiation results of the test assemblies in the foreign reactor, it is expected that the zirconium base alloy waterside corrosion and hydriding will be less than that expected for Zircaloy-4 clad fuel rods. Irradiation results also showed lower clad irradiation growth (delta L/L) and creepdown for the zirconium alloy compared to Zircaloy-4. These irradiation results were considered in the design of the fuel rods with zirconium alloy clad in order to assure that all the current fuel rod design bases are satisfied for the planned irradiation life of the NA-1 fuel assemblies.

The use of two assemblies with fuel rods clad with a zirconium base alloy will not result in any new accident since the two assemblies and their fuel rods will satisfy the same design bases used for other assemblies in the fuel region as specified in the NRC approved Westinghouse report, "Reference Core Design Report—17 x 17 Optimized Fuel Assembly, WCAP-9500-A, Volume 2, May 1982. For each reload core until discharge, the fuel assemblies will be specifically evaluated using NRC approved standard methods specified in the VEPCO report, "Reload Nuclear Design Methodology," VEP-FRD-42, Revision 1-A, September 1986, and the Westinghouse report, "Improved Analytical Models Used in Westinghouse Fuel Rod Design Computations," WCAP-8720, October 1976 and Addendum dated June 1982 and December 1983. The two fuel assemblies do not change the existing reload design and safety analysis limits and therefore, the current NA Updated Final Safety Analysis Report (UFSAR) remains bounding. Finally, the irradiation data and design analysis provide sufficient evidence to support the determination that fuel rods with zirconium base alloy cladding will perform, at the very least, as well as fuel rods with the present Zircaloy-4 cladding.

Although the new zirconium based alloy is very similar in composition to "Zircaloy" it is not clear that it falls within the scope of 10 CFR 50.46 which applies to "Zircaloy" clad fuel. Resolution of this question will involve substantial effort in checking into the rulemaking process on which 10 CFR 50.46 is based. Complete resolution of this issue however is not necessary at this time to assure that operation with 2 test assemblies will be adequately safe. For the use of this material in test assemblies, the composition of the zirconium based alloy is very similar to zircaloy in all significant respects; moreover, the test assemblies are not located in the portions of the core expected to experience highest burnup and highest power density. The performance of these assemblies in the event of a LOCA will be bounded by the performance previously calculated for the other zircaloy clad assemblies in the core which was based on accepted ECCCs evaluation models. In the absence of resolution of whether the zirconium based alloy material can be considered to be "Zircaloy" an

exemption from the provision of 50.46 limiting its application to "Zircaloy" is needed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

Based on the above, the proposed change (license condition) does not:

(1) Involve a significant increase in the probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the safety analyses. The fuel assemblies with zirconium base alloy clad fuel rods meet the same fuel assembly and rod design bases as other fuel assemblies in the fuel region, and the use of these fuel assemblies will not result in a change to existing reload design and safety analysis limits. Although the use of the zirconium based alloy may require an exemption as discussed above, for use in test assemblies the characteristics of this material are very similar to zircaloy in all significant respects. Consequently, the existing evaluations are fully applicable to the new material and the new material does not affect the probability or consequences of any previously evaluated accident or any malfunction of equipment.

(2) Create the possibility of a new or different type of accident than previously evaluated since the fuel assemblies satisfy the current design bases. In addition, use of the assemblies does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. The use of the new materials does not create the possibility of a new or different type of accident.

(3) Involve a significant reduction in the margin of safety. The fuel assemblies do not change the existing reload design and safety analysis limits. Therefore, the current UFSAR analyses remain bounding and there is no reduction in the margin of safety. The use of the new material does not involve a reduction in margins of safety.

Therefore, the proposed change (license condition) meets the criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed change involves no significant hazards considerations, and that operation of the facility in accordance with the proposed change would not involve a significant hazards consideration.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: November 18, 1986.

Description of amendment request: This proposed amendment, if approved, will change the WNP-2 Technical Specifications by modifying Tables 3.3.7.5-1 and 4.3.7.5-1, Accident Monitoring Instrumentation, to reflect the environmentally qualified flux monitoring instrumentation required as a condition of the WNP-2 license.

License Condition 16, Attachment 2, Item 3b states: "The licensee shall implement (installation or upgrade) requirements of Regulatory Guide 1.97 Revision 2, for flux monitoring prior to startup following the second refueling outage." Accordingly, the licensee is procuring equipment to meet this schedule and satisfy the license condition.

The WNP-2 Technical Specifications (Tables 3.3.7.5-1 and 4.3.7.5-1) currently reflect three neutron monitoring instruments, APRM/IRM/SRM, to cover the entire neutron flux range of interest; but single wide range environmentally qualified monitors are being installed for this purpose. Consequently, it is appropriate to change the technical specifications to specify the environmentally qualified neutron instrumentation that will be added to the system.

Additionally, with the redundancy provided by the existing flux monitoring devices, which will remain in use, the action statement for wide range monitors should be changed from "80" to "81" Under action statement 81 the alternate method of monitoring, should the number of operable channels be less than the minimum, would be use of the existing APRM, IRM and SRM monitors. This action is similar to that required for other instruments listed in Table 3.3.7.5-1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from an accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment per 10 CFR 50.92 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the equipment being installed will not provide input to any safety systems relied upon in the licensing bases accident analyses. The change in action statements does not significantly increase the probability or consequences of an accident previously evaluated because the redundant APRM, IRM and SRM monitors presently in use will be available should the wide range monitors be declared inoperable.

(2) Create the possibility of a new or different kind of accident than previously evaluated because the equipment provides monitoring only and merely provides another display that indicates neutron flux or power levels in addition to the existing devices currently relied upon. The change in action statements does not create the possibility of a new or different kind of accident because the equipment provides a monitoring function only and has adequate redundancy with the existing APRM, IRM and SRM monitors so that no new or different kind of accident is credible.

(3) Involve a significant reduction in a margin of safety because no safety margins are changed. This wide range monitoring equipment provides a passive monitoring function only and is not part of any plant safety related system, thus safety margins will not be affected. The change in action statements does not involve a significant reduction in a margin of

safety because the existing redundant monitors provide adequate backup given the remote possibility that both wide range monitors become inoperable.

Based on the above considerations, the Commission proposes to determine that the requested change to the WNP-2 Technical Specifications involves no significant hazards considerations.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Washington Public Power Supply System, Docket No. 50-397 WNP-2, Richland, Washington

Date of amendment request: March 10, 1987

Description of amendment request: This proposed amendment, if approved, would revise a license condition of the WNP-2 Operating License NPF-21. Attachment 2, paragraph 3.(b) of License Condition 2.C.(16) as amended, now requires that the licensee shall implement (install or upgrade) requirements of Regulatory Guide 1.97 Revision 2, for flux monitoring prior to startup following the second refueling outage. The licensee has requested that implementation of this requirement be delayed until the third refueling outage.

To date the Supply System has been unsuccessful in its attempt to qualify a neutron monitoring system as required by Revision 2 of Regulatory Guide 1.97. On three separate occasions during recent qualification testing, the test assembly experienced immediate failures. These failures are currently under investigation by the monitoring system vendor. It is now deemed unlikely that the difficulty can be found, corrected and the system subjected to a successful qualification test prior to restart following the second refueling outage. Thus the Supply System would be unable to meet the requirements of the existing License Condition.

Because the development of a flux monitoring system that meets the criteria of the Regulatory Guide remains an industry development item and because there are unrelated systems to monitor plant status (e.g., control rod position monitors) as well as the existing neutron monitoring system, the Supply System has concluded that the operators have sufficient data to assess reactor conditions following an accident event.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from an accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the existing instrumentation consists of four redundant safety related channels; additionally, there are unrelated systems in place to provide operators with sufficient data to assess reactor conditions in the unlikely event of an accident prior to replacement; or

(2) Create the possibility of a new or different kind of accident than previously evaluated because no function of the flux monitor system is being changed; therefore, no new or different kind of accident is conceivable; or

(3) Involve a significant reduction in a margin of safety because adequate instrumentation is provided to allow the operator to assess reactor conditions without this monitor in the unlikely event of an accident condition that could cause the monitor currently in place to fail prior to replacement.

Based on the above considerations, the Commission proposes to determine that the requested change to the WNP-2 license involves no significant hazards considerations.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire; Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (21) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Carolina Power & Light Company, Dockets Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: June 28, 1985, as supplemented September 2 and 23, 1986 and February 27 1987

Brief description of amendments: The amendments change Section 3/4.8.1 of the Technical Specifications to reduce the number of cold fast starts, eliminate

excessive surveillance testing and extend the allowable outage time for the emergency diesel generators. We have determined that sufficient information was not provided to approve that portion of the June 28, 1985 application relating to extending the allowable outage time for offsite power sources. As requested by CP&L letter of February 27 1987 we will consider the proposed change to the offsite power source outage time in a separate action after receipt of additional justification.

Date of issuance: March 27 1987

Effective date: March 27 1987

Amendments Nos.. 104 and 134.

Facility Operating Licenses Nos. DPR-71 and DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 3278,).

The September 2, 1986 submittal provided clarifying information and did not change the substance of the initial notice. The September 23, 1986 submittal provided a clarifying correction to a footnote.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: November 26, 1985, supplemented June 16, 1986 and November 24, 1986.

Brief description of amendments: The amendment approves changes to the Technical Specification Section 3/4.5.2 to allow closure of either of the Residual Heat Removal Pump discharge to Reactor Coolant System (RCS) cold leg isolation valves, along with the Safety Injection Pump discharge to RCS cold leg valve, in order to perform certain check valve back leakage testing.

The licensee's submittal of November 24, 1986 was made as a result of NRC staff request to clarify the original submittal dated November 26, 1985, supplemented June 16, 1986.

Date of issuance: March 20, 1987

Effective date: March 20, 1987

Amendment Nos.. 6.

Facility Operating License Nos. NPF-37 and NPF-66. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27279).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 20, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: December 5, 1986, supplemented February 26, 1987 and February 27 1987

Brief description of amendments: These amendments would extend the applicability of the heatup and cooldown curves to 14 effective full power years.

Date of issuance: March 13, 1987

Effective date: March 13, 1987

Amendment Nos.: 101 and 91.

Facility Operating License Nos. DPR-39 and DPR-48. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4404).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 13, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: October 16, 1986.

Brief description of amendments: These amendments would allow disabling the rod control system at Zion Station during the time periods that a reactor is in Mode 3 with less than four reactor coolant pumps operating.

Date of issuance: March 19, 1987

Effective date: March 19, 1987

Amendment Nos.. 102 and 92.

Facility Operating License Nos. DPR-39 and DPR-48. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17 1986 (51 FR 45197).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 19, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: October 15, 1986.

Brief description of amendments: These amendments would modify the Zion Technical Specifications in accordance with the guidance contained in the referenced letter, Generic Letter 85-19. These changes will eliminate the requirement to shutdown if the coolant iodine exceeds one micro-curie per gram dose equivalent iodine 131 for 800 hours in a twelve month period.

In addition, the reporting requirements regarding iodine spiking and a number of other minor administrative changes are also included. These minor administrative changes include correction of position title, special reporting requirement changes, and the specific activity reporting requirements discussed above.

Date of issuance: March 26, 1987

Effective date: March 26, 1987

Amendment Nos.. 103 and 93.

Facility Operating License Nos. DPR-39 and DPR-48. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17 1986 (51 FR 45196).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: October 15, 1985.

Brief description of amendment: This amendment allows delegation of the Plant Manager's procedure approval authority, by the Plant Manager, to appropriate members of the plant management. This amendment differs from the October 15, 1985 submittal in that the affected Technical Specifications within the Administrative Controls, Section 6.8.2 and 6.8.3c, have been revised in mutual agreement between the Consumers Power Company and the staff such that the intent of the specifications is clarified.

Date of issuance: March 23, 1987

Effective date: March 23, 1987

Amendment No. 103.

Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17 1986 (51 FR 451191 at 45197).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 23, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 9, 1986, as supplemented February 13, 1987

Brief description of amendments: The amendments modify Technical Specification 3/4.7.7 to change the allowed outage time of the auxiliary building filtered exhaust system to make it consistent with the Standard Technical Specification.

Date of issuance: March 24, 1987

Effective date: March 24, 1987

Amendment Nos.. 23 and 13.

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27 1986 (51 FR 30565).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 7 1985, as supplemented November 8, and December 4 and 20, 1985.

Brief description of amendments: The amendments change Technical Specifications Table 3.2-1 "DNB Parameters" for the Reactor Coolant System average temperature and pressurizer pressure so as to provide for direct comparison of measured values with parameter limits.

Date of issuance: March 27 1987

Effective date: March 27 1987

Amendment Nos.. 24 and 14.

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27 1986 (51 FR 30564).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 13, 1986, and supplemented January 21, 1987

Brief description of amendments: The amendments change the Technical Specifications to authorize a maximum fuel enrichment of 4.0 weight percent (w/o) uranium-235, rather than the present 3.5 w/o.

Date of issuance: March 24, 1987

Effective date: March 24, 1987

Amendment Nos.. 68 and 49.

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41853).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 17 1986 and supplemented February 5 and March 16, 1987

Brief description of amendments: The amendments change Technical Specification 3/4.9.12 regarding restrictions for fuel assemblies placed in region 2 of the spent fuel storage pool.

Date of issuance: March 24, 1987

Effective date: March 24, 1987

Amendment Nos.: 69 and 50.

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27 1986 (51 FR 30571).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: August 15, 1984.

Brief description of amendments: These amendments revise the Station's common Technical Specifications (TSs) to add limiting conditions for operation and surveillance requirements for the low temperature overpressure protection system.

Date of issuance: March 30, 1987

Effective date: March 30, 1987

Amendments Nos.. 156, 156 and 153.

Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Facility Operating Licenses.

Date of initial notice in **Federal Register:** October 24, 1984 (49 FR 42817).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: September 10, 1984, as supplemented November 3, 1986.

Brief description of amendment: The amendment added test flowrates to be used when the spray additive system is tested at least once every 5 years.

Date of Issuance: March 30, 1987

Effective Date: March 30, 1987

Amendment No.. 78.

Facility Operating License No. DPR-67 Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 21, 1984 (49 FR 45941 at 45948). The licensee's November 3, 1986 submittal provided additional analyses and had slightly revised the technical specification wording as compared to the original wording proposed in the September 10, 1984 application. The revised wording is acceptable and it does not alter the substance of the action noticed or our original proposal of a no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: November 7 1986 (TSCR 155).

Brief description of amendment: The amendment revises Sections 3.12 and 4.12, Fire Protection, of the Appendix A. Technical Specifications (TS), regarding fire protection and the Alternate Shutdown Facility. Specifically, the changes to the TS are the following:

(1) Add Sections 3.12.I/4.12.I and Tables 3.12-6/4.12-1, the Limiting Conditions of Operation (LCO) and the Surveillance Requirements for the operability of the Alternate Shutdown Facility.

(2) Revise Table 3.12-1 "Fire Detection Instrumentation" to include new detectors which have been added, new fire area/zone designations, and new detection systems.

(3) Revise Table 3.12-2 "Spray/Sprinkler Systems" to include new fire suppression systems and new fire area/zone designations.

(4) Revise Table 3.12-3 "Hose Stations" and Table 3.12-5 "Hydrants and Hose Houses" to include new fire area/zone designations.

(5) Revise Table 3.12-4 "Halon Systems" to include changes in the 480 Volt Switchgear Room Halon System and new fire area/zone designations.

Date of issuance: March 20, 1987

Effective date: March 20, 1987

Amendment No.. 114.

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17 1986 (51 FR 45201).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 20, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of applications for amendment: July 16, 1986, and November 3, 1986.

Brief description of amendment: The amendment revised the TMI-1 Technical Specifications (TSs) to support the core reload for Cycle 6 operation.

Additionally, the amendment changed the order of preference of instrumentation used to monitor reactor power quadrant tilt.

Date of issuance: March 20, 1987

Effective date: March 20, 1987

Amendment No.. 126.

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notices in **Federal Register:** October 8, 1986 (51 FR 36091) and December 30, 1986 (51 FR 47079)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: August 29, 1986 as supplemented on February 19, 1987

Brief description of amendment: Changes the Technical Specifications requirements to perform channel calibrations of the recirculation flow transmitters for two functions of the Average Power Range Monitor (APRM) and one function of the Reactor Coolant System Recirculation Flow from once per six months to once per 18 months.

Date of issuance: March 28, 1987

Effective date: March 28, 1987

Amendment No.. 3.

Facility Operating License No. NPF-47. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 25, 1987 (52 FR 5732).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 22, 1986.

Brief description of amendments: The amendments delete from the Design Features Section 5.3.1 of the Technical Specifications (TS) the maximum fuel rod weight limit 2236 grams uranium for Unit 1 and 1983 grams uranium for Unit 2. The amendments also correct several typographical errors.

Date of issuance: March 27 1987

Effective date: March 27 1987

Amendment Nos.. 102 and 88.

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 14, 1987 (52 FR 1556).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: August 29, 1986.

Brief Description of amendment: The amendment revises the current Technical Specifications (TS) to change the control rod (CR) scram time basis from a percentage insertion to a CR position basis. This will more accurately determine CR scram times based on directly obtainable plant data. Administrative changes are also being approved which will improve consistency in nomenclature throughout the TS.

Date of issuance: March 27 1987

Effective date: March 27 1987

Amendment No.. 141.

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37513).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: October 30, 1986 as supplemented by letter dated January 15, 1987

Brief description of amendment: The amendment modifies Figures 2.1.1 and 3.1.7aa of the Appendix A Technical Specifications regarding the limiting relationships between core power and core flow rate.

Date of issuance: March 24, 1987

Effective date: March 24, 1987

Amendment No.. 92.

Facility Operating License No. DPR-63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2884). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: November 5, 1986.

Brief description of amendment: The amendment changed the surveillance criteria for Sample Selection and Inspection Results regarding steam generator tube inspections from fixed numerical criteria to comparable percentages.

Date of issuance: March 26, 1987

Efffective date: March 26, 1987

Amendment No.. 104.

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17 1986 (51 FR 45191 at 45212).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 17 1986.

Brief description of amendments: These amendments revise Units 1 and 2 license conditions approving the proposed changes regarding the employee security clearances and the vital equipment identification.

Date of issuance: March 26, 1987

Effective date: March 26, 1987

Amendment Nos.. 62 and 33.

Facility Operating License Nos. NPF-14 and NPF-22: Amendment revises license condition 2.D.

Date of initial notice in the **Federal Register:** December 30, 1986 (51 FR 47084). The Commission's related evaluation of the amendment is contained in a safety Evaluation dated March 26, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: October 31, 1986, as supplemented December 8, 1986.

Brief description of amendment: The amendment revises Technical Specifications Sections 3.1.3.4 and 3.1.3.5 regarding Shutdown Rod and Control Rod Insertion Limits, by changing the definition of "fully withdrawn rods" from 228 steps to greater than 225 steps.

Date of issuance: March 20, 1987

Effective date: March 20, 1987

Amendment No.. 125.

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4417). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 31, 1986.

Brief description of amendment: The amendment changes the Technical Specifications to support plant operation with the recently installed second-level undervoltage protection system.

Date of issuance: March 20, 1987

Effective date: March 20, 1987

Amendment No.. 106.

Facility Operating License No. DPR-59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2889). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 4, 1986.

Brief description of amendment: The amendment changes the Technical Specifications pertaining to operability requirements for the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems.

Date of issuance: March 20, 1987

Effective date: March 20, 1987

Amendment No.. 107

Facility Operating License No. DPR-59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2886). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of applications for amendments: December 12, 1985 and February 7 1986.

Brief description of amendments: The amendments revised Technical Specification 3/4.7.6, "Snubbers", to add additional requirements for the visual inspection acceptance criteria and transient event inspections.

Date of issuance: March 23, 1987

Effective date: March 23, 1987 to be implemented within 30 days of issuance.
Amendment Nos.. 58 and 47
Facility Operating License Nos. NPF-10 and NPF-15: Amendments revise the Technical Specifications.
Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18695). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 1987
No significant hazards consideration comments received: No.
Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 20, 1987
Brief description of amendments: The amendments change the Technical Specifications to add a requirement for demonstrating the operability of the shunt trip attachment to the reactor trip breaker and to incorporate testing requirements in the surveillance requirements for the reactor trip bypass breakers.
Date of issuance: March 16, 1987
Effective date: March 16, 1987
Amendment Nos.. 54 and 46.
Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4420). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1987
No significant hazards consideration comments received: No.
Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 5, 1986.
Brief description of amendment: This amendment corrected a clerical error in the Technical Specifications (TSs) by inserting the word "or" after the words "within 7 days" in Section 3.7.9:1.a. This correction makes the reporting requirements of Section 3.7.9.1.a consistent with the reporting requirements of fire protection TS Sections 3.3.3.8.b, 3.7.9.2.a and 3.7.10.a.
Date of issuance: March 16, 1987
Effective date: March 16, 1987
Amendment No. 101.
Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36105). The Commission's related evaluation of the amendment is contained in a letter to the Toledo Edison Company dated March 16, 1987
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 12, 1986.
Brief description of amendments: The amendments revise the Technical Specifications in order to allow the tie-in, startup, and operation of a replacement spray system for the existing service water spray system and its related components.
Date of issuance: March 27 1987
Effective date: Within 60 days of the date of issuance.
Amendment Nos.. 91 and 76.
Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36106). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27 1987
No significant hazards consideration comments received: No.
Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Washington Public Power Supply System, Docket No. 50-397 WNP-2, Richland, Washington

Date of amendment request: March 14, 1986.
Brief description of amendment: This amendment revises WNP-2 Technical Specifications Table 4.3.7.5-1 to reflect the installation of new HydrogenOxygen Analyzers which eliminate the necessity of obtaining precise sample gas concentrations for calibration.
Date of issurance: March 27 1987
Effective date: March 27 1987
Amendment No.. 37
Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32280). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27 1987
No significant hazards consideration comments received: No.
Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: June 28, 1985.
Brief description of amendments: The amendments change the expiration date for the Point Beach Unit 1 Facility Operating License No. DPR-24 from July 19, 2007 to October 5, 2010 and change the expiration date for the Unit 2 Facility Operating License No. DPR-27 from July 25, 2008 to March 8, 2013.
Date of issuance: March 17 1987
Effective date: March 17 1987
Amendment Nos.. 107 and 110.
Facility Operating License Nos. DPR-24 and DPR-27 Amendments change the license expiration dates.
Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41241). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 17 1987
No significant hazards consideration comments received: No.
Local Public Document Room location: Joseph P Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By May 8, 1987 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800)

325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: December 12, 1986, as revised on January 29, 1987 and supplemented on February 11, 1987

Brief description of amendments: These amendments revised the Station's common Technical Specifications (TSs) to support the operation of Oconee Unit 3 at full rated power during the upcoming Cycle 10. These amendments also revised the TSs on the Oconee Unit 1 operational power imbalance curve; quadrant power tilt and xenon reactivity. For Oconee Unit 3 only, these amendments raised the minimum boron concentration in the borated water storage tank from 1835 parts per million (ppm) to 2010 ppm to ensure that the core is at one percent delta k over k, 1% delta k/k or shutdown margin, at 70 °F without any control rods in the core. Other administrative type changes requested in the licensee's February 11, 1987 application are being handled separately.

Date of issuance: March 19, 1987

Effective date: March 19, 1987

Amendments Nos.. 155, 155, 152.

Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, published in the **Federal Register** on March 6, 1987 (52 FR 7050).

Comments received: No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 19, 1987

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Dated at Bethesda, Maryland this 2nd day of April, 1987

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A.

[FR Doc. 87–7685 Filed 4–7–87· 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, RS 701–4 (which should be metioned in all correspondence concerning this draft guide), is entitled "Best-Estimate Calculations of Emergency Core Cooling System Performance" and is intended for Division 1, "Power Reactors." The guide is being developed to describe models, data, model evaluation procedures, and methods that are acceptable to the NRC staff for addressing proposed amendments to 10 CFR Part 50 (52 FR 6334). It provides guidance on realistic calculation of emergency core cooling system performance during a loss-of-coolant accident and on estimating the uncertainty in that calculation. The guide also requests comments from the public on the applicability of the models and guidance.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the draft guide (including the implementation schedule). Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by July 1, 1987

Although a time limit is given for comments on the draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552)(a))

Dated at Rockville, Maryland, this 2nd day of April 1987

For the Nuclear Regulatory Commission:

Bill M. Morris,

Acting Director, Division of Reactor System Safety, Office of Nuclear Regulatory Research.

[FR Doc. 87–7775 Filed 4–7–87; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques

used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, CE 602-4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 3.1, "Use of Borosilicate-Glass Raschig Rings as a Neutron Absorber in Solutions of Fissile Material. The guide is being revised to update procedures acceptable to the NRC staff for implementing the Commission's regulations concerning the prevention of criticality accidents in solutions of fissile material by the use of borosilicate-glass raschig rings as a neutron absorber. They guide is being revised to endorse ANSI/ANS-8.5-1986, "Use of Borosilicate-Glass Raschig Rings as a Neutron Absorber in Solutions of Fissile Material.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. The have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by June 5, 1987

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 2nd day of April 1987

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Safety, Office of Nuclear Regulatory Research.

[FR Doc. 87-7776 Filed 4-7-87 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-400]

Carolina Power and Light Co., (Shearon Harris Nuclear Power Plant); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a "Director's Decision Under 10 CFR 2.206" concerning a Petition dated October 17 1986, submitted by Mr. Wells Eddleman and the Coalition for Alternatives to Shearon Harris (Petitioners). The Petition requested the agency to revoke, suspend or modify the construction permit for the Shearon Harris facility of the Carolina Power & Light Company (CP&L) and to delay or deny the issuance of an operating license for the facility. The basis for the requests were alleged deficiencies in CP&L's quality assurance program for electrical safety-related components, alleged lack of requisite character and technical capability to operate the Shearon Harris facility, and allegedly poor documentation and performance of certain construction procedures.

The Director, Office of Nuclear Reactor Regulation, has determined to deny Petitioner's request pursuant to 10 CFR 2.206. The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206, DD-87-06 which is available for public inspection in the Commission Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room for the Shearon Harris facility at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Bethesda, Maryland, this 2nd day of April, 1987

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-7774 Filed 4-01-87 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277; 50-278, License Nos. DPR-44; DPR-56, EA 87-46]

Philadelphia Electric Co., Peach Bottom Atomic Power Station, Units 2 and 3; Order Suspending Power Operation and Order to Show Cause

I

Philadelphia Electric Company (Licensee) is the holder of Facility Operating License Nos. DPR-44 and DPR-56, authorizing the License to operate the Peach Bottom Atomic Power Station, Units 2 and 3 (facility), in Delta, Pennsylvania. The licenses were issued by the Nuclear Regulatory Commission (NRC or Commission) on October 25, 1973 and July 2, 1974, respectively.

II

On March 24, 1987 the NRC, Region I, received information that control room operators at Peach Bottom had been observed sleeping while on duty in the control room and were otherwise inattentive to their license obligations. The information also indicated that this conduct on the part of operators was pervasive and has been occurring for some time, and that shift supervision had knowledge of this situation. On March 24, 1987 in response to this information NRC initiated: (1) 24 hour inspection coverage of the Peach Bottom control room and (2) a special safety investigation of licensed activities. The NRC investigation, which is still ongoing, to date has established:

1. At times during various shifts, in particular the 11:00 p.m. to 7:00 a.m. shift, one or more of the Peach Bottom operations control room staff (including licensed operators, senior licensed operators and shift supervision) have for at least the past five months periodically slept or have been otherwise inattentive to licensed duties.

2. Management at the Shift Supervisor and Shift Superintendent level have either known and condoned the facts set forth in Paragraph one, or should have known of these facts.

3. Plant management above the shift superintendent position either knew or

should have known the facts set forth in Paragraph one and either took no action or inadequate action to correct this situation.

III

Prior NRC inspections have identified other instances of inattention to duty or failure to adhere to procedures on the part of licensed operators in the control room at Peach Bottom.

On June 10, 1985, during the 11:00 p.m. to 7:00 a.m. shift, an NRC inspector was present in the Unit 3 control room and observed an on-duty Unit 3 reactor operator sitting in a chair at the Unit 3 reactor control panel with his eyes closed and his head tilted back, aparently asleep or otherwise inattentive to his duties. In response to this charge the licensed operator denied being asleep and indicated he was enticing the NRC inspector to believe he was asleep, demonstrating poor judgment and a negative attitude toward safety. An enforcement conference was held with the licensee concerning this matter on June 21, 1985.

On June 6, 1986, the NRC issued its Systematic Assessment of Licensee Performance (SALP) report for the period April 1, 1985 through January 31, 1986. This report concluded that management involvement and effectiveness toward improving operating activities was not evident. Indications of the lack of adequate management involvement included: poor dissemination of management goals and policies; poor communications between different departments and divisions; and a focus on compliance rather than acknowledgement and correction of the root causes of problems. Further, the report concluded there was a complacent attitude toward procedural compliance in plant operations.

On June 9, 1986, the NRC issued a Notice of Violation and Proposed $200,000 Civil Penalty for several violations that resulted from numerous personnel errors by several licensed operators, including the Shift Supervisor and Shift Superintendent, both of whom are licensed senior reactor operators, and two licensed reactor operators. These personnel errors by four licensed individuals and associated violations indicated a pattern of inattention to detail, failure to adhere to procedural requirements, and a generally complacent attitude by the operations staff toward performance of their duties at Peach Bottom. This NRC assessment was emphasized to the licensee in a June 12, 1986, letter from Victor Stello, Jr., Executive Director for Operations, to J.C. Everett, III, PECo Chairman of the Board and Chief Executive Officer.

In addition, three previous civil penalties were issued for violations of technical specifications involving violations that resulted from personnel errors. March 29, 1983 (EA 83-7); June 13, 1983 (EA 83-46); June 18, 1984 (EA 84-39). In general, the enforcement history at Peach Bottom regarding adherence to procedures and attention to duty has been poor.

IV

The NRC expects licensees to maintain high standards of control room professionalism. NRC licensed operators in the control rooms at nuclear power plants are responsible for assuring that the facility is operated safely and within the requirements of the facility's license, technical specifications, regulations and orders of the NRC. To be able to carry out these highly important responsibilities, reactor operators must give their full attention to the condition of the plant at all times. Operators must be alert to ensure that the plant is operating safely and must be capable of taking timely action in response to plant conditions. All control room business must be conducted in such a way that neither control room operator attentiveness nor the professional atmosphere will be compromised. Sleeping while on duty in the control room demonstrates a total disregard for performing licensed duties and a lack of appreciation for what those duties entail.

10 CFR 50.54(k) and Peach Bottom Technical Specifications 6.2.2 prohibit sleeping or otherwise inattentive operators in the control room. Under 10 CFR Part 50, App. B, the licensee must have and implement procedures to ensure that activities affecting quality, including operations of the facility, are satisfactorily accomplished. The Peach Bottom quality assurance program has failed to identify this condition adverse to safety. These conditions constitute a hazard to the safe operation of the facility.

In light of the above, it is apparent that the licensee, through its enforcement history and from what has been developed by the ongoing investigation, knew or should have known of the unwillingness or inability of its operations staff to comply with Commission requirements, and has been unable to implement effective corrective action. Consequently, the NRC lacks reasonable assurance that the facility will be operated in a manner to assure that the health and safety of the public will be protected. Pending the development of other relevant information, I am unable to determine that there is reasonable assurance that the facility will be operated in a manner to assure that the health and safety of the public will be protected. Accordingly, I have determined that continued operations of the facility is an immediate threat to the public health and safety. Therefore, I have determined that the public health, safety and interest requires that the Licensee should proceed to place or maintain its units in a cold condition.

I have further determined for the reasons set forth above, that pursuant to 10 CFR 2.201(c), no prior notice is required and, pursuant to 10 CFR 2.202(f), the actions required by section V of this Order are immediately effective pending further Order.

V

Accordingly, pursuant to sections 103, 161 (i) and (o), 182 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 50, it is hereby ordered, effective immediately that:

A. The licensee shall within 36 hours from receipt of this Order, shutdown Unit 3 and place the unit in the cold condition (reactor coolant temperature equal to or less than 212°F) and maintain both units in the cold condition with the reactor mode switch in either the refueling or shutdown mode pending further Order.

B. The licensee shall provide to the Administrator of Region I within seven days of this Order a description of the actions the licensee plans to take to provide asurance that the facility will comply with all requirements including station procedures while in a cold condition.

C. Before the licensee proposes to operate either Unit 2 or Unit 3 above a cold condition the licensee shall provide to the Administrator of Region I, for his approval, a detailed and comprehensive plan and the schedule to accomplish the plan to assure that the facility will safely operate and comply with all requirements including station procedures;

D. Licensee may show cause, in the manner hereinafter provided, why this order should not have been issued; and

E. The Regional Administrator, Region I, may relax any of the above provisions, in writing, upon demonstration of good cause by the licensee.

VI

The licensee may show cause, within 20 days after issuance of this Order by filing a written answer under oath or affirmation setting forth the matters of fact and law on which the licensee relies. The licensee may answer as

provided in 10 CFR 2.202(d) by consenting to the entry of an Order in substantially the form proposed in this Order.

VII

The licensee or any other person adversely affected by this Order may request a hearing within 20 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this Order or a request for hearing shall not stay the immediate effectiveness of Section V of this Order.

If a hearing is requested by the licensee or other person adversely affected by this Order, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 31 day of March, 1987

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-7784 Filed 4-7-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL, 50-444-OL, (ASLBP No. 82-471-02-OL) (Offsite Emergency Planning)]

Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 and 2); Hearing

Before Administrative Judges: Helen F Hoyt, Chairperson, Gustave A. Linenberger, Jr., Dr. Jerry Harbour.

April 2, 1987

The following dates and location have been established for the first three weeks of hearings:

June 1-5, 1987 9:00 a.m.-6:00 p.m. EDT
June 22-26, 1987 9:00 a.m.-6:00 p.m. EDT
June 20-24, 1987 9:00 a.m.-6:00 p.m. EDT
U.S. District Court, 55 Pleasant Street, Concord, New Hampshire 03301-1498

For the Atomic Safety and Licensing Board.

Helen F Hoyt,

Chairperson, Administrative Judge.

[FR Doc. 87-7785 Filed 4-7-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Biotechnology Science Coordinating Committee; Open Meeting

Agency: Executive Office of the President, Office of Science and Technology Policy.

Notice is hereby given of the following open meeting of the Biotechnology Science Coordinating Committee.

Date and time: 28 April 1987 at 3:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 543, Washington, DC.

Contact: Mary Gant, Executive Secretary, BSCC, Office of Science and Technology Policy, Room 5026, New Executive Office Building, Washington, DC 20506, (202) 395-3952.

Tentative agenda: International cooperative activities, Status of USDA regulations, Subcommittee activities.

Public participation: The meeting is open to the public. Members of the public who wish to make oral presentations pertaining to agenda items should contact Mary Gant at the above address or telephone number. Requests to speak including topic must be received 2 days prior to the meeting; reasonable provisions will be made to include the presentation on the agenda as time permits although the time available for each presentation may need to be limited. The Chairman of the BSCC is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Issued at Washington, DC, on 3 April 1987

Jonathan F Thompson,

Executive Assistant to the Director, Office of Science and Technology Policy.

[FR Doc. 87-7873 Filed 4-7-87; 8:45 am]

BILLING CODE 3170-01-M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the Returned Peace Corps Volunteer and Former Staff Data Base Card through March 1, 1990. The card is completed voluntarily by those former volunteers and staff interested in receiving information on current activities by the Agency. Respondents also indicate if they are willing to voluntarily share with the general public their experiences with the Peace Corps. This information is necessary for Peace Corps to cost effectively achieve the three goals stated in the Peace Corps Act, in particular, the third goal of promoting a better understanding of other people on behalf of the American people.

Information About the Form

Agency Address: Peace Corps, 806 Connecticut Avenue, NW Washington, DC 20526
Title: RPCV and Former Staff Data Base Card
Request: Approval of Use
Frequency of Collection: On occasion
General Description of Respondent: Individuals who served as Peace Corps volunteers or as Peace Corps staff.
Estimated Number of Responses: 5,000
Estimated Hours for Respondents to Furnish Information: .033 Hours each.
Respondents Obligation to Reply: Voluntary
Comments: Comments on this form request should be directed to Francine Picoult, Desk Officer, Office of Management and Budget, Washington, DC 20503.

A copy of this form may be obtained from Noel McCaman, Direct Response Advertising Unit, Office, of Recruitment, Peace Corps, 806 Connecticut Avenue, NW Room M-1106, Washington, DC 20526. Mr. McCaman may be called at 202-254-6480.

This notice is issued in Washington, DC, on April 6, 1987

Linda Rae Gregory,

Associate Director for Management.

[FR Doc. 87-7769 Filed 4-7-87; 8:45 am]

BILLING CODE 6051-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Wednesday May 13, 1987 at the Hyatt Regency Crystal City

at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the meetings are to set the work agenda for the next year. The public is encouraged to communicate with PROPAC regarding issues for consideration. Suggestions may be addressed to Dr. Donald A. Young, Executive Director, Prospective Payment Assessment Commission, 300 7th Street, Southwest, Suite 301B, Washington, DC 20024.

The Subcommittee on Diagnostic and Therapeutic Practices will meet in the Regency A & B Rooms at 9 o clock a.m. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene their meeting at 9 o'clock a.m. in Potomac I and II Rooms. The Full Commission will convene its meeting at 1:30 p.m. in the Virginia Room.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87-7953 Filed 4-7-87; 9:00 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Certain Over-the-Counter Securities

March 30, 1987

The Midwest Stock Exchange, Inc. ("MSE") on March 30, 1987 submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 in the following over-the-counter ("OTC") security, *i.e.*, not registered under section 12(b) of the Act:[1]

Symbol	Issuer	File No.
APCI	Apollo Computer, Inc.	7-9866.

Comments

Interested persons are invited to submit, on or before April 23, 1987 written comments, data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Commentators are requested to address whether they believe the grant of UTP is consistent with section 12(f)(1)(C). Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors. In considering an application for extension of UTP to OTC securities under section 12(f)(1)(C), the Commission is required to take account of, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant the application if any rule of the national securities exchange making the application under 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists. In this connection, commentators should note that the Commission previously has stated, as a general matter, that the grant to an exchange of UTP for up to 25 OTC stocks pursuant to section 12(f)(1)(C) would be appropriate, subject to the establishment of a facility for consolidating the OTC and exchange reports of quotations and transactions in such securities.[2] The NASD and MSE have submitted a plan intended to provide for such a reporting facility.[3] Accordingly, commentators may wish to address the specific question of UTP regarding this security in the context of the Commission's general policy statements in this area. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis

Assistant Secretary.

[FR Doc. 87-7732 Filed 4-7-87; 8:45 am]

BILLING CODE 8010-01-M

On December 18, 1986, the MSE submitted an application for UTP on 25 OTC securities (*see* 52 FR 1687). One of the issuers, Tandem Computers, Inc. ("TNDM"), however, has since listed its securities on the New York Stock Exchange. Thus, the MSE submitted this application for UTP in Apollo Computer, Inc. and simultaneously withdrew its UTP application for Tandem Computers, Inc. (File No. 7-9495).

See Securities Exchange Act Release No. 22412 (September 16, 1985) 50 FR 38640.

[3] *See* Securities Exchange Act Release No. 23698 (January 7, 1987).

[Rel. No. IC-15659; 812-6551]

The Northwestern Mutual Life Insurance Co., et al.

April 2, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Northwestern Mutual Life Insurance Company ("Northwestern"); NML Equity Services, Inc. ("Equity"); NML Variable Annuity Account B ("Account B"); NML Variable Annuity Account 1 ("Account 1"); and NML Variable Annuity Account 2 ("Account 2").

Relevant 1940 Act Sections: Exemption requested *under* Section 17(b) from Section 17(a).

Summary of Application: Applicants seek an order of exemption to the extent necessary to effect the proposed combination of Accounts 1 and 2 into Account B.

Filing Date: The application was filed on December 4, 1986, and amended on March 27 1987

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 27 1987 Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC, 20549. Applicants, 720 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person of the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations: 1. Northwestern is a mutual life insurnace company. Equity is a wholly-owned,

second-tier broker-dealer subsidiary of Northwestern and acts as underwriter of Northwestern's variable annuity contracts. Accounts B, 1 and 2 are variable annuity separate accounts registered under the 1940 Act as unit investment trusts. Northwestern and Equity are co-depositors of the Accounts.

2. Assets of Account B are invested in shares of four underlying mutual funds ("Funds") used exclusively as funding vehicles for Northwestern's variable annuity contracts. The Account B variable annuities are tax-qualified and nontax-qualified contracts. Assets of Account 1 are invested in shares of one of the Funds, and assets of Account 2 are invested in shares of two of the Funds. The Account 1 and Account 2 variable annuities are nontax-qualified contracts.

3. The Applicants proposed to combine Accounts 1 and 2 into Account B by redeeming the shares of the Funds held in Accounts 1 and 2, reallocating the proceeds of the redemptions to Account B, and purchasing for Account B the same number of shares of each Fund to replace the assets previously held in Accounts 1 and 2. The combination will be accomplished by transactions as of a single point in time, based on the net asset values of the shares of each Fund.

4. The combination of the Accounts will make all four of the Funds available as investment funding vehicles for the Account 1 and Account 2 contracts and will permit savings of administrative costs. The present limitations of the funding vehicles for Accounts 1 and 2 reflect the former federal income tax treatment of long-term capital gains in the context of non-tax qualified variable annuities. These limitations are no longer appropriate in view of the changes in the tax laws enacted in 1984.

5. All provisions of the Account 1 and Account 2 contracts will continue in effect after the proposed combination and the contracts will continue to be administered in accordance with their terms.

6. All costs of the proposed combination of the Accounts will be borne by Northwestern. No taxes or other costs will be incurred by owners of the variable annuity contracts as a resuls of, or in connection with, the proposal transaction.

7 The terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned. The proposed transaction is consistent with the policy of each registered investment company concerned and is consistent with the general purposes of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-7731 Filed 4-7-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15608; File No 812-6590]

Hartford Life Insurance Co., et al.

April 3, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Hartford Life Insurance Company ("Hartford"), Hartford Life Insurance Company-Thomson McKinnon Separate Account ("Account"), and Hartford Equity Sales Company, Inc. ("Equity Sales").

Relevant 1940 Act Sections: Exemption requested *under* section 6(c) *from* sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants request exemption to offer certain individual and group Flexible premium variable annuity contracts ("contracts") subject to a daily asset charge for mortality and expense guarantees at the annual rate of 1.25%, estimated at .90% and .35%, respectively.

Filing Date: The application was filed on January 7 1987 and amended on March 5, 1987

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 23, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549 Applicants, Hartford Plaza, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. Hartford is a stock life insurance company organized under the laws of the state of Connecticut. The Account is registered under the 1940 Act as a unit investment trust. Equity Sales, a registered broker-dealer, is the principal underwriter for the contracts.

2. The contractowner has the right to allocate purchase payments to any one or more of five portfolios ("Funds") of Thomson McKinnon Investment Annuity Trust. A sales charge is not deducted at the time of purchase. Each premium payment, net of any applicable premium tax, is credited to the contract. A Contingent deferred sales charge may be assessed against contract values upon surrender. The time from receipt of a premium payment to the time of surrender determines the contingent deferred sales charge; and the charge equals 5% of the amount withdrawn for the first year, 4% for the second year, 3% for the third year, 2% for the fourth and fifth year, and 0% for the sixth year. A single partial surrender may be made each year after the first full contract year of up to 10% of the aggregate premium payments without the application of the contingent deferred sales charge.

3. An annual maintenance fee of $25 is deducted on each contract anniversary from contract values. A daily charge of .175% per annum is made against contract values for administration. The contracts issued with respect to the Account will provide for a 1.25% annual asset charge paid to the Hartford on a daily basis for providing mortality and expense guarantees.

4. The mortality undertaking provided by Hartford under the contracts, assuming the selection of one of the forms of life annuities, is to make monthly annuity payments (determined in accordance with the 1983(a) Individual Annuity Table with ages set back one year and other provisions in the contract) regardless of how long an annuitant may live, and regardless of how long all annuitants as a group may live. Hartford also assumes the liability for payment of a minimum death benefit. The expense undertaking is the risk assumed that the contingent deferred

sales charges, the annual maintenance fee, and the asset-based administration charge, may be insufficient to cover the actual costs.

5. Exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) is requested in order that the contracts may be subject to the mortality and expense risk charge. Hartford and the Account represent that:

(a) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. These contracts are similar in that current charge levels are approximately the same; all provide minimum death benefit guarantees the same as or lower than the Applicants contract; all have guaranteed annuity purchase rates; all have the same special accounting system for separate account unit value administration; and all are offered in the same market. Hartford will undertake to maintain and make available to the Commission upon request a memorandum underlying this representation;

(b) There is likelihood that the proceeds from explicit sales loads will be insufficient to cover the expected costs of distributing the contracts. Hartford has concluded that there is a reasonable likelihood that the Account's distribution financing arrangement will benefit the Account and contractowners, and that it will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation; and

(c) The Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

6. The exemption requested to permit the deduction for mortality and expense guarantees is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-7815 Filed 4-7-87 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-805]

American President Lines, Ltd., Application To Increase Sailings to Guam on its TR 29 (U.S. Pacific, Hawaii, Alaska/Far East Service)

Notice is hereby given that American President Lines, Ltd. (APL), by letter application dated March 30, 1987 has requested amendment of its Appendix A of Operating-Differential Subsidy Agreement, Contract MA/MSB-417 to increase from 26 to 52 the number of Line A sailings that APL may provide between California and Guam. For future flexibility, APL also requested an increase to 52 in the number of Line B sailings that may call at Guam, subject to an overall maximum of 52 annual sailings that may call at Guam in either or both Line A and Line B services. No increase was requested in the scope of APL's exsting authority to provide service between Guam and foreign ports on APL s authorized routes.

APL has recently reorganized its services to begin a second, weekly service on Line A, between California and the Far East. The reorganization is occasioned by the continuing growth in trade that has occurred on the routes serviced by APL, particularly eastbound. APL ships have been operating at full capacity eastbound for several years, and have been experiencing good utilization westbound as well. Without added service and added capacity APL believes it will lose cargo, and market share, to foreign lines, which themselves have been increasing service and adding capacity at a rapid rate.

The increase in Line A sailings, while providing increased coverage to major Far East ports served by APL and improved transit time between many of those ports and California ports, also provides APL the opportunity to call at Guam on a weekly basis, rather than on a fortnightly basis as it has in the past. APL feels that the availability of a weekly rather than a fortnightly service will be a significant benefit to Guam commercial interests, and remedies the disadvantage that APL has operated under since it reinstituted the Guam service in competing with the weekly service being provided by United States Lines, Inc.

Commerce between continental United States ports and Guam has been determined to be not "domestic intercoastal or coastwise service within the meaning of section 805(a) of the Merchant Marine Act, 1936, as amended (Act). Also it is not foreign commerce, and therefore does not fall within the provisions of section 605(c) of the Act.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW Washington, DC 20590. Such views should be directed to the issue as to whether the effect of the amendment sought by APL would be to give undue advantage or be unduly prejudicial as between APL and other operators serving Guam. Comments must be received no later than 5:00 p.m. on April 21, 1987 This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: April 3, 1987

By Order of the Maritime Subsidy Board.

James E. Saari,

Secretary.

[FR Doc. 87-7773 Filed 4-7-87 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP-87-02; Notice 1]

The Uniroyal Goodrich Tire Company; Receipt of Petition for Determination of Inconsequential Noncompliance

The Uniroyal Goodrich Tire Company of Akron, Ohio, has petition to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for apparent noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tire for Vehicles Other Than Passenger Cars*, on the basis that it is consequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other

exercise of judgment concerning the merits of the petition.

Paragraph S6.5(d) of Federal Motor Vehicle Safety Standard No. 119, *New Peneumatic Tires for Vehicles Other Than Passenger Cars,* requires that tires be marked on both sidewalls with the maximum load rating and corresponding inflation pressure of the time. Uniroyal Goodrich Tire Company manufactured and shipped 3,922 31X10.50R15 All-Terrain Radial tires that do not comply with Paragraph S6.5(d) of FMVSS No. 119. These tires have the incorrect load range stamped on the serial number side of the tire.

From August 31, 1986 to December 12, 1986, Uniroyal Goodrich stamped the following load range on their 31X10.50R15 All-Terrain Radial:

Load Range G—Max. Load 2,250 Lbs. at 50 PSI Cold.

The correct load range is: Loag Range C—Max. Load 2,250 Lbs. at 50 PSI Cold.

Uniroyal Goodrich believes this noncompliance is inconsequential to motor vehicle safety because all identification located above the bead on both sides of the tire correctly states the maximum load in terms of pounds and pressure and the highest load range available in the family of flotation tire sizes is load range "C" Also the correct load range identification appears on the opposite serial number sidewall and is imprinted on each paper label adhered to the tread of the tire.

Interested persons are invited to submit written data, views and arguments on the petition of The Uniroyal Goodrich Tire Company described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 8, 1987

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on April 3, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-7754 Filed 4-7-87 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 87-48]

Recordation of Trade Name; Aspen Laboratories, Inc.

AGENCY: Customs Service, Treasury.

ACTION: Notice of recordation.

SUMMARY: On January 30, 1987, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ASPEN LABORATORIES, INC." was published in the **Federal Register** (52 FR 3075). The notice advised that before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than March 31, 1987 No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "ASPEN LABORATORIES, INC. is recorded as the trade name used by the Aspen Laboratories, Inc., a corporation organized under the laws of the State of Colorado, located at 181 Inverness Drive West, Englewood, Colorado 80155. The trade name is used in connection with the following merchandise manufactured in the United States: the developing and marketing of products for medical electronic equipment, such as electrosurgical electrodes, electro power supply and adapter for power supply to supply electricity to electrosurgical electrodes.

DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW Washington, DC 20229 (202-566-5765).

Dated: April 2, 1987.

Steven Pinter,

Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87-7749 Filed 4-7-87; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 87-50]

Recordation of Trade Name: Jobst Institute, Inc.

AGENCY: Customs Service, Treasury.

ACTION: Notice of recordation.

SUMMARY: On January 26, 1987 a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "JOBST INSTITUTE, INC." was published in the **Federal Register** (52 FR 2787). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than March 27 1987. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "JOBST INSTITUTE, INC. is recorded as the trade name used by the Jobst Institute, Inc., a corporation organized under the laws of the State of Ohio, located at 653 Miami Street, Toledo, Ohio 43694. The trade name is used in connection with the following merchandise manufactured in the United States: developing and marketing of medical soft goods for the treatment of vascular and lymphatic system disorders due to surgery, trauma or disease, such as support stockings and elastic pressure covers for the treatment of burns.

DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

Dated: April 2, 1987

Steven Pinter,

Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87-7750 Filed 4-7-87 8:45 am]

BILLING CODE 4820-02-M

[T.D. 87-49]

Recordation of Trade Name; Medical Engineering Corporation

AGENCY: Customs Service, Treasury.

ACTION: Notice of recordation.

SUMMARY: On January 30, 1987 a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "MEDICAL ENGINEERING CORPORATION" was published in the Federal Register (52 FR 3075). The notice

advised that before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than March 31, 1987 No responses where received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "MEDICAL ENGINEERING CORPORATION, is recorded as the trade name used by the Medical Engineering Corporation, a corporation organized under the laws of the State of Delaware, located at 3037 Mount Pleasant, Racine, Wisconsin 53401. The trade name is used in connection with the following merchandise manufactured in the United States: medical prostheses, catheters, drains and tracheal tubes.

DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

Dated: April 2, 1987.

Steven Pinter,

Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87-7751 Filed 4-7-87; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 87-47]

Recordation of Trade Name; Xomed, Inc.

AGENCY: Customs Service, Treasury.

ACTION: Notice of recordation.

SUMMARY: January 26, 1987 a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "XOMED, INC." was published in the **Federal Register** (52 FR 2787). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than March 27 1987 No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "XOMED, INC." is recorded as the trade name used by the Xomed, Inc., a corporation organized under the laws of the State of Delaware, located at 6743 Southpoint Drive North, Jacksonville, Florida 32216. The trade name is used in connection with the following merchandise manufactured in the United States: medical prosthetic supplies and apparatus, such as, surgical instruments, x-ray machine drapes, ear drapes, various types of sheeting and gauze primarily for use in surgical procedures, otology implants, and stapedectomy prostheses.

DATE: April 8, 1987

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

Dated: April 2, 1987.

Steven Pinter,

Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87-7752 Filed 4-7-87; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Privacy Act of 1974; Systems of Records

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notification of revised notices of systems of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to revise several notices of systems of records and Appendix A. Further identification of changes are printed below in their entirety.

DATE: These changes are effective April 8, 1987

FOR FURTHER INFORMATION CONTACT: Marcus Farbenblum, (202)566-3359, Chief, FOI/Privacy Section.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service is revising several notices of systems of records and Appendix A. Some of the notices are being revised to add the phrase "in response to a subpoena in the following routine use (wherever it appears): "to disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings." This phrase was inadvertently dropped when routine uses contained in the Department of the Treasury's Appendix AA were incorporated into appropriate systems.

With the elimination of Appendix AA's routine uses, the congressional inquiry routine use is included for several systems to enable us to respond to a congressional inquiry.

Several systems also contain tax return information; thus IRC 6103 is cited within the Routine Uses category of the notice. Additionally, 26 U.S.C. 7852(e) is included in the Contesting Records Category.

In numerous systems, the Notification Procedures and Record Access Procedures are being revised to contain instructions on how to seek access and/or notification.

In System 10.001, the Categories of Records in the System is being amended to include photographs. The Routine Uses category is being amended to include the statement that, "information contained in this system may be included in news releases issued to the media and the public"

In System 10.004, the Routine Uses category is being amended to include the following: "To the extent information contained in this system is used in response to inquiries from the media, routine disclosures may be made to the media and the public."

In System 22.034, the Categories of Records in the System is being amended to include withholding allowance certificates. The Storage category is being expanded to include magnetic media.

In System 24.030, the Retention and Disposal category is being amended to clarify that although the Potentially Dangerous Taxpayer System (PDT) contemplates reassessment after five years, it does not necessarily mean that PDT codes will be removed in five years.

The System Name of 24.046, "Returns and Information Processing—Treasury/IRS Business Master File (BMF)" should be "Business Master File (BMF): Returns and Information Processing, D:R:R—Treasury/IRS."

In Systems 26.001, 26.006, 26.008, 26.010, 26.011, 26.013, 26.016, 26.019, 26.020, 26.021 and 26.022 the Routine Uses category is being revised. Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

In Systems 26.011 and 26.016, the phrase, "disclosures may be made during judicial processes" is being deleted from the Categories of Records in the System, as not being applicable to this section of the notices.

In System 34.018, the Routine Uses category is being revised. The routine use set forth in the notice as published is an intra-agency use which need not be published.

In System 36.002, the method of storage of records is being expanded to include magnetic media.

In System 36.005, in the Routine Uses category, the "(3)" is being removed. The language which follows should be part of the second routine use enumerated therein.

In Systems 37.001, 37.002, 37.003, 37.004, 37.005, 37.006, 37.007 37.008, 37.009, 37.010 and 37.011 the Routine Uses category is being revised to include disclosures to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

The System Name of 42.001, "Examination Administrative File is being changed to, "Examination Administrative File (open and closed)" to clarify that both open and closed examination administrative files are included.

In Systems 42.001, 42.012, 42.013, 42.017 42.027 42.030, 49.001, 49.002, 49.003, 49.007 and 49.008 the System Location and System Manager(s) and Address categories are being revised to reflect the IRS reorganization which established the Office of the Assistant Commissioner (International).

The System Name of 42.016, "Classification and Examination Selection Files" is being changed to, "Classification/Centralized Files and Scheduling Files and other changes in the System Location, Categories of Records in the System and Retention and Disposal categories are being made to reflect the systems change from manual to automated.

In System 48.001, the language in the Systems Exempted from Certain Provisions of the Act and Record Source categories is being revised. In accordance with 5 U.S.C. 552a(k)(2), the Commissioner has claimed the system exempt from various Privacy Act provisions, including access.

Pursuant to paragraph (g) of the Notice of Exempt Systems, 42 FR 49407 published on September 26, 1977 any information contained in an exempt IRS system which is also located in another nonexempt system retains its exempt status. Accordingly, the language in System 48.008, Systems Exempted from Certain Provisions of the Act category is being revised.

System 60.010 has not been exempted by the Commissioner. The first sentence in the Notification Procedure category is being deleted. It is a partial restriction which has no legal basis.

As a result of the reorganization of the Office of Chief Counsel (effective 10/27/85), the Corporation Tax Division and the Individual Tax Division were transferred to Chief Counsel. Therefore, the systems described in 80.001 and 80.002 are now under the jurisdiction of the Director, Appeals Division and are being renumbered as 44.004 and 44.005. The system described in 80.003 will remain under Associate Chief Counsel (Technical) but, as a result of the reorganization, is being renumbered as 90.017

System 90.001 is being revised to add 5 U.S.C. 552(d)(5) in the Notification and Record Access Procedures category.

In Systems 90.003 and 90.013, the System Name category is being revised to include the Associate Chief Counsel (International).

The current language in the Retention and Disposal category of 90.006 and 90.010 is no longer correct and is therefore being revised.

Typographical errors are being corrected as follows: The Routine Uses category of 70.001, "27 U.S.C. 6103" should be "26 U.S.C. 6103"; the Categories of Records in the System headnote of 60.007 should be set apart and in bolder print, and in the Contesting Records category, "7851(e)" should be "7852(e)"; and the Routine Uses headnote of 80.003, now 90.017 should be set apart and in bolder print, as the other category headings are. In System 60.007 in the Categories of Individuals Covered by the System, the phrase, "persons whose actions or alleged actions indicate a threat to IRS employees, facilities, or the integrity of the tax system" is being corrected to change "indicate to the past tense "indicated"

The following corrections are being made in Appendix A: Due to the IRS reorganization, Director, Disclosure and Security Division is being changed to Director, Office of Disclosure; Foreign Operations District is being changed to Assistant Commissioner (International) and District Counsel's Office, IRS, Foreign Operations is being deleted. The Chief Counsel and the Associate Chief Counsel (Technical) are being deleted from the listing of National Office Internal Revenue Service Systems Managers. The proper placement for the Director, Appeals Division, the Associate Chief Counsel (Technical) and the newly created Associate Chief Counsel (International) is under the listing of National Office Chief Counsel Systems Managers, and the abolished position of Associate Chief Counsel (General) is being deleted. Under Regional Office Internal Revenue Service, the Regional Inspector for each region is being deleted.

Dated: April 1, 1987

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

Portions of the following systems of records are being changed for the reasons stated in the preamble. The date and volume/page of the previous **Federal Register** publication of each system notice is also provided.

Treasury/IRS 10.001 published on July 22, 1985 (50 FR 29817).

SYSTEM NAME:

Biographical Files, Public Affairs—Treasury/IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are biographical data and photographs of key IRS employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Information contained in this system may be included in news releases issued to the media and the public.

Treasury/IRS 10.004 published on July 22, 1985 (50 FR 29817).

SYSTEM NAME:

Subject Files, Public Affairs—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent information contained in this system is used in response to inquiries from the media, routine disclosures may be made to the media and the public.

Treasury/IRS 21.001 published on July 22, 1985 (50 FR 29818).

SYSTEM NAME:

Tax Administration Advisors Resources File, Tax Administration Advisory Services Division—Treasury/IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant roster database, locator cards, and lists with names, addresses, telephone number, and organizational affiliations of officials engaged in tax

administration; work assignment or application folders of past and potential tax administration advisors, which contain employment history, information, medical abstracts, security clearances, and passport information, bio-data sketches on IRS employees and others engaged in tax administration and related fields.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Maintained for use by Division management officials as a reference in obtaining and presenting information related to tax administration, and for administrative selection and processing of overseas and domestic assignments. These records and information in these records may be used to disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made during judicial processes.

STORAGE:

Paper records and magnetic media.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to Director, TAAS Division, PM:HR:TAAS, 1111 Constitution Avenue, NW., Washington, DC 20224.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to Director, TAAS Division, PM:HR:TAAS, 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the Director, TAAS Division, PM:HR:TAAS, 1111 Constitution Avenue, NW., Washington, DC 20224.

Treasury/IRS 22.034 published on July 22, 1985 (50 FR 29821).

SYSTEM NAME:

Individual Returns Files, Adjustments and Miscellaneous Documents Files. D:R:R—Treasury/IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

A variety of records reflecting tax matters which have served as input documents or supporting documentation for entries on the Individual Master File, or other tax accounting files, including tax return forms, declarations, applications, case records, processing documents, vouchers, computer notices, posting and correction forms, Interest Equalization Tax Forms, withholding allowance certificates, and similar records. Information will be maintained as to the name, SSN, address of individuals owing past due child and/or spousal support payments submitted by states under Pub. L. 97-35. Also maintained will be the name of the submission state, the amount owed, and the amount of any individual income tax overpayment retained and transferred to the state to apply against the amount owed.

STORAGE:

Paper document files or magnetic media.

Treasury/IRS 24.030 published on July 22, 1985 (50 FR 29826).

SYSTEM NAME:

Individual Master File (IMF): Returns and Information Processing, D:R:R—Treasury/IRS.

RETENTION AND DISPOSAL:

As specified in the Records Disposition Handbook published by the Service, IRM 1(15)59. The code identifying taxpayers who threatened or assaulted IRS employees may be removed five years after initial input.

Treasury/IRS 24.046 published on July 22, 1985 (50 FR 29826).

SYSTEM NAME:

Business Master File (BMF): Returns and Information Processing, D:R:R—Treasury/IRS.

Treasury/IRS 26.001 published on July 22, 1985 (50 FR 29827).

SYSTEM NAME:

Acquired Property Records, OP:C—Treasury/IRS.

* * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

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Treasury/IRS 26.006 published on July 22, 1985 (50 FR 29828).

SYSTEM NAME:

Form 2209, Courtesy Investigations, OP:C—Treasury/IRS.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

*

Treasury/IRS 26.008 published on July 22, 1985 (50 FR 29828).

SYSTEM NAME:

IRS and Treasury Employee Delinquency, OP:C—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* *

Treasury/IRS 26.010 published on July 22, 1985 (50 FR 29829).

SYSTEM NAME:

Lists of Prospective Bidders at Internal Revenue Sales of Seized Property, OP:C—Treasury/IRS.

* *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose pertinent information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation. (2) To disclose information to a court, magistrate, or administrative tribunal in

the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

Treasury/IRS 26.011 published on July 22, 1985 (50 FR 29830).

SYSTEM NAME:

Litigation Case Files, OP:C—Treasury/IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information about basis of assessment, including class of tax, period, and dollar amount. This file includes: Suit to Reduce Tax Claim to Judgement; Suit for Failure to Honor a Levy; Suit to Enforce Federal Tax Lien; Suit Against Transferee; Suit to Set Aside Fraudulent Transfer; Suit to Recover Erroneous Refund; other suits include those in which the United States may intervene to assert a Federal tax lien; a proceeding to require opening of a safe deposit box, etc. The following suits against the United States are also included in this file; Quiet Title Suit; Foreclosure of Mortgage or other Lien; Partition; Condemnation; Interpleader; Refund Suits Involving 100-Percent Penalty Assessments; Injunction Suits Under Freedom of Information Act. Also included in Litigation Files are: Individuals against whom bankruptcy proceedings are pending; decedent estates in probate with outstanding Federal tax liabilities; individuals executing Assignments for the Benefit of Creditors; individuals in Receivership Proceedings; individuals conducting a bulk sale; summons referrals; subpoena files, advisory opinions; collateral security agreements; revenue officer reports; and various other legal instruments and correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

Treasury/IRS 26.012 published on July 22, 1985 (50 FR 29831).

SYSTEM NAME:

Offer in Compromise (OIC) File, OP:C—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103, and to the extent necessary to permit public inspection of any accepted offer-in-compromise as required by 26 U.S.C. 6103(K)(1).

Treasury/IRS 26.013 published on July 22, 1985 (50 FR 29832).

SYSTEM NAME:

One Hundred Percent Penalty Cases, OP:C—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

Treasury/IRS 26.016 published on July 22, 1985 (50 FR 29833).

SYSTEM NAME:

Returns Compliance Programs (RCP), OP:C—Treasury/IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of name, address, taxpayer identification number (if known) and information concerning the potential tax liability. Returns Compliance Programs involve any type of Federal tax administered by the Collection Division and are conducted in accordance with Section 7601 of the Internal Revenue Code. RCP programs can be initiated by the National Office, Regional Offices, or by individual districts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

Treasury/IRS 26.019 published on July 22, 1985 (50 FR 29833).

SYSTEM NAME:

TDA (Taxpayer Delinquent Accounts) including subsystems: (a) Adjustments and Payment Tracers Files, (b) Collateral Files, (c) Seized Property Records, (d) Tax Collection Waiver, Forms 900, Files, (e) Accounts on child support obligations, OP:C—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

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STORAGE:

Paper records and magnetic media.

Treasury/IRS 26.020 published on July 22, 1985 (50 FR 29834).

SYSTEM NAME:

TDI (Taxpayer Delinquency Investigation) Files, OP:C— Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

Treasury/IRS 26.021 published on July 22, 1985 (50 FR 29835).

SYSTEM NAME:

Transferee Files, OP:C—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

Treasury/IRS 26.022 published on July 22, 1985 (50 FR 29835).

SYSTEM NAME:

Delinquency Prevention Programs, OP:C—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

Treasury/IRS 30.004 published on July 22, 1985 (50 FR 29837).

SYSTEM NAME:

Security Violations—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may

be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made during judicial processes. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

Treasury/IRS 32.001 published on July 22, 1985 (50 FR 29837).

SYSTEM NAME:

Travel Expense Record—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. Routine disclosure of information may be made to furnish another Federal agency information to effect inter-agency salary offset; to furnish a consumer reporting agency information to obtain commercial credit reports; to furnish a debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data available to private sector credit grantors.

Treasury/IRS 32.003 published on July 22, 1985 (50 FR 29838).

SYSTEM NAME:

Schedules of Collections and Schedules of Canceled Checks—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. Routine disclosure of information may be made to furnish another federal agency information to effect inter-agency salary offset, to furnish a consumer reporting agency information to obtain commercial credit reports; to furnish debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data available to private sector credit grantors.

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Treasury/IRS 34.003 published on July 22, 1985 (50 FR 29838).

SYSTEM NAME:

Assignment and Accountability of Personal Property Files—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(2) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

CONTESTING RECORD PROCEDURES:

See Access above.

Treasury/IRS 34.005 published on July 22, 1985 (50 FR 29839).

SYSTEM NAME:

Parking Space Application and Assignment—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes.

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NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

CONTESTING RECORD PROCEDURES:

See Access above.

Treasury/IRS 34.007 published on July 22, 1985 (50 FR 29839).

SYSTEM NAME:

Record of Government Books of Transportation Requests—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. Routine disclosure of information may be made to furnish another federal agency information to effect inter-agency salary offset; to

furnish a consumer reporting agency information to obtain commercial credit reports; to furnish a debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data available to private sector credit grantors.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

CONTESTING RECORD PROCEDURES:

See Access above.

Treasury/IRS 34.009 published on July 22, 1985 (50 FR 29840).

SYSTEM NAME:

Safety Program Files System—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(11) To the extent the records in this system contain returns and return information, disclosures thereof may be made only as provided by 26 U.S.C. 6103.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched. Name must be provided to ascertain whether or not the system has a record pertaining to the individual.

Treasury/IRS 34.012 published on July 22 1985 (50 FR 29841).

SYSTEM NAME:

Emergency Preparedness Cadre Assignments and Alerting Rosters Files Systems—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

CONTESTING RECORD PROCEDURES:

See Access above.

Treasury/IRS 34.013 published on July 22, 1985 (50 FR 29841).

SYSTEM NAME:

Identification Media Files System for Employees and Others Issued IRS ID—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes.

Treasury/IRS 34.014 published on July 22, 1985 (50 FR 29841).

SYSTEM NAME:

Motor Vehicle Registration and Entry Pass Files System—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

CONTESTING RECORD PROCEDURES:

See Access above.

Treasury/IRS 34.016 published on July 22, 1985 (50 FR 29842).

SYSTEM NAME:

Security Clearance Files System—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal

advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. To provide information to agencies and individuals on a need-to-know basis to determine the current status of an individual's security clearance.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

CONTESTING RECORD PROCEDURES:

See Access above.

Treasury/IRS 34.018 published on July 22, 1985 (50 FR 29842).

SYSTEM NAME:

Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS.

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RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center or District Office servicing the area in which the individual resides. (See IRS Appendix A.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

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Treasury/IRS 36.001 published on July 22, 1985 (50 FR 29843).

SYSTEM NAME:

Appeals, Grievances and Complaints Records—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

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(7) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(10) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(11) To the extent returns and return information is included, disclosure thereof may only be made pursuant to 26 U.S.C. 6103.

SYSTEM MANAGER(S) AND ADDRESS:

(a) EEO Discrimination Complaint Records—Assistant Commissioner (EEO, National Office; (b) all other records—Director, Human Resources Division, or Chief Personnel Branch, appropriate office (See IRS Appendix A.)

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Treasury/IRS 36.002 published on July 22, 1985 (50 FR 29844).

SYSTEM NAME:

Employee Activity Records—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(4) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

STORAGE:

Paper records and magnetic media.

Treasury/IRS 36.003 published on July 22, 1985 (50 FR 29844) and December 2, 1985 (50 FR 49493).

SYSTEM NAME:

General Personnel and Payroll Records—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(19) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, and Chief, Personnel Branch, appropriate office (see IRS Appendix A); Executive Secretary, Executive Resources Board (for executive resource records).

Treasury/IRS 36.005 published on July 22, 1985 (50 FR 29846).

SYSTEM NAME:

Medical Records—Treasury/IRS.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(13) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, or Chief, Personnel Branch, appropriate office; Director, Operations Division (Office of Chief Counsel), National and Regional Counsels. (See IRS Appendix A for Locations.)

Treasury/IRS 36.008 published on July 22, 1985 (50 FR 29847).

SYSTEM NAME:

Recruiting, Examining and Placement Records—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(10) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(13) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, or Chief, Personnel Branch, appropriate office. (See IRS Appendix A.)

Treasury/IRS 36.009 published on July 22, 1985 (50 FR 29848).

SYSTEM NAME:

Retirement, Life Insurance and Health Benefits Records System—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(11) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(14) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, and Chief, Personnel Branch, appropriate office. Director, Operations Division (Office of Chief Counsel), National and Regional Counsels. (See IRS Appendix A for Locations.)

NOTIFICATION PROCEDURE:

(1) Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to: District Director for each District whose records are to be searched; Service Center Director for each Service Center whose records are to be searched; Director, National Computer Center (for Computer Center employees only); Director, Data Center (for Data Center employees only); Regional Commissioner for each Regional Office whose records are to be searched; Director Human Resources Division, National Office; Assistant Commissioner (Human Resources), National Office; Regional Counsel for each region whose records are to be searched; Director, Disclosure Litigation Division for records in the National Office of Chief Counsel; or other appropriate official. (See IRS Appendix A for locations.) (2) If the individual is retired from Federal service he should direct inquiries to: Associate Director for Compensation, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. (3) If the individual is not retired, but has been separated from Federal service, he should direct inquiries to: National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118.

Treasury/IRS 37.001 published on July 22, 1985 (50 FR 29849).

SYSTEM NAME:

Abandoned Enrollment Applications—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

CONTESTING RECORD PROCEDURES:

See Access above.

Treasury/IRS 37.002 published on July 22, 1985 (50 FR 29850).

SYSTEM NAME:

Applicant Appeal Files—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 37.003 published on July 22, 1985 (50 FR 29851).

SYSTEM NAME:

Closed Files containing Derogatory Information about individual's practice before the Internal Revenue Service and files of attorneys and certified public accountants formerly enrolled to practice—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 37.004 published on July 22, 1985 (50 FR 29851).

SYSTEM NAME:

Derogatory Information (No Action)—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 37.005 published on July 22, 1985 (50 FR 29852).

SYSTEM NAME:

Present Suspensions and Disbarments Resulting From Administrative Proceeding—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

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(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(7) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(8) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 37.006 published on July 22, 1985 (50 FR 29853).

SYSTEM NAME:

General Correspondence File—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 37.007 published on July 22, 1985 (50 FR 29853).

SYSTEM NAME:

Inventory—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

*

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions

appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 37.008 published on July 22, 1985 (50 FR 29854).

SYSTEM NAME:

Register of Docketed Cases and Applicant Appeals—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 37.009 published on July 22, 1985 (50 FR 29854).

SYSTEM NAME:

Resigned Enrolled Agents (action pursuant to 31 CFR, Section 10.55(b))—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 37.010 published on July 22, 1985 (50 FR 29855).

SYSTEM NAME:

Roster of Former Enrollees—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 37.011 published on July 22, 1985 (50 FR 29856).

SYSTEM NAME:

Present Suspensions from Practice before the Internal Revenue Service—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

RECORD ACCESS PROCEDURES:

See Notification Procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

Treasury/IRS 38.001 published on July 22, 1985 (50 FR 29856).

SYSTEM NAME:

General Training Records—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system may be made available to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. Information in these records

may be used to provide input data for the automated Training CPDF at the Office of Personnel Management.

Treasury/IRS 42.001 published on July 22, 1985 (50 FR 29857).

SYSTEM NAME:

Examination Administrative File (open and closed)—Treasury/IRS.

SYSTEM LOCATION:

Jurisdictional District Office where the individual resides, or Service Center where return was examined, or Assistant Commissioner (Examination) and Assistant Commissioner (International), National Office. (See IRS Appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any taxpayer who is being considered for examination or is being examined or has been examined for tax determination purposes, i.e., income, estate and gift, excise, or employment tax liability.

RETRIEVABILITY:

By taxpayer's name and social security number and employer identification number and document locator number.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International); Officials maintaining the system—Director of Jurisdictional District Office, or Service Center, or Assistant Commissioner (Examination) and Assistant Commissioner (International). (See IRS Appendix A.)

Treasury/IRS 42.012 published on July 22, 1985 (50 FR 29858).

SYSTEM NAME:

Combined Case Control Files—Treasury/IRS.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Director of Jurisdictional District. (See IRS Appendix A.)

Treasury/IRS 42.013 published on July 22, 1985 (50 FR 29859).

SYSTEM NAME:

Project Files for the Uniform Application of laws as a result of technical determinations and court decisions—Treasury/IRS.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Director of Jurisdictional District. (See IRS Appendix A.)

Treasury/IRS 42.016 published on July 22, 1985 (50 FR 29859).

SYSTEM NAME:

Classification/Centralized Files and Scheduling Files—Treasury/IRS.

SYSTEM LOCATION:

Jurisdictional service center or related district office where individual resides. (See IRS Appendix A.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals' tax returns/claims and other information considered in screening/classifying of an individual's return or claim for refund.

RETENTION AND DISPOSAL:

Returns/claims accepted as filed are returned to System of Records 22.034. Returns/claims selected for examination become part of System of Records 42.001. Other information is retained until associated with returns/claims or two years, whichever occurs first. Authority: Records Disposition Handbook IRM 1(15)59.

Treasury/IRS 42.017 published on July 22, 1985 (50 FR 29860).

SYSTEM NAME:

International Enforcement Program Files—Treasury/IRS.

SYSTEM LOCATION:

Jurisdictional District Office of district where individual resides; National Office: Examination and International, Washington, DC. (See IRS Appendix A.)

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Director of Jurisdictional District; Assistant Commissioner (Examination) and Assistant Commissioner (International). (See IRS Appendix A.)

Treasury/IRS 42.021 published on July 22, 1985 (50 FR 29860).

SYSTEM NAME:

Compliance Programs and Projects Files—Treasury/IRS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers that may be involved in tax evasion schemes, including withholding noncompliance or other areas of noncompliance grouped by industry, occupation, or financial transactions, and other, e.g., return preparers, political contributions, corporate kickbacks, questionable Forms W-4.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to individuals in projects and programs.

RETRIEVABILITY:

By taxpayers name and social security number or Document Locator Number.

RETENTION AND DISPOSAL:

W-4 paper case files and National Computer Center (NCC) magnetic tape records are destroyed two years after the cases have been inactive.

RECORD SOURCE CATEGORIES:

(1) Taxpayer's return, (2) taxpayer's books and records, (3) informants and third party information, (4) city, state government, (5) other federal agencies, (6) examinations of related taxpayers, and (7) taxpayer's employer.

Treasury/IRS 42.027 published on July 22, 1985 (50 FR 29861).

SYSTEM NAME:

Data on Foreign Corporations—Treasury/IRS.

SYSTEM LOCATION:

IRS Data Center, Detroit, Michigan; National Office, Examination and International, Washington, D.C.; District Offices; Regional Offices; Philadelphia Service Center. (See IRS Appendix A.)

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant

Commissioner (International), National Office. Officials maintaining the system—District Directors; Regional Commissioners; Assistant Commissioner (Examination) and Assistant Commissioner (International), National Office; Director, Data Center, Detroit, Michigan; Director, Returns Processing and Accounting Division, National Office. (See IRS Appendix A.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if the System of Records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the district director for each district whose records are to be searched, or to the directors, or Assistant Commissioner (International) in the case of records in the National Office. (See Appendix A for addresses.)

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the System of Records may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the district director for each district whose records are to be accessed or contested, or to the directors, or Assistant Commissioner (International) in the case of records in the National Office. (See Appendix A for addresses.)

Treasury/IRS 42.029 published on July 22, 1985 (50 FR 29861).

SYSTEM NAME:

Audit Underreporter Case File, OP:EX—Treasury/IRS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of income who appear not to have declared on their income tax returns (Forms 1040, 1040A, and 1040EZ) all income paid to them in the tax year under study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained are taxpayer (i.e., payee) entity records containing payee name, address, taxpayer identification number, and other indicators relating to entity maintenance; and income records containing the types and amounts of income received/ reported, and information identifying the income payer.

RECORD SOURCE CATEGORIES:

Information returns filed by payers and Forms 1040, 1040A, and 1040EZ.

Treasury/IRS 42.030 published on July 22, 1985 (50 FR 29862).

SYSTEM NAME:

Discriminant Function File (DIF), OP:EX—Treasury/IRS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whose Forms 1040 and 1040A have a DIF Score higher than a cutoff score determined by Examination and International, indicating high audit potential. The DIF Score is the computation of Audit potential, based on formulae prescribed by Examination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Document Locator Number of the return, the Regional and District Offices of the taxpayer, the taxpayer's DIF Score and data from the individual's Income Tax Return needed to conduct an audit of his/her return.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Directors, Internal Revenue Service Centers. (See IRS Appendix A.)

Treasury/IRS 44.003 published on July 22, 1985 (50 FR 29863).

SYSTEM NAME:

Appeals Case Data—Treasury/IRS.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

Treasury/IRS 44.004 formerly 80.001 published on July 22, 1985 (50 FR 29880).

SYSTEM NAME:

Artist File—Treasury/IRS.

SYSTEM LOCATION:

Director, Appeals Division, National Office; Regional Director of Appeals. (See IRS Appendix A.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. These records and information in these records may be used: (1) To disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. (2) To disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation. (3) To disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit. (4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings. (5) To disclose information to foreign governments in accordance with formal or informal international agreements. (6) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. (7) To provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings. (8) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of

1978, 5 U.S.C. 7111 and 7114. (9) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Appeals Division, National Office; Regional Director of Appeals. (See IRS Appendix A.)

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CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. Address inquiries to the System Manager.

Treasury/IRS 44.005 formerly 80.002 published on July 22, 1985 (50 FR 29880).

SYSTEM NAME:

Expert Witness and Fee Appraiser Files—Treasury/IRS.

SYSTEM LOCATION:

Director, Appeals Division, National Office; Regional Director of Appeals. (See IRS Appendix A.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

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(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Appeals Division, National Office; Regional Director of Appeals. (See IRS Appendix A.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

Treasury/IRS 46.002 published on July 22, 1985 (50 FR 29863).

SYSTEM NAME:

Case Management and Time Reporting System, Criminal Investigation Division—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

*

Treasury/IRS 46.003 published on July 22, 1985 (50 FR 29863).

SYSTEM NAME:

Confidential Informants, Criminal Investigation Division—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

Treasury/IRS 46.016 published on July 22, 1985 (50 FR 29866).

SYSTEM NAME:

Secret Service Details, Criminal Investigation Division—Treasury/IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of Criminal Investigation participants and correspondence between Criminal Investigation and Secret Service.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made during judicial processes.

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Treasury/IRS 48.001 published on July 22, 1985 (50 FR 29867).

SYSTEM NAME:

Disclosure Records; Disclosure—Treasury/IRS.

*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made during judicial processes, and as necessary to report apparent violations of law to appropriate law enforcement agencies. Disclosure of debtor information may be made to a Federal payor agency for purposes of salary and administrative offsets, to a consumer reporting agency to obtain commercial credit reports, and to a debt collection agency for debt collection services. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Director, Office of Disclosure. Officials maintaining the system— Director, Office of Disclosure, National Office; Regional Commissioners, District Directors, Service Center Directors, or other official receiving or servicing requests for records. (See IRS Appendix A.)

RECORD SOURCE CATEGORIES:

Requests for disclosure, records being evaluated and processed for disclosure, and related information from other systems of records. This system may contain investigatory material compiled for law enforcement purposes whose sources need not be reported.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 48.008 published on July 22, 1985 (50 FR 29868).

SYSTEM NAME:

Defunct Special Service Staff File being retained because of Congressional directive, Disclosure—Treasury/IRS.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This file is no longer being used by the Internal Revenue Service. The Special Service Staff was abolished August 13, 1973. Disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential litigation. Access to the system is

limited to Congressional Committees and individuals making Freedom of Information requests pertaining to themselves. Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Disclosure, National Office. (See IRS Appendix A.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may address inquiries to the Director, Office of Disclosure, National Office. (See IRS Appendix A for location.)

RECORD ACCESS PROCEDURES:

Individuals seeking access to any system of records may inquire in accordance with the instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Director, Office of Disclosure, National Office. (See IRS Appendix A for location.) In addition, this System may contain some records provided by other agencies which are exempt from the access and contest provisions of the Privacy Act as published in the Notices of Systems of Records for those agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Information from another agency's exempt system of records duplicated in this system of records retains the exempt status.

Treasury/IRS 49.001 published on July 22, 1985 (50 FR 29868).

SYSTEM NAME:

Collateral and Information Requests System—Treasury/IRS.

SYSTEM LOCATION:

The central files for this system are maintained at the Office of the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024. A corresponding system of records is separately maintained by the foreign posts located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Jidda, Saudi Arabia; (5) Johannesburg, Republic of South Africa; (6) Nassau, Bahamas; (7) London, England; (8) Manila, Philippines; (9) Mexico City, Mexico; (10) Ottawa, Canada; (11) Paris, France; (12) Rome, Italy; (13) Sao Paulo, Brazil; (14) Singapore; and (15) Tokyo, Japan. Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Assistant Commissioner (International).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

Treasury/IRS 49.002 published on July 22, 1985 (50 FR 29869).

SYSTEM NAME:

Competent Authority and Index Card—Microfilm Retrieval System—Treasury/IRS.

SYSTEM LOCATION:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

Treasury/IRS 49.003 published on July 22, 1985 (50 FR 29869).

SYSTEM NAME:

Financial Statements File—Treasury/IRS.

SYSTEM LOCATION:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

Individuals seekings to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries may be addressed to the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Assistant Commissioner (International).

Treasury/IRS 49.007 published on July 22, 1985 (50 FR 29870).

SYSTEM NAME:

Overseas Compliance Projects System—Treasury/IRS.

SYSTEM LOCATION:

The central files for this system are maintained at the Office of the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024. A corresponding system of records is separately maintained by the foreign posts located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Jidda, Saudi Arabia; (5) Johannesburg, Republic of South Africa; (6) Nassau, Bahamas; (7) London, England; (8) Manila, Philippines; (9) Mexico City, Mexico; (10) Ottawa, Canada; (11) Paris, France; (12) Rome, Italy; (13) Sao Paulo, Brazil; (14) Singapore; and (15) Tokyo, Japan. Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Office of the Assistant Commissioner (International).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant plaza SW., Fourth Floor, Washington, DC 20024.

Treasury/IRS 49.008 published on July 22, 1985 (50 FR 29870).

SYSTEM NAME:

Taxpayer Service Correspondence System—Treasury/IRS.

SYSTEM LOCATION:

This system is separately maintained by each one of the 15 overseas posts of the Office of the Assistant Commissioner (International) located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Jidda, Saudi Arabia; (5) Johannesburg, Republic of South Africa; (6) Kuala Nassau, Bahamas; (7) London, England; (8) Manila, Philippines; (9) Mexico City, Mexico; (10) Ottawa, Canada; (11) Paris, France; (12) Rome, Italy; (13) Sao Paulo, Brazil; (14) Singapore; and (15) Tokyo, Japan; as well as (16) Vancouver, Canada. Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from taxpayers, foreign post personnel, and the Office of the Assistant Commissioner

(International) headquarters offices in Washington, DC.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Assistant Commissioner (International).

RECORD SOURCE CATEGORIES:

Taxpayers and the Office of the Assistant Commissioner (International) foreign posts and headquarter's offices.

Treasury/IRS 50.001 published on July 22, 1985 (50 FR 29871).

SYSTEM NAME:

Employee Plans/Exempt Organizations, Correspondence Control Record (Form 5961)—Treasury/IRS.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager.

Treasury/IRS 50.003 published on July 22, 1985 (50 FR 29871)

SYSTEM NAME:

Employee Plans/Exempt Organizations, Report of Significant Matters in Technical (M-5945)—Treasury/IRS.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager.

Treasury/IRS 60.001 published on July 22, 1985 (50 FR 29872).

SYSTEM NAME:

Assault and Threat Investigation Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

IRS National Office, Regional Inspectors' Offices, and the Federal Records Center, as well as offices of the District Directors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

Treasury/IRS 60.002 published on July 22, 1985 (50 FR 29873).

SYSTEM NAME:

Bribery Investigation Files, Inspection—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

Treasury/IRS 60.003 published on July 22, 1985 (50 FR 29873)

SYSTEM NAME:

Conduct Investigation Files, Inspection—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

NOTIFICATION PROCEDURES:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

Treasury/IRS 60.004 published on July 22, 1985 (50 FR 29874).

SYSTEM NAME:

Disclosure Investigation Files, Inspection—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

Treasury/IRS 60.005 published on July 22, 1985 (50 FR 29875).

SYSTEM NAME:

Enrollee Applicant Investigation Files, Inspection—Treasury/IRS.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings..

Treasury/IRS 60.006 published on July 22, 1985 (50 FR 29875).

SYSTEM NAME:

Enrollee Charge Investigation Files, Inspection—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

*

NOTIFICATION PROCEDURES:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

Treasury/IRS 60.007 published on July 22, 1985 (50 FR 29876).

SYSTEM NAME:

Miscellaneous Information File, Inspection—Treasury/IRS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the Internal Revenue Service; Tax Practitioners (Attorneys, Certified Public Accountants, Enrolled Persons, Return Preparers); alleged tax violators; persons whose actions or alleged actions indicated a threat to IRS employees, facilities, or the integrity of the tax system; confidential informants; and reputed numbers of the organized criminal element.

CATEGORIES OF RECORDS IN THE SYSTEM:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

NOTIFICATION PROCEDURES:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

Treasury/IRS 60.008 published on July 22, 1985 (50 FR 29877).

SYSTEM NAME:

Security, Background and Character Investigations Files, Inspection—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to Assistant Commissioner (Inspection), National Office.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

Treasury/IRS 60.009 published on July 22, 1985 (50 FR 29878).

SYSTEM NAME:

Special Inquiry Investigation Files, Inspection—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

Treasury/IRS 60.010 published on July 22, 1985 (50 FR 29878).

SYSTEM NAME:

Tort Investigation Files, Inspection—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if their record is accessible may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Assistant Commissioner (Inspection), National Office.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

Treasury/IRS 70.001 published on July 22, 1985 (50 FR 29879).

SYSTEM NAME:

Individual Income Tax Returns, Statistics of Income—Treasury/IRS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.001 published on July 22, 1985 (50 FR 29882).

SYSTEM NAME:

Chief Counsel Criminal Tax Case Files. Each Regional Counsel Office, each District Counsel Office, and the National Office maintain one of these systems. The information in this notice applies to all 59 systems—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

NOTIFICATIONS PROCEDURES:

This systems of records may not be accessed for purposes of determining if the records pertain to a particular individual as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (j)(2).

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (j)(2).

Treasury/IRS 90.002 published on July 22, 1985 (50 FR 29883).

SYSTEM NAME:

Chief Counsel Disclosure Litigation Division Case Files—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Treasury/IRS 90.003 published on July 22, 1985 (50 FR 29883).

SYSTEM NAME:

Chief Counsel General Administrative Systems. Each of the 7 Regional Counsel Offices and 51 District Counsel Offices, each of the 9 Divisions in the National Office, the Office of the Chief Counsel, and the Office of the Deputy Chief Counsel, Associate Chief Counsels (Litigation, International and Technical) maintain a General Administrative System. This notice applies to all 72 of these systems—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(5) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Treasury/IRS 90.004 published on July 22, 1985 (50 FR 29884).

SYSTEM NAME:

Chief Counsel General Legal Services Case Files. Each of the seven Regional Counsel Offices and the National Office maintain a General Legal Services Case File System. The information in this notice applies to all eight systems—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(21) To provide information to the Office of Government Ethics in conflict of interest, conduct, financial statement reporting, and other ethical matters.

Treasury/IRS 90.005 published on July 22, 1985 (50 FR 29886).

SYSTEM NAME:

Chief Counsel General Litigation Case Files. Each Regional Counsel Office, each District Counsel Office, and the National Office maintain one of these systems. The information in this notice applies to all 59 systems—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(7) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Treasury/IRS 90.006 published on July 22, 1985 (50 FR 29887).

SYSTEM NAME:

Chief Counsel Interpretative Division Case Files—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

RETENTION AND DISPOSAL:

General Counsel Memorandums, Office Memorandums, and legal case and administrative files are retained

indefinitely in the National Office. Internal Control Records are generally disposed of when no longer useful.

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Treasury/IRS 90.007 published on July 22, 1985 (50 FR 29888).

SYSTEM NAME:

Chief Counsel Legislation and Regulation Division Correspondence and Private Bill Files—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Treasury/IRS 90.009 published on July 22, 1985 (50 FR 29888).

SYSTEM NAME:

Chief Counsel Tax Litigation Case Files. Each Regional Counsel Office, each District Counsel Office, and the National Office maintain one of these systems. The information in this notice applies to all 59 systems—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Treasury/IRS 90.010 published on July 22, 1985 (50 FR 29889).

SYSTEM NAME:

Digest Room Files Containing Briefs, Legal Opinions, and Digests of Documents Generated Internally or by the Department of Justice Relating to the Administration of the Revenue Laws—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(10) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

RETENTION AND DISPOSAL:

Briefs, legal opinions, and digests are retained indefinitely.

Treasury/IRS 90.011 published on July 22, 1985 (50 FR 29890).

SYSTEM NAME:

Employee Recruiting Files Maintained by the Operations Division—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Treasury/IRS 90.013 published on July 22, 1985 (50 FR 29891).

SYSTEM NAME:

Legal Case Files of the Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Litigation), (International) and (Technical)—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Treasury/IRS 90.014 published on July 22, 1985 (50 FR 29891).

SYSTEM NAME:

Management Files Maintained by Operations Division and the Deputy Chief Counsel other than the Office of Personnel Management's Official Personnel Files—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Treasury/IRS 90.015 published on July 22, 1985 (50 FR 29892).

SYSTEM NAME:

Reference Records of the Library in the Office of Chief Counsel—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

(9) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

Treasury/IRS 90.016 published on July 22, 1985 (50 FR 29893).

SYSTEM NAME:

Reports and Information Retrieval Activity Computer and Microfilm Records (Counsel/Appeals Tracking System)— Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of

civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

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Treasury/IRS 90.017 formerly 80.003 published on July 22, 1985 (50 FR 29881).

SYSTEM NAME:

Correspondence Control and Records, Associate Chief Counsel (Technical)—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Treasury/IRS—Appendix A published on July 22, 1985 (50 FR 29895–29897).

Inquiries under Treasury/IRS systems should be addressed to the office whose records are to be searched. The titles and addresses of the Systems Managers are as follows:

National Office Internal Revenue Service

Assistant to the Commissioner (Equal Opportunity)
Assistant to the Commissioner (Public Affairs)
Assistant Commissioner (Collection)
Assistant Commissioner (Computer Services)
Assistant Commissioner (Employee Plans and Exempt Organizations)
Assistant Commissioner (Inspection)
Assistant Commissioner (Planning, Finance and Research)
Assistant Commissioner (Human Resources)
Assistant Commissioner (Returns and Information Processing)
Assistant Commissioner (Criminal Investigation)
Assistant Commissioner (Examination)
Assistant Commissioner (International)
Director, Office of Disclosure

The address for all of the above Systems Managers with the exception of the Assistant Commissioner (International) noted below, is as follows: 1111 Constitution Avenue, NW., Washington, DC 20224. Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

Regional Offices Internal Revenue Service

Central Region:
Regional Commissioner, Internal Revenue Service, 550 Main Street, Cincinnati, Ohio 45202.
District Director, Internal Revenue Service, 550 Main Street, Cincinnati, Ohio 45202.
District Director, Internal Revenue Service, 1240 East 9th Street, Cleveland, Ohio 44199
District Director, Internal Revenue Service, Rm. 2483, Patrick V McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226.
District Director, Internal Revenue Service, Federal Office Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204.
District Director, Internal Revenue Service, U.S. Post Office Building, 601 West Broadway, Louisville, Kentucky 40202.
District Director, Internal Revenue Service, 425 Juliana Street Parkersburg, West Virginia 26101.
Director, Internal Revenue Service Center, Central Region, 201 W. Second St., Covington, Kentucky 41019.
Mid-Atlantic Region:
Regional Commissioner, Internal Revenue Service, 841 Chestnut Street, Philadelphia, Pennsylvania 19107.
District Director, Internal Revenue Service, Federal Building, 31 Hopkins Plaza, Baltimore, Maryland 21201.
District Director, Internal Revenue Service, 1501–970 Broad Street, Newark, New Jersey 07102.
District Director, Internal Revenue Service, W.J. Green Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19106.
District Director, Internal Revenue Service, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
District Director, Internal Revenue Service, 400 North 8th Street, Richmond, Virginia 23240
District Director, Internal Revenue Service, 844 King Street, Wilmington, Delaware 19801.
Director, Internal Revenue Service Center, Mid-Atlantic Region, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19154.
Midwest Region:
Regional Commissioner, Internal Revenue Service, One North Wacker Drive, Chicago, Illinois 60606.
District Director, Internal Revenue Service, Federal Building, 115 Fourth Avenue SE., Aberdeen, South Dakota 57401.
District Director, Internal Revenue Service, 230 South Dearborn Street, Chicago, Illinois 60604.
District Director, Internal Revenue Service, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.
District Director, Internal Revenue Service, Federal Building and Post Office, 653 Second Avenue, North, Fargo, North Dakota 58102.
District Director, Internal Revenue Service, Federal Building, Second Floor, 301 South Park, Helena, Montana 59626–0016.
District Director, Internal Revenue Service, Federal Building and Court House, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.
District Director, Internal Revenue Service, Federal Office Building, 106 South 15th Street, Omaha, Nebraska 68102.
District Director, Internal Revenue Service, U.S. Court and Custom House, 1114 Market Street, St. Louis, Missouri 63101.
District Director, Internal Revenue Service, Federal Building and Court House, 316 North Robert Street, St. Paul, Minnesota 55101.
District Director, Internal Revenue Service, Room 702, 320 West Washington St., Springfield, Illinois 62704.
Director, Internal Revenue Service, Midwest Region, 2306 East Bannister Road, P.O. Box 24551, Kansas City, Missouri 64131.
North-Atlantic Region:
Regional Commissioner, Internal Revenue Service, 90 Church Street, New York, New York 10007.
District Director, Internal Revenue Service, 68 Sewall Street, Augusta, Maine 04330.
District Director, Internal Revenue Service, John F Kennedy Federal Building, Government Center, Boston, Massachusetts 02203.
District Director, Internal Revenue Service, Leo W. O'Brien Federal Building, Clinton Avenue and North Pearl Street, Albany, New York 12207.
District Director, Internal Revenue Service, 120 Church Street, New York, New York 10007
District Director, Internal Revenue Service, 35 Tillary Street, Brooklyn, New York 11201.
District Director, Internal Revenue Service, 111 W. Huron Street, Buffalo, New York 14202.
District Director, Internal Revenue Service, 11 Elmwood Avenue, Burlington, Vermont 05401.
District Director, Internal Revenue Service, William R. Cotter Federal Building, (Stop 204), 135 High Street, Hartford, Connecticut 06103.
District Director, Internal Revenue Service, Federal Building, 80 Daniel Street, Portsmouth, New Hampshire 03801.
District Director, Internal Revenue Service, 380 Westminister Mall, Providence, Rhode Island 02903.
Director, Internal Revenue Service Center, North-Atlantic Region, (Stop 100), 310 Lowell Street, Andover, Massachusetts 05501.
Director, Internal Revenue Service Center, North-Atlantic Region, (Stop 100), 1040 Waverly Avenue, Holtsville, New York 11799.
Southeast Region:
Regional Commissioner, Internal Revenue Service, P.O. Box 926, Room 600, Atlanta, Georgia 30370.
District Director, Internal Revenue Service, 275 Peachtree Street NE., Atlanta, Georgia 30043.
District Director, Internal Revenue Service, 500 22nd Street South, Birmingham, Alabama 35233.
District Director, Internal Revenue Service, 1835 Assembly Street, Columbia, South Carolina 29201.
District Director, Internal Revenue Service, 320 Federal Place, Greensboro, North Carolina 27401.
District Director, Internal Revenue Service, Suite 504, 100 W. Capital Street, Jackson, Mississippi 39269.

District Director, Internal Revenue Service, Federal Office Building, 400 West Bay Street, Jacksonville, Florida 32202.
District Director, Internal Revenue Service, 801 Broadway, Nashville, Tennessee 37203.
District Director, Internal Revenue Service, 700 W. Capitol, Little Rock, Arkansas 72201.
District Director, Internal Revenue Service, (Stop 6), 500 Camp Street, New Orleans, Louisiana 70130.
District Director, Internal Revenue Service, One University Drive, Building B, Ft. Lauderdale, FL 33324.
Director, Internal Revenue Service Center, Southeast Region, 4800 Buford Highway, Chamblee, Georgia 30341.
Director, Internal Revenue Service Center, Southeast Region, 3131 Democrat Road, Memphis, Tennessee 38110.

Southwest Region:
Regional Commissioner, Internal Revenue Service, LB-70 Stop 1000 SWR, 7839 Churchill Way, Dallas, Texas 75251.
District Director, Internal Revenue Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87101.
District Director, Internal Revenue Service, Stop 100D AUS, 300 E. 8th Street, Austin, Texas 78701.
District Director, Internal Revenue Service, 3223 Briarpark, Houston, Texas 77042.
District Director, Internal Revenue Service, 308 W. 21st Street, Cheyenne, Wyoming 82001.
District Director, Internal Revenue Service, Stop 1000 DAL, 1100 Commerce Street, Dallas, Texas 75242.
District Director, Internal Revenue Service, 1050 Seventeen Street, Denver, Colorado 80265.
District Director, Internal Revenue Service, 2120 N. Central Avenue, Phoenix, Arizona 85004.
District Director, Internal Revenue Service, 465 S. Fourth East Street, Salt Lake City, Utah 84111.
District Director, Internal Revenue Service, 200 N.W. Fourth Street, Oklahoma City, Oklahoma 73102.
District Director, Internal Revenue Service, 412 S. Main Street, Wichita, Kansas 67202.
Director, Internal Revenue Service Center, Southwest Region, 3651 S. Interregional Highway, Austin, Texas 73301.
Director, Internal Revenue Service Center, Western Region, 1160 W. 1200 South Street, Ogden, Utah 84201.

Western Region:
Regional Commissoner, Internal Revenue Service, 5th Floor, 1650 Mission Street, San Francisco, California 94103.
District Director, Internal Revenue Service, 949 East 36th Ave., Anchorage, Alaska 99508.
District Director, Internal Revenue Service, Box 041, 550 W. Fort Street, Boise, Idaho 83724.
District Director, Internal Revenue Service, PJKK Federal Bldg., 300 Ala Moana, Honolulu, Hawaii 96850.
District Director, Internal Revenue Service, 2400 Avila Road, Laguna Niguel, CA 92677
District Director, Internal Revenue Service, 300 N. Los Angeles Street, Los Angeles, CA 90012.
District Director, Internal Revenue Service, 1220 S.W. Third Ave., Portland, Oregon 97204.
District Director, Internal Revenue Service, 300 Las Vegas Blvd., South, Las Vegas, Nevada 89101.
District Director, Internal Revenue Service, 2345 Fair Oaks Blvd., Sacramento, CA 95825.
District Director, Internal Revenue Service, Box 36020, 450 Golden Gate Avenue, San Francisco, CA 94102.
District Director, Internal Revenue Service, 55 S. Market Street, San Jose, CA 95113.
District Director, Internal Revenue Service, 915 Second Avenue, Seattle, Washington 98174.
Director, Internal Revenue Service Center, Western Region, 5045 E. Butler Avenue, Fresno, CA 93727

Addresses of Chief Counsel, Regional Counsel, District Counsel, and Regional Director of Appeals Offices

National Office:
Appeals Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.
Operations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Criminal Tax Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Disclosure Litigation Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
General Legal Services Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
General Litigation Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Interpretative Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Tax Litigation Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Corporation Tax Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Individual Tax Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Chief Counsel; Deputy Chief Counsel; Associate Chief Counsels (Litigation), (International), and (Technical). Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Regional Counsel Offices
North-Atlantic Region:
Regional Counsel Office
Regional Counsel's Office, IRS, North-Atlantic Region, 26 Federal Plaza, 12th Floor, New York, New York 10278.
District Counsel Offices
District Counsel's Office, IRS, 26 Federal Plaza, 12th Floor, New York, New York 10278.
District Counsel's Office, IRS, Leo W. O'Brien Federal Building, Clinton Avenue and N. Pearl Street, Albany, New York 12207
District Counsel's Office, IRS, 100 Summer Street, Room 1728, Boston, Massachusetts 02110.
District Counsel's Office, IRS, Brooklyn Office, 1000 Umondale Avenue and Hempstead Turnpike, Umondale, New York 11553.
District Counsel's Office, IRS, U.S. Court House, Room 304, 68 Court Street, Buffalo, New York 14202.
District Counsel's Office, IRS, 135 High Street, Room 259, Hartford, Connecticut 06103.
Regional Director of Appeals, 90 Church Street, New York, N.Y. 10007

Mid-Atlantic Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Mid-Atlantic Region, 841 Chestnut Street, Room 360, Philadelphia, Pennsylvania 19107
District Counsel Offices
District Counsel's Office, IRS, Room 10424, 600 Arch Street, Philadelphia, Pennsylvania 19106.
District Counsel's Office, IRS, Room 4100, 101 W. Lombard Street, Baltimore, Maryland 21201.
District Counsel's Office, IRS, Room 904, 970 Broad Street, Newark, New Jersey 07102.
District Counsel's Office, IRS, 726 Federal Building, Room 726, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
District Counsel's Office, IRS, Room 5215, 400 N. Eighth Street, Richmond, Virginia 23240.
District Counsel's Office, IRS, 422 Universal Building, North, 1875 Connecticut Avenue, NW., Washington, DC 20009.
Regional Director of Appeals, Room 360, 841 Chestnut St., Philadelphia, PA 19107

Southeast Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Southeast Region, Room 830, 275 Peachtree Street, NE., Atlanta, Georgia 30043.
District Counsel Offices
District Counsel's Office, IRS, Room 850, 275 Peachtree Street, NE., Atlanta, Georgia 30043.
District Counsel's Office, IRS, Room 340, 500 22nd Street, South, Birmingham, Alabama 35233.

District Counsel's Office, IRS, Room 509, 320 Federal Place, Greensboro, North Carolina 27401.
District Counsel's Office, IRS, Box 35027, Federal Office Building, 400 West Bay Street, Room 564, Jacksonville, FL 32202.
District Counsel's Office, IRS, Room 1502, Federal Office Building, 51 SW First Avenue, Miami, Florida 33130.
District Counsel's Office, IRS, Room 703, 801 Broadway, Nashville, Tennessee 37203.
District Counsel's Office, IRS, Stop 18, Room 917 500 Camp Street, New Orleans, Louisiana 70130.
Regional Director of Appeals, 625 Federal Office Building, 275 Peachtree Street, NE., Atlanta, GA 30043.

Central Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Room 7510, 550 Main Street, Cincinnati, Ohio 45202.
District Counsel Offices
District Counsel's Office, IRS, Room 7525, 550 Main Street, Cincinnati, Ohio 45202.
District Counsel's Office, IRS, Suite 810, One Cleveland Center, 1375 E. Ninth St., Cleveland, Ohio 44114.
District Counsel's Office, IRS, 1870 McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226.
District Counsel's Office, IRS, 509 Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204.
District Counsel's Office, IRS, 579 Federal Office Building, 600 Federal Place, Louisville, Kentucky 40202.
Regional Director of Appeals, Room 7514, 550 Main Street, Cincinnati, Ohio 45202.

Midwest Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Kluczynski Federal Building, 230 South Dearborn Street, Room 3410, Chicago, Illinois 60604.
District Counsel Offices
District Counsel's Office, IRS, Room 1342, Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois 60604.
District Counsel's Office, IRS, 439 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.
District Counsel's Office, IRS, Room 240, Federal Building, 301 S. Park Avenue, Helena, Montana 59626.
District Counsel's Office, IRS, 2700 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.
District Counsel's Office, IRS, 760 Henry Reuss Federal Plaza, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.
District Counsel's Office, IRS, 3101 Federal Building, 215 N. Fifteenth Street, Omaha, Nebraska 68102.
District Counsel's Office, IRS, Room 720, 320 W. Washington Street, Springfield, Illinois 62701.
District Counsel's Office, IRS (3rd Floor), Chouteau Center Building, 133 S. Eleventh Street, St. Louis, Missouri 63102.
District Counsel's Office, IRS, 572 Federal Building and U.S. Court House, 316 N. Robert Street, St. Paul, Minnesota 55101.
Regional Director of Appeals, 230 N. Dearborn, 29th Floor, Room 2972, Chicago, Illinois 60604.

Southwest Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Southwest Region, LB-81, Stop 2000 SWR, 7839 Churchill Way, Dallas, Texas 75251.
District Counsel Offices
District Counsel's Office, IRS, Room 12A24, Stop 2000 DAL, 1100 Commerce St., Dallas, TX 75242.
District Counsel's Office, IRS, 20th Floor, 1050 Seventeenth Street, Denver, Colorado 80265.
District Counsel's Office, IRS, Suite 350, 10850 Richmond Avenue, Houston, Texas 77042-4775.
District Counsel's Office, IRS, 200 NW. Fourth Street, Oklahoma City, Oklahoma 73102.
District Counsel's Office, IRS, Room 784, Stop 2000 AUS, 300 E. 8th Street, Austin, Texas 78701.
District Counsel's Office, Suite 1500, 3225 N. Central Avenue, Phoenix, Arizona 85012.
District Counsel, Room 1311, 125 S. State Street, Salt Lake City, Utah 84138.
Regional Director of Appeals, LB-70, Stop 8000 SWR, 7839 Churchill Way, Dallas, TX 75251.

Western Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Western Region, 5th Floor, 1650 Mission Street, San Francisco, CA 94103.
District Counsel Offices
District Counsel's Office, IRS, 84 W. Santa Clara Street, Room 300, San Jose, CA 95113.
District Counsel's Office, IRS, 801 I Street, Room 204, Sacramento, CA 95814.
District Counsel's Office, IRS, Room 607 949 E. 36th Avenue, Anchorage, Alaska 99508.
District Counsel's Office, IRS, Box 024, 550 W. Fort Street, Boise, Idaho 83724.
District Counsel's Office, P.O. Box C-15, Laguna Niguel, CA 92677
District Counsel's Office, IRS, 3018 Federal Building, 300 N. Los Angeles Street, Los Angeles, CA 90012.
District Counsel's Office, IRS, 810 Crown Plaza, 1500 SW. First Avenue, Portland, Oregon 97201.
District Counsel's Office, IRS, 550 E. Charleston Boulevard, Reno, Nevada 89104.
District Counsel's Office, IRS, Room 2N16, U.S. Courthouse, 940 Front Street, San Diego, CA 92189.
District Counsel's Office, IRS, Room 504, 160 Spear Street, San Francisco, CA 94105.
District Counsel's Office, IRS, 2710 Federal Building, 915 Second Avenue, Seattle, Washington 98174.
District Counsel's Office, IRS, 7119 PJKK Federal Building, 300 Ala Moana, Honolulu, HI 96850.
Regional Director of Appeals, 5th Floor, 1650 Mission Street, San Francisco, CA 94103.

[FR Doc. 87-7673 Filed 4-7-87 8:45 am]
BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Cultural Property Advisory Committee; Meeting

The Cutural Property Advisory Committee will conduct a meeting in Room 840, 301 4th Street SW., Washington, DC on April 21-22, 1987

The meeting will be closed to the public in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. 552 App. 2), the Government in the Sunshine Act (U.S.D. 552b), and the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et seq.). The session will be closed because the discussion will involve investigation techniques and information the premature disclosure of which would be likely to frustrate significantly implementation of proposed actions and policies. Disclosure of information at this time identifying specific cultural property is likely to frustrate the imposition of import restrictions on such property. For this reason, the Government of El Salvador has requested that the information be held in confidence. Also, the Committee will discuss recommendations to the President as to appropriate U.S. action regarding a request from the Government of El Salvador for a U.S. cultural property agreement with El Salvador under the terms of the Cultural Property Implementation Act. (5 U.S.C. 552b(c)(1), 5 U.S.C. 552b(c)(2), 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605).

Dated: April 1, 1987.

Marvin L. Stone,

Acting Director, United States Information Agency.

[FR Doc. 87-7691 Filed 4-7-87 8:45 am]
BILLING CODE 8230-01-M

Federal Register Announcement of Receipt of Cultural Property Request From the Government of El Salvador

Pursuant to section 303(f)(1) of the Cultural Property Implementation Act (19 U.S.C. 2602(f)(1)), notice is hereby given that the United States Government is in receipt of a request under section 303(a)(3) from the Government of El Salvador, a State Party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The request from El Salvador is for U.S. import restrictions on certain endangered archaeological material to

assist El Salvador in protecting its cultural patrimony.

Dated: April, 1987.

Marvin L. Stone,

Acting Director, United States Information Agency.

[FR Doc. 87-7692 Filed 4-7-87; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration

ACTION: Notice

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503 (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 2, 1987.

By direction of the Administration.

David A. Cox,

Associate Deputy Administrator for Management.

Reinstatement

1. Department of Medicine and Surgery
2. Application for Medical Benefits for Dependents or Survivors—CHAMPVA
3. VA Form 10-10d
4. Legal eligibility to obtain medical care under CHAMPVA is determined by information provided by dependents and survivors of a veteran who has a total service-connected disability or who died as a result of that disability.
5. One time
6. Individuals or households
7. 9,600 responses
8. 787 hours
9. Not applicable

[FR Doc. 87-7770 Filed 4-7-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 67
Wednesday, April 8, 1987

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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursaunt to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, March 31, 1987 the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointix), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of a recommendation to: (1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of assets of and the assumption of the liability to pay deposits made in The First National Bank of Herington, Herington, Kansas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, April 2,1987 or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type of transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter 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 by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 3, 1987

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-7872 Filed 4-6-87; 12:09 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 11:30 a.m., Friday, April 3, 1987

PLACE: Room 600, 1730 K Street NW Washington, DC.

STATUS: Open.

MATTER TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Texas Utilities Generating Company.* Docket No. CENT 86-119. (Issues include consideration of the Secretary's motion to stay the proceedings and the Secretary's petition for interlocutory review).

TIME AND DATE: 10:00 a.m., Monday, April 6, 1987

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will continue their consideration of:

1. *Texas Utilities Generating Company.* Docket No. CENT 86-119. (Issues considered are the same as above).

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible.

CONTACT PERSON, FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-7868 Filed 4-6-87; 12:01 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 13, 1987

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. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.
2. Request by the General Accounting Office for Board comment on a draft report regarding supervision of country risk and international lending.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. 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: April 6, 1987

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7825 Filed 4-6-87; 10:34 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The following item has been deleted from a previously announced open meeting (52 FR 10850, Friday, April 3, 1987) of the National Credit Union Administration on April 9, 1987 and tentatively rescheduled for consideration at the Board's May 8, 1987 open meeting.

Central Liquidity Facility Investment Policies.

Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Memorandum of Understanding Between National Association State Credit Union Supervisors (NASCUS) and National Credit Union Administration (NCUA).
6. Proposed Rule: Part 705, NCUA Rules and Regulations, Community Development Credit Union Program.
7 Final Rule: Amendments to Part 708, NCUA Rules and Regulations, involving mergers of federally-insured credit unions and voluntary termination or conversion of Federal share insurance.
8. Final Rule: Amendments to Sections 701.21 and 741, NCUA Rules and Regulations, Member Business Loans by Federally-Insured Credit Unions..

The meeting is scheduled for 2:00 p.m., April 9, 1987 at the Biloxi Hilton, Biloxi, MS.

FOR MORE INFORMATION CONTACT: Becky Baker, Acting Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Acting Secretary of the Board.

[FR Doc. 87-7926 Filed 4-6-87; 3:42 pm]

BILLING CODE 7535-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, April 14, 1987

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first two items will be open to the public. The last three items will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Rear-End Collision of Two Greater Cleveland Regional Transit Authority Red Line Rail Rapid Transit Authority Trains, Cleveland, Ohio, July 10, 1985.
2. *Highway Accident Report:* Schoolbus Loss of Control and Collision with Sign Pillar, U.S. Highway 70 near Lucas and Hunt Road, St. Louis County, Missouri, November 11, 1985.
3. *Opinion and Order:* Commandant V. Lyons, Docket ME-125; disposition of seaman's appeal.
4. *Opinion and Order:* Administrator V Arroyo, Docket SE-7131, disposition of the respondent's appeal.
5. *Opinion and Order:* Administrator V. Ospina, Docket SE-6901; disposition of the appeals of each party.

FOR MORE INFORMATION, CONTACT: Ray Smith (202) 382-6525.

Dated: April 3, 1987

Ray Smith,

Federal Register Liaison Officer.

[FR Doc. 87-7818 Filed 4-6-87; 9:17 am]

BILLING CODE 7533-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-87-14]

TIME AND DATE: Monday, April 13, 1987 at 2:30 p.m.

PLACE: Room 117 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-326 (Final) (Frozen Concentrated Orange Juice from Brazil)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Dated: April 1, 1987

Kenneth R. Mason,

Secretary.

[FR Doc. 87-7796 Filed 4-3-87; 4:22 pm]

BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 52, No. 67
Wednesday, April 8, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ORE-03587-F ORE-012712, ORE-013107, ORE-017506; ORE-2945, ORE-5708, OR-7878; OR-943-07-4220-11: GP-07-118]

Oregon; Proposed Continuation of Withdrawals

Correction

In notice document 87-5767 beginning on page 8535, in the issue of Wednesday, March 18, 1987 make the following corrections:

1. On page 8536, in the first column, in item 7 in the sixth line, "northwest" should read "northeast"

2. On the same page, in the first column, in the fourth line from the bottom, after "determine" insert "whether"

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ORE-03468, ORE-03588-A, ORE-011667-A) (ORE-015246, OR 1579) OR-943-07-4220-11: GP-07-121)]

Oregon; Proposed Continuation of Withdrawals

Correction

In notice document 87-5769, appearing on page 8537 in the issue of Wednesday, March 18, 1987 make the following correction:

In the third column, in the second complete paragraph, in the sixth line, after "present" insert "their"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Meeting

Correction

In notice document 87-7237 appearing on page 10665 in the issue of Thursday, April 2, 1987 make the following correction:

In the second column, in the first complete paragraph, in the third line, the fee for registration by April 24, 1987 should read "$125.00"

BILLING CODE 1505-01-D

federal register

Wednesday
April 8, 1987

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources: Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3162-7]

Standards of Performance for New Stationary Sources: Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for volatile organic liquid (VOL) storage vessels (including petroleum liquid storage vessels) were proposed in the Federal Register on July 23, 1984 (49 FR 29698). That notice included revisions to the priority list to include VOL storage vessels; revisions to the standards of performance for petroleum liquid storage vessels constructed after June 11, 1973, and prior to May 19, 1978 (38 FR 15406); and revisions to the standards of performance for petroleum liquid storage vessels constructed after May 18, 1978 (45 FR 23374), and prior to July 23, 1984. This action promulgates those revisions and the standards of performance for VOL storage vessels (including petroleum liquid storage vessels). These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that synthetic organic chemical manufacturing industry and VOL storage vessels and handling equipment cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed VOL storage vessels to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

DATE: Effective April 8, 1987

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

Incorporation by Reference

The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of April 8, 1987

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777 Please refer to "Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels)—Background Information for Promulgated Standards" (EPA-450/3-81-003b). The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement that summarizes the impacts of the standards.

Docket: A docket, number A-80-51, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT.

The promulgated standards apply to new, modified, or reconstructed storage vessels, regardless of location, with a capacity greater than or equal to 40 cubic meters (m^3) (≅10,000 gallons [gal]) and storing a VOL from which volatile organic compounds (VOC's) can be emitted to the atmosphere except for vessels specifically exempted from the standards in § 60.110b(d).

The standards requires that new, modified, or reconstructed storage vessels, regardless of location, with (1) a capacity greater than or equal to 151 m^3 (≅40,000 gal) and storing a VOL with a maximum true vapor pressure greater than or equal to 5.2 kPa (≅0.75 psia) but less than 76.6 kPa (≅11.1 psia) or (2) with a capacity greater than or equal to 75 m^3 (≅20,000 gal) but less than 151 m^3 (≅40,000 gal) and storing a VOL with a maximum true vapor pressure greater than or equal to 27.6 kPa (≅4.0 psia) but less than 76.6 kPa (≅11.1 psia) be equipped with:

1. A fixed roof in conjunction with an internal floating roof equipped with a liquid-mounted or mechanical shoe primary seal, either flexible fabric sleeve seals on pipe columns or gasketed sliding covers on built-up or pipe columns, slit fabric membranes or sample wells, and gasketed covers on roof fittings; or

2. An external floating roof equipped with a liquid-mounted or mechanical shoe primary seal and a continuous rim-mounted secondary seal, with both seals meeting certain minimum gap requirements, and gasketed covers on roof fittings; or

3. A closed vent system and a 95 percent effective control device. Alternative means of emission limitation may be approved by the Administrator after notice and an opportunity for a public hearing.

The standards require that each new, modified, or reconstructed storage vessel, regardless of location, with a capacity greater than or equal to 75 m^3 (≅20,000 gal) and storing a VOL with a maximum true vapor pressure greater than or equal to 76.6 kPa (≅11.1 psia) be equipped with a closed vent system and 95 percent effective control device.

To determine applicability, the standards require that the owner or operator of each new, modified, or reconstructed storage vessel with a capacity greater than or equal to 40 m^3 (≅10,000 gal) and storing a VOL maintain a record of the capacity of the storage vessel. The standards also require that the owner or operator of each new, modified, or reconstructed storage vessel with (1) a capacity greater than or equal to 75 m^3 (≅20,000 gal) but less than 151 m^3 (≅40,000 gal) and storing a VOL with a maximum true vapor pressure greater than or equal to 15.0 kPa (≅2.2 psia) but less than 27.6 kPa (≅4.0 psia) or with (2) a capacity greater than or equal to 151 m^3 (≅40,000 gal) and storing a VOL with a maximum true vapor pressure greater than or

equal to 3.5 kPa (≅0.51 psia) but less than 5.2 kPa (≅0.75 psia) maintain a record of maximum true vapor pressure of the VOL stored.

Standards for Internal Floating Roof Vessels. The standards for internal floating roof vessels (IFR's) have additional requirements that are not in the previous petroleum liquid storage vessel new source performance standards (NSPS); these include a liquid-mounted primary seal, gasketed fittings, and either flexible fabric sleeve seals on pipe columns or gasketed sliding covers on built-up or pipe columns. The new requirements do not apply retroactively to petroleum liquid storage vessels already covered by Subparts K or Ka; only vessels on which construction, modification, or reconstruction commences after July 23, 1984, are subject to the new requirements.

The owner or operator of each IFR subject to these standards is required to inspect the internal floating roof and seals to ensure that the equipment is maintained and operated properly. The owner or operator is required to inspect the floating roof and seals prior to filling the vessel with VOL to ensure that there are no holes in the internal floating roof and that there are no holes, tears, or other openings in the seals. Every 12 months thereafter, the owner or operator is required to inspect visually the internal floating roof and primary seal from the fixed roof. If there are holes in the internal floating roof or if VOL is accumulated on the roof, the owner or operator would have the option of repairing the control equipment within 45 days or emptying the storage vessel within 45 days. At least once every 10 years, the owner or operator is required to empty the storage vessel and to inspect the internal floating roof, the primary seal, and the secondary seal, if one exists. The owner or operator has the option of conducting an internal inspection of the internal floating roof at least once every 5 years in place of conducting an annual visual inspection if a double-seal (primary and secondary) system has been installed. In any case, the standards require that all defects in the control equipment be repaired before the vessel is refilled.

Standards for External Floating Roof Vessels. The requirements of the standards for external floating roof vessels (EFR's) are identical to the requirements in the previous petroleum liquid storage vessel standards except that the type of primary seal is restricted to liquid-mounted or mechanical shoe seals, that gasketed covers are required for roof fittings, and that a continuous rim-mounted secondary seal is required.

The owner or operator of each EFR subject to these standards is required to inspect the seals prior to filling the vessel with VOL to ensure that there are no holes, tears, or other openings in the seals. Measurements of gaps between the seal and the vessel wall for both primary and secondary seals are required for EFR's to ensure that the equipment is maintained and operated properly. The owner or operator is required to measure the gaps in both the primary and secondary seals within 60 days of introducing VOL into the vessel. Every 12 months thereafter, the owner or operator is required to perform secondary seal gap measurements. At least once every 5 years, the owner or operator must perform primary seal gap measurements. Measured gaps that exceed specified limitations must either be repaired within 45 days or the storage vessel must be emptied within that time.

The reporting and recordkeeping provisions of Subpart Ka are amended to be consistent with the provisions of Subpart Kb, which require that reports be made only when the measured gaps exceed the specified limitations. These reports shall be submitted to EPA within 30 days of the date of the report. Otherwise, records of gap measurements are kept by the owner or operator.

Standards for Closed Vent Systems and Control Devices. The owner or operator of each affected facility equipped with a closed vent system designed to duct all emissions to a 95 percent effective control device is required to submit to the Administrator the system design specifications and an operation and maintenance plan. The owner or operator is required to operate, maintain, and monitor the system in accordance with the plans submitted to the Administrator.

Selection of Format for the Standards. Section 111 of the Clean Air Act requires that an emission standard be developed whenever it is feasible. Section 111(h) states that "if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard or combination thereof The term "not feasible" is applicable if the emissions cannot be captured and vented through a vent or stack designed for that purpose or if the application of a measurement methodology is not practicable because of technological or economic limitations.

Determining compliance with an emission standard for storage vessels would require the measurement of emissions from each storage vessel; therefore, the emissions would have to be vented in a manner that would allow the measurement of pollutant concentration and flow rates. Internal and external floating roof vessels typically do not have a conveyance designed to capture the emissions or a stack or vent through which the emissions pass to the atmosphere, nor is it practical to design such a capture system for these vessels. Therefore, the Administrator concluded that a performance standard is not feasible for either IFR's or EFR's.

A performance standard was also considered for closed vent systems and control devices. A standard based on a mass emission limitation was determined to be infeasible because a mass emission limitation value cannot be selected that would be achievable in the worst-case situation (i.e., large vessel capacity, high vapor pressure, and high utilization rate) and that, at the same time, would prevent the construction of closed vent systems and control devices that are less effective than BDT. A standard based on reduction efficiency was also determined to be infeasible. Emissions from storage vessels are variable and are often too low to measure. Total emissions from vessels have not been measured, and to do so would require that the operation of the vessel be strictly controlled during the testing period. Because of methodology problems, it may not be possible to measure simultaneously both the flow rate and the concentration. Thus, the accuracy of the measurements may be in doubt. For these reasons, it was concluded that it was impracticable to measure the emissions exiting the vessel or captured by the control system. Therefore, it was concluded that reduction efficiency standards are not feasible for closed vent systems and control devices.

A "design, equipment, work practice, or operational standard or combination thereof" was established. The equipment that comprises BDT for vessels storing affected liquids with vapor pressures less than 76.6 kPa (≅11.1 psia) consists of an internal floating roof with a liquid-mounted or mechanical shoe primary seal and controlled fittings or an external floating roof with a liquid-mounted or mechanical shoe primary seal, a continuous rim-mounted secondary seal, and gasketed fittings. Operational and work practice requirements, which

consist of inspection and repair requirements, are necessary to ensure the continued integrity of the control equipment. Therefore, the Administrator concluded that the format of the standards for these vessels should include a combination of a design, equipment, work practice, and operational standards.

A "design, equipment, work practice, or operational standard or combination thereof" was also established for storage vessels equipped with closed vent systems and control devices. A reduction efficiency design standard can account for the wide variation in emission and flow rates being vented from the vessel, and it would require the use of closed vent systems and 95 percent effective control devices on all vessels equipped with these controls. Operational requirements, which consist, among other things, of inspection, repair, and work practice requirements, are necessary to ensure the proper operation and integrity of control equipment meeting a reduction efficiency design standard. Therefore, the Administrator concluded that the format of the standards for storage vessels equipped with closed vent systems and control devices should include a combination of a design, equipment, work practice, and operational standards.

II. Environmental Impacts

There has been no change in the environmental impacts since proposal. The promulgated standards would reduce the national VOC emissions from new, modified, and reconstructed storage vessels by about 31,100 megagrams (Mg) (34,300 tons) in 1988. The standards reduce the national VOC emissions from storage vessels with no adverse impacts on other aspects of the environment or on energy requirements.

III. Energy Impacts

There has been no change in the energy impacts since proposal. The control technologies that are the bases for the regulatory alternatives do not increase the power or energy requirements of VOL storage vessels. Therefore, no energy impacts are attributed to the standards.

IV Cost Impacts

The total nationwide capital cost for affected facilities constructed through the fifth year of implementation to comply with the proposed standards has increased to $44.4 million from the nationwide capital cost of $15.6 million estimated at the time of proposal. The annualized cost for a typical plant controlled by the standards has increased from $2,350 to $3,200, and the initial capital cost has increased from $10,800 to $14,100. Since proposal, the cost of the liquid-mounted primary seal has been revised upward to $98.40/meter from $2.60/meter, and the expected life of the seals has been revised downward from 20 years to 10 years. The cost of installing fitting controls has also been revised. However, the standards still result in a net annualized credit in the fifth year (1988) due to the retention of liquids that would otherwise be lost.

V Economic Impact

As discussed above, the standards result in a net annualized credit in the fifth year. For this reason, no price increases or other adverse economic impacts attributable to implementation of the standards are expected.

In addition to economic impacts, the cost effectiveness of alternative standards also was evaluated in order to determine the least costly way to reduce emissions and to assure that the controls required by this rule are reasonable relative to other regulations. In this case, the promulgated standards would reduce the operating costs of VOL storage vessels and produce a net annualized credit in the fifth year. Additional details can be found in the BID.

The environmental, energy, and economic impacts are discussed in greater detail in the BID for the proposed standards ("VOC Emissions From Volatile Organic Liquid Storage Tanks—Background Information for Proposed Standards" [EPA–450/3–81–003a]).

VI. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (45 FR 73133) (November 4, 1980) of a meeting of the National Air Pollution Control Techniques Advisory Committee to dicuss the standards for VOL storage vessels recommended for proposal. This meeting was held on December 2, 1980. The meeting was open to the public, and each attendee was given an opportunity to comment on the standards recommended for proposal.

The proposed standards were published in the **Federal Register** on July 23, 1984 (49 FR 29698). The preamble to the proposed standards discussed the availability of the BID ("VOC Emissions From Volatile Organic Liquid Storage Tanks—Background Information for Proposed Standards" [EPA–450/3–81–003a]), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

The opportunity for interested persons to present data, views, or arguments concerning the proposed standards at a public hearing was provided. However, there were no requests to hold such a hearing, and, therefore, no hearing was held.

The public comment period was from July 23, 1984, to October 2, 1984. Twenty-three comment letters were received during the comment period concerning issues relative to the proposed standards of performance for VOL storage vessels. One late comment was also received. The comments have been carefully considered, and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

VII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, Federal and State agencies, and trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the promulgation BID serves as the basis for revisions that have been made to the standards between proposal and promulgation. In addition, several clarifications have been made to the standards. The changes involve clarification of procedural matters such as the length of time allowed to operators or owners of storage vessels to submit reports to the Agency regarding vessels in noncompliance, specific notification requirements when unplanned inspections occur, and the procedures followed by the Administrator in considering requests for permission to use alternate means of emission limitation.

The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Selection of Affected Facility; Emission Control Technology; and Reporting, Recordkeeping, and Inspection Requirements.

Selection of Affected Facility

Commenters requested that the vapor pressure and tank size cutoffs be maintained so that consistency with the existing regulations and with State implementation plans (SIP's) is

maintained at the levels described in Subparts K and Ka (10.4 kPa [≅1.5 psia] and 151 m^3 [≅40,000 gal]).

Section 111 requires EPA to set NSPS that reflect BDT. The EPA has identified BDT for classes of tanks covered by this standard and is, therefore, promulgating this NSPS reflecting BDT. Consistency with some SIP's or the previous standards (K and Ka) is not germane.

Commenters stated that no data are presented that show a significant reduction in emissions from vessels storing liquids with true vapor pressures between 3.5 and 10.4 kPa (0.51 and 1.5 psia) or that show that emissions from these vessels contribute to ozone formation. One commenter maintained that control of vessels storing liquids having vapor pressures between 3.5 and 10.4 kPa (0.51 and 1.5 psia) would not contribute greatly to the reduction in emissions and that such vessels are less cost effective to control than vessels storing liquids with vapor pressures above 10.4 kPa. Another commenter said that the emission reduction attributed to vessels of this size class is overstated at "for-hire" terminals because of the low turnover rate (approximately 5 per year) on these vessels. This commenter suggested that IFR's average at least 10 annual turnovers and fixed roof vessels average at least 50 annual turnovers before becoming subject to the control requirement.

The Agency reevaluated the cost effectiveness of controlling emissions from vessels storing VOL's in this vapor pressure range. The Agency recognizes that there will be variations in cost-effectiveness values within a class. In particular, certain subclasses of vessels (for example, vessels storing low vapor pressure liquids) may have unreasonable cost-effectiveness values, particularly when combined with other storage parameters such as low annual turnovers. Therefore, the Agency has limited the scope of the standards to preclude some of those vessels storing low vapor pressure chemicals that may have unreasonable cost-effectiveness values. This has been done by changing the vapor pressure cutoff from 3.5 to 5.2 kPa (0.51 to 0.75 psia). While the exact number of vessels excluded by the revision of the vapor pressure cutoff is not known, the change in emission reduction is small.

It should be noted that cost effectiveness is not a measure of the economic impact of the standards to individual owners. Rather, it is a measure of the overall cost efficiency for various classes of sources subject to the standards. Because it is practical to do so without affecting the objectivity and enforceability of the standards, the Agency has limited the scope of the standards to preclude some of the vessels which have unreasonable cost-effectiveness values. Nevertheless, variation in cost-effectiveness values among individual facilities does remain. This is expected and is not unreasonable.

Furthermore, these cost-effectiveness estimates do not reflect the indirect environmental benefits of these standards. Emissions from storage of some potentially toxic chemicals will be controlled under these standards. It was not possible to quantify these benefits in this case; nonetheless, the existence of these benefits, in light of the difficulty of making additional distinctions among classes of tanks, was a factor in the Agency's determination that the cost effectiveness of the standards is reasonable.

The Agency also considered an exemption based on turnovers. The Agency evaluated the cost effectiveness of BDT controls for a typical chemical industry tank (a volume of 606 m^3 [160,000 gal], diameter and height of 9.2 m [30 ft], and a stored liquid vapor pressure of 6.9 kPa [1.0 psia]). Tanks with this volume associated with the chemical industry typically turn over 60 times per year. However, the analysis was conducted assuming 10 turnovers per year to evaluate the cost effectiveness of controls at a low turnover rate. The cost effectiveness of BDT is about $1,140/Mg for this case.

The Agency's analysis of tanks larger than 151 m^3 (40,000 gal) was based on an annual turnover rate of 50. Because the number of turnovers does play a role in the cost effectiveness of BDT controls for fixed roof tanks, the Agency examined the impact on the cost effectiveness of BDT controls of low turnover rates in this vapor pressure range (3.5 to 10.4 kPa). As the number of turnovers decreases, fixed roof tank emissions will decrease; the emission reduction obtained by BDT will decrease; and, therefore, BDT will become less cost effective.

The average volume of a tank at a "for-hire" terminal is about 3,300 m^3 (871,000 gal). The emission reductions obtained by constructing a BDT internal floating roof tank in place of a fixed roof tank are about 7.2 Mg/yr and 5.3 Mg/yr at 5 and 2.5 turnovers, respectively; and the associated cost-effectiveness values are $520/Mg rounded and $870/Mg rounded at 5 and 2.5 turnovers, respectively.

An exemption based on annual turnovers is not possible without affecting the objectivity and enforceability of the standards. The number of turnovers that any vessel storing VOC's undergoes is not constant from year to year and cannot be predicted with certainty at the time the vessel is built or reconstructed. As such, any standards designed to exempt individual vessels that may have low turnover rates would be impractical both from an enforcement perspective and from the owner's perspective.

The Agency has concluded that, even in cases of low turnover rates, the control of vessels storing liquids with vapor pressures between 5.2 and 10.4 kPa (0.75 and 1.5 psia) is reasonable. As discussed above, a cutoff based on turnovers is not practical even for those instances where cost-effectiveness values are high. Therefore, because the overall cost of the standards produces a net credit and because an exemption for the subclass of low turnover vessels is not practical, no changes based on turnovers were made to the proposed cutoffs in these final standards. However, the final standards will reflect the change in vapor pressure cutoff.

The emission reduction achieved between 3.5 and 10.4 kPa (0.75 and 1.5 psia) cannot be quantified. However, the cost effectiveness of typical tanks in this vapor pressure range is reasonable. Also, the overall emission reduction of the standards is 31,000 Mg (34,300 tons) and results in a net annual credit. Therefore, this cutoff is reasonable.

Commenters also requested that EPA reevaluate the inclusion of small volume (75– to 151-m^3 [20,000- to 40,000-gal]) vessels by using a range of annual turnovers because at low turnover rates (fewer than 10 per year) controls for these vessels are not cost effective. Another commenter said that the turnover rate for 75– 10 151-m^3 (20,000- to 40,000-gal) vessels in the for-hire terminal industry is as low as 2.5 to 5 times per year. This commenter said that EPA's selection of higher turnover rates results in overstated overall emission reduction and understated cost-effectiveness values.

The Agency examined the possibility of significant numbers of small volume (75- to 151-m^3 [20,000- to 40,000-gal]), low tunover vessels being located at terminals. While some petroleum products such as gasoline meet the small volume vapor pressure cutoff (27.6 kPa [4 psia]), these products are typically stored in much larger tanks. In the chemical industry, only 0.3 percent of total storage volume is shipped and, thereby, available for storage at for-hire terminals. Of this volume shipped, less than 13 percent consists of liquids in the higher vapor pressure range (27.6 to 76.6 kPa [4 to 11.1 psia]) that would be affected under the standards in this size

range. Therefore, the Agency considers it unlikely that a significant number of storage vessels in this size range would be affected by the standards. However, the Agency examined the cost effectiveness of BDT controls in a 113-m^3 (30,000-gal) tank for four specific liquids stores at terminals and at two turnover rates (5 and 10 per year). The cost effectiveness at 5 turnovers annually ranges from $920/Mg to $2,570/Mg and averaged $1,500/Mg. The cost effectiveness at 10 turnovers annually ranged from a savings of $160/Mg to a cost of $890/Mg and averaged $310/Mg. While BDT for these low turnover vessels results in higher cost-effectiveness values than those for vessels with higher turnovers, these costs are reasonable considering the difficulty of discriminating between tanks with different turnover rates. As noted previously, larger vessels, which are more typical in the for-hire terminal industry, are even more cost effective to control.

The actual cost effectiveness of BDT controls is dependent upon tank-specific parameters (diameter, height, and volume) and product-specific parameters (vapor pressure, molecular weight, and chemical formulation) that cannot be predicted and may be higher or lower than those presented. Because of these variable parameters, an objective exemption that would exempt only those vessels that always have low turnovers would be complex and impractical. Therefore, because the average cost effectiveness is reasonable even at lower turnovers, no changes in the volume cutoffs have been made in the final rule.

Commenters requested an exemption for storage vessels located at retail gasoline service stations on the basis that it would be an unnecessary recordkeeping burden for both the operators of smaller affected vessels not subject to the control requirements and the regulatory agencies that would have to keep the records. The commenters stated their belief that it was not EPA's intent to include underground storage vessels at gasoline service stations as affected facilities.

It is true that EPA did not intend to affect vessels at gasoline service stations with these standards. Consequently, no evaluation of the possible economic impact of these standards on retail gasoline marketers was performed. Emissions from retail gasoline marketers are part of the gasoline marketing source category (Petroleum Transportation and Marketing, 40 CFR 60.16, category No. 23) as well as part of the VOL storage category. The decision as to whether to regulate emissions from these vessels is being made in a regulatory decision package for that source category. Therefore, the Agency decided to exempt storage vessels at retail gasoline service stations specifically from the final standards.

One commenter requested that the impact of the standards on bulk gasoline plant owners or operators be evaluated. The commenter was concerned that these firms, which are typically small businesses, would be unable to raise the capital necessary to install the equipment to comply with BDT.

According to the Small Business Administration's criteria for small businesses, bulk plants may be classified as such because they typically have fewer than 500 employees. The economic impacts of the standards on model bulk plants were examined to see if adverse impacts (closure of the facility or inability to construct the new source) could be ruled out. While the capital costs of controls represent only 5 percent of total capital cost for a new model facility, the capital costs of control for replacing or adding an individual tank are significant and may be 50 percent of the total capital cost required to install a new individual tank. Also, the bulk plant industry is declining due to closure and consolidation of firms, and it is possible that the impact of further regulation would be to accelerate closures. Therefore, it was determined that a potential adverse economic impact exists.

Although an Agency study indicates that the cost effectiveness of controls is reasonable for typical facilities ($520/Mg), the economic impact may not be reasonable. The Agency was unable to quantify the profitability of bulk plant firms, and no data are available to prove that these firms have access to sufficient capital to install controls. Even firms that are part of integrated operations may not be able to divert capital from more profitable operations to bulk plant operations. Therefore, the Agency was unable to ascertain how many of the plants that would add or replace tanks would suffer an adverse economic impact due to the inability to finance the capital costs of controls. Furthermore, bulk plants are an identifiable class of vessels, and an exemption for this class would not affect the objectivity and enforceability of the standards. For these reasons, the Agency has decided to exempt bulk gasoline plants from the standards.

This change in the regulation from proposal only affects those plants in attainment areas. Plants located in nonattainment areas would have been exempted in any case because the control technology required by the SIP's in these areas (vapor balance systems) is incompatible with BDT. The bulk plant industry is also part of the gasoline marketing source category, and the decision as to whether to regulate emissions from these vessels at bulk plants is being made in a regulatory decision package for that category.

One commenter also requested that EPA grant an exemption from the standards for vessels used to store nonindustrial, distilled beverage alcohol. The commenter requested the exemption for the following reasons: (1) Producers of distilled spirits are insignificant sources of VOC emissions, (2) the suggested control technology would be either extremely damaging to the product as a food item or would be proscribed by existing Federal regulations, and (3) the costs and other problems that would result from implementation of the proposed standards would violate Executive Order 12291.

The Agency concurs with the commenter that the proposed control technologies required by these standards could contaminate beverage alcohol, resulting in a product with little or no market value. Also, because beverage alcohol was exempted from the priority list as part of the synthetic organic chemical manufacturing industry source category and because it is not a petroleum liquid, storage vessels containing beverage alcohol are exempt from the final standards. However, any storage vessels that are used to store nonbeverage, fermented products are subject to the standards if they are found to be affected facilities.

Some commenters requested that the provision of Subparts K and Ka that exempts underground vessels when the volume of liquid added to and taken from the tank in a year does not exceed twice the volume of the vessel be continued in Subpart Kb.

Based on the following reasons, the Administrator has decided not to continue the exemption. It is impracticable to control emissions from underground vessels with internal floating roofs. Emissions from these tanks can be controlled with vapor recovery or disposal systems designed and operated in compliance with these standards. While the cost effectiveness of vapor recovery or disposal systems in these isolated instances may be high, cost effectiveness is not a measure of economic impact. Rather, it is a measure of the cost efficiency of subclasses of vessels. The overall cost of the

standards to the industry is a net credit. Additionally, aboveground IFR's or EFR's equipped with the controls required by the standards could be constructed in lieu of underground storage vessels. Therefore, the Administration has decided not to include this exemption in the promulgated standards. It should be noted that the exemption does continue for vessels constructed after the date of proposal for Subpart K but prior to proposal for Subpart Kb.

One commenter contended that the BID does not support the inclusion of underground storage vessels, particularly those smaller than 100 m^3 (26,000 gal) in capacity. The commenter's primary concern was that some manufacturing plants may not have adequate space to install aboveground tanks in place of underground tanks. The commenter also noted that emissions from these vessels are excessively costly to control. According to the commenter, installations storing VOL for use in manufacturing operations may need one or two horizontal, underground tanks as large as 95 m^3 (25,000 gal) to store material received from railroad tank cars that have capacities up to 75 m^3 (20,000 gal). The commenter recommended that an exemption be included in the proposed standard for underground storage vessels with capacities less than 100 m^3 (26,000 gal).

Adequate spacing of tanks is necessary to reduce the possibility of the spread of fire from the tank initially involved to exposed structures or adjacent tanks. For example, a 75-m^3 (20,000-gal) tank would have to be placed at least 7.5 to 15 m (25 to 50 ft) away from buildings depending on the flammability of the liquid being stored. The minimum tank-to-tank spacing is one-half the diameter of the largest tank, which is 4.3 m (14 ft) in the case of adjacent 75-m^3 (20,000-gal) tanks. In contrast, underground tanks may be located as close as 1.5 m (5 ft) to building foundations and 0.6 m (2 ft) to other tanks and pipelines.

Aboveground tanks are a proven and safe method of storage, and there appear to be no technical reasons why aboveground tanks could not be installed in place of underground tanks when space permits. Furthermore, it is expected that space would not be a problem at new plants because they can be designed to allow sufficient space for aboveground tanks. However, EPA cannot predict which existing facilities may have spacing problems in installing new aboveground tanks. In cases where space is a problem, the owner or operator may install underground tanks equipped with the control devices allowed by § 60.112b(a)(3).

The cost effectiveness of controlling emissions from a 113-m^3 (30,000-gal) capacity underground tank is about $2,100/Mg. This amount assumes the tank undergoes 10 turnovers per year, which is typical for the commenter's industry. While $2,100/Mg is higher than the cost effectiveness of BDT control (i.e., floating roof) in comparable tanks ($310/Mg), the overall cost of the standards to the industry is a net credit. Therefore, the promulgated standards were not revised to include a blanket exemption for underground storage vessels because adequate means of complying with the standards (aboveground vessels or underground vessels equipped with add-on controls) exist.

One commenter noted that horizontal tanks are used widely in the synthetic organic chemical manufacturing industry (SOCMI). The commenter said that, because floating roofs cannot be used in these tanks, there is a problem in applying the proposed standards to them.

The standards provide three fundamentally different methods of compliance:

1. Tanks equipped with an external floating roof and with liquid-mounted or mechanical shoe primary seals and a rim-mounted secondary seal;

2. Tanks equipped with an internal floating roof and with liquid-mounted or mechanical shoe primary seals or vapor-mounted primary seals and secondary seals and gasketed fittings; or

3. A 95 percent effective vapor control system. Horizontal tanks are typically small (volumes rarely exceed 113 m^3 [30,000 gal]); and because EFR's are rarely smaller than 492 m^3 (130,000 gal), these horizontal tanks could not be constructed as new EFR's. However, the other options allowed by the standard are suitable for vesels in the size range of horizontal tanks. In subsequent discussion, the commenter agreed that vertical tanks equipped with internal floating roofs could be used in place of horizontal tanks although in some instances such as separation processes horizontal tanks were advantageous.

Additional information was obtained from the State of Texas on the issue. Texas requires equipment similar to BDT (internal floating roofs) for all new storage vessels with capacities of 95 m^3 (25,000 gal) or greater storing liquids with vapor pressures of 3.5 kPa (0.51 psia) or greater and, thus, currently requires controls on vessels of concern to the commenter. Texas Air Control Board (TACB) personnel have stated that, in their permitting experience, there are very few circumstances in which the tanks must be horizontal. If a horizontal tank is used, the TACB generally requires add-on control systems (carbon adsorption or thermal oxidation).

Previous studies of storage in the chemical industry indicate that add-on control systems are cost effective (less than $1,000/Mg) for tanks with volumes less than 151 m^3 (40,000 gal) storing liquids with high vapor pressures. For example, the average cost effectiveness of a 95 percent efficient condenser for chloroform storage at chloroform production facilities is $630/Mg. This issue was further analyzed by examining the cost effectiveness of controlling a 113 m^3 (30,000 gal) horizontal tank as a function of turnover rate and filling rate. While turnover rates of 170 times per year are typical for vessels in this size range in the chemical industry, cases were analyzed assuming 5 and 10 turnovers per year. Cost-effectiveness values were determine for 4 chemicals (n-pentane, cyclopentane, isoprene, ethyl ether) stored at 21° (70°F). The average cost effectiveness of these cases ranged from $650/Mg to $1,540/Mg. This range is judged to be reasonable. The standards are achievable and, in many cases, are cost effective even if atypical turnover rates are assumed and if add-on controls are adopted. Furthermore, only 0.22 percent of vessels in the 75- to 151-m^3 (20,000- to 40,000-gal) size range are used to store liquid with vapor pressures between 27.6 and 58.7 kPa (4 and 8.5 psia) in the chemical industry, and only 8 percent of total storage capacity is dedicated to storage of liquids with vapor pressures between 20.7 and 103.4 kPa (3 and 15 psia). Based on this information, it is reasonable to assume that only a very small proportion of potential new sources of small fixed roof tanks in the chemical industry would be affected by the standards. Therefore, no exemption for these vessels has been incorporated into the final rule.

Several commenters requested an exemption to the recordkeeping requirements for tanks used to store a mixture of different products ("slop oil") and for tanks used to retain wastewater after the organic liquids have been removed in an oil-water separator. The commenters said that the constantly changing nature of the products and the associated vapor pressure in the slop oil vessels would necessitate physical testing to determine vapor pressure as required in the proposed standards. The

wastewater vessels contain liquids with low vapor pressures such that operational monitoring is inappropriate.

The purpose of the vapor pressure determination is to distinguish between the three possible classes of VOL's that are of concern:

1. Those liquids with vapor pressures greater than or equal to a control cutoff (27.6 kPa [4 psia] for vessels with capacities of 75 m^3 [20,000 gal] or greater and 5.2 kPa [0.75 psia] for vessels with capacities of 151 m^3 [40,000 gal] or greater);

2. Those liquids that are exempt from all vapor pressure recordkeeping provisions of the standards (less than 15 kPa [2.2 psia] for vessels with capacities between 75 and 151 m^3 [20,000 and 40,000 gal] and less than 3.5 kPa [0.51 psia] for vessels with capacities of 151 m^3 [40,000 gal] or greater); and

3. Those liquids for which monitoring, but not emission control, is required (greater than or equal to 15 kPa [2.2 psia] and less than 27.6 kPa [4 psia] for vessels with capacities ranging from 75 to 151 m^3 [20,000 to 40,000 gal] and greater than or equal to 3.5 kPa [0.51 psia] and less than 5.2 kPa [0.75 psia] for vessels with capacities of 151 m^3 [40,000 gal] or greater).

For most chemical and petroleum products, the class to which a given liquid belongs will be obvious. For instance, the vapor pressure of No. 2 fuel oil will not exceed 5.2 kPa (0.75 psia) at normal storage temperatures, and, therefore, vessels storing this liquid would be exempt from all except the monitoring provisions of the standards.

Waste tanks with constantly changing mixtures pose a different issue. While a range of possible vapor pressures will be known, constant minor fluctuations in composition will prevent the determination of the actual vapor pressure without extensive (perhaps daily) testing. However, these fluctuations generally are not so large that under normal operating conditions large daily changes in vapor pressure would be expected. Extensive testing of these liquids would be unduly burdensome to industry without providing a corresponding benefit. Therefore, EPA sought an alternative that would preserve the intent of the requirement without being unreasonably burdensome.

Prior to construction of the vessel, the range of likely liquid compositions will be known, as will the maximum monthly average storage temperature. Given these, it is possible to estimate the vapor pressure of the mixture by Raoult's law:

$P_t = \Sigma P_n X_n$.

where

P_t = the total vapor pressure.
P_n = the vapor pressure component.
X_n = the mole fraction of a component.

As with all other liquids, if the anticipated liquid composition with the highest vapor pressure is below the monitoring cutoffs, the vessel would be exempt from the vapor pressure monitoring requirements of the standards.

For these types of liquids, the provisions for monitoring have been changed from those proposed. If the anticipated liquid composition is above the cutoff for monitoring but below the cutoff for controls, the standards require a physical test of the vapor pressure initially and at least once every 6 months thereafter. This testing is not costly (less than $100) and would serve the intent of the proposed standards without being burdensome. Records of the results will be kept by the owner or operator, but reports will be required only in the event the vapor pressure of the stored liquid exceeds the threshold for controls.

Emission Control Technology

One commenter stated that industry experience with secondary seals on EFR's is limited and that there is uncertainty regarding the effective life of the seals. The commenter also requested that EPA acknowledge a potential safety hazard from the formation of a vapor space between the primary and secondary seal.

There may be some uncertainty about the lifetime of secondary seals; the actual lifetime may be longer or shorter than the 10 years estimated at proposal. Comments received on the draft Control of Volatile Organic Compound Emissions From Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks (CTG), August 1983, suggested that vapor-mounted primary seals on an internal floating roof would have a lifetime of 10 years or more in the more severe chemical services. Because the construction of the seal systems is similar to that of secondary seals used on EFR's, it is reasonable to assume a 10-year life on secondary seals for EFR's as an average.

The Agency has determined that adequate technology exists and is commonly employed to operate EFR's with double seals in a safe manner. Although specific data are not available for EFR's equipped with double-seal systems, the fire and explosion hazard is greatly reduced because the floating roof eliminates vapor space. The reduced hazard is substantiated by a study conducted by Factory Mutual Research of fire loss experience of storage vessels from 1962 to 1974. Fixed roof tanks were involved in 53 percent of all losses while floating roof tanks were involved in only 34 percent. Significantly, 47 percent of fixed roof tanks were totally destroyed compared to 12 percent of the floating roof tanks. Unlike fires in fixed roof tanks, most fires in floating roof tanks were extinguished by portable foam or water hose streams before serious damage occurred. Therefore, the Administrator has concluded that there are no safety hazards associated with floating roof tanks beyond those normally experienced by industry.

Some commenters noted that vented IFR's may not be the best choice of storage vessel in cases where the stored liquid must be protected from moisture or oxygen. They cited chemical products such as chlorinated solvents that may be contaminated by exposure to moist ambient air. One commenter noted that vented IFR's would greatly increase the cost of inert gas pads.

These comments are based on the premise that the IFR required in § 60.112(b)(a)(1) must be vented. The Agency agrees that ventilating tanks storing liquids that must be protected from contact with ambient air is not wise. Neither the proposed nor the promulgated standards require the IFR to be vented. The IFR may be ventilated or nonventilated, padded or unpadded, according to the preference of the owner or operator, without affecting the compliance status of the tank. Therefore, the requirement for an internal floating roof will impose no additional contamination problems, safety problems, or gas padding costs over normal industry practice. No changes to the standards were made as a result of these comments.

Some commenters stated that use of the floating roof itself is incompatible with storage of highly corrosive liquids. According to the commenters, to prevent corrosion damage, the vessel either may be lined with plastics, fluoropolymers, or synthetic materials, or it may be constructed with fiberglass reinforced plastic. These commenters state that such materials are unable to withstand the abrasion that is inherent in the operation of floating roofs.

Regarding the abrasion of the tank liner, internal floating roof seals are typically made of soft materials and are softer than common liners. The seals do not exert much compressive force against the tank sidewall. The anticipated point of wear would be the seal and not the tank liner. Internal floating roofs have been installed in lined tanks and have operated properly without excessive wear to the liner.

Therefore, no exemption for lined tanks has been incorporated into the final standards.

Fiberglass reinforced plastic (FRP) tanks are used by some tank operators to store corrosive liquids (chlorinated solvents, acids, and bases). These tanks generally are lined with a corrosion barrier composed of a thin layer of resin. Floating roof are not used in these tanks because a leak or structural damage could result if the roofs seals damage the resin layer. However, stainless steel tanks equipped with internal floating roofs may be substituted for FRP tanks, or emissions from FRP tanks may be controlled by use of a closed vent system and 95 percent effective control device. Therefore, because adequate control alternatives are available to owners or operators of FRP tanks, no revisions have been made to the standards as a result of this comment.

Other commenters questioned whether ventilation in IFR's is adequate to prevent an explosion hazard. They said that the proposed standards should recognize that the use of IFR's could promote the formation of explosive vapor mixtures above the floating roof. They also noted that, by design, the product stored in an IFR is isolated from any roof-mounted deluge system, thus reducing the probability of early control of any fire that occurs.

The Agency has determined that the final standards do not pose a safety hazard. A representative of the Texas Chemical Council stated that his company's safety personnel had reviewed the standards and did not believe that the required controls would pose a hazard. Data from vendors indicate that the lower explosive limit was never reached in tests on a noncontact internal floating roof in vented tanks storing a wide variety of products. It appears that there are no additional safety hazards associated with the IFR beyond those hazards normally accepted by the industry.

Regarding isolation from any roof-mounted deluge system, vendors of internal floating roofs as well as Factory Mutual Research Standards have stated that foam distribution systems have been used successfully against fires in IFR's. Foaming the deck closes off the oxygen supply; any vapor space under the deck will quickly be deficient in the oxygen necessary to support a fire.

Some commenters stated that the flare exit velocity limitations are unduly restrictive and suggested that they be reviewed in light of the latest information from the Chemical Manufacturers Association and EPA. They said that the velocity specifications are identical to those proposed in the SOCMI equipment leak NSPS and suggested that both the SOCMI and the proposed VOL standards be revised to encompass a consistent set of limitations based on a recently completed study showing 98 percent or better destruction efficiencies at velocities greater than the existing velocity limitation. One commenter suggested a public comment period on flare operation limitations.

The flare exit velocity limitations have been reviewed by EPA in the time since the standards were proposed. New data obtained by an EPA test program showed that VOC destruction efficiencies of 98 percent or better are achievable using higher exit velocities when the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf). Accordingly, an addition to the General Provisions (§ 60.18) was promulgated (51 FR 2699, January 21, 1986) to reflect this information, and the VOL standards were revised as well. The specifications limit flare exit velocity of steam-assisted and nonassisted flares to 18.3 m/s (60 ft/s) unless the net heating value of the gas being combused is greater than 37.3 MJ/scm (1,000 Btu/scf). In this latter case, exit velocities may be between 18.3 m/s and 122 m/s (60 ft/s and 400 ft/s). The specifications also permit the owners to operate the flare at a prorated maximum exit velocity (based on the net heating value of the gas being combusted) so long as it is less than 122 m/s (400 ft/s) but greater than 18.3 m/s (60 ft/s).

Some commenters found the required use of flexible fabric sleeve seals on column penetrations to be restrictive and recommended that EPA also allow the use of gasketed sliding covers. They noted that flexible fabric sleeve seals are a fitting design unique to a single manufacturer and are not generally available. They also noted an insignificant difference in overall emission reduction (0.1 to 0.2 percent) when flexible fabric sleeve seals are used in place of gasketed sliding covers. They stated that the use of "built-up" columns, which are currently in widespread use, is disallowed under the proposed standards because sleeve seals can only be used with pipe columns. One commenter discussed the potential for damage and maintenance repair problems with use of sleeve seals, which could result in lengthy downtime.

Flexible fabric sleeve seals are currently available only on contact decks. It is not the intent of the Agency to prohibit the use of noncontact decks with this fitting requirement. While the annualized cost of redesigning a noncontact deck to allow the adoption of flexible fabric sleeve seals is not known, the Agency has determined that it is highly unlikely that noncontact decks could be redesigned and flexible fabric sleeve seals installed cost effectively. Alternatively, gasketed sliding covers are widely available and may be employed on both contact and noncontact decks with a slight difference in overall emission reduction as noted by the commenter. Therefore, the Agency has decided to revise the proposed regulations to allow the use of either flexible fabric sleeve seals or gasketed sliding covers.

Recordkeeping, Reporting, and Inspection requirements

Commenters said that an annual visual inspection of IFR seals precludes the use of nonvented IFR's because of the excessive time, materials, and manpower required to inspect the vessels. They also said that the inspection could pose a safety hazard. One commenter suggested that IFR's with primary and secondary seals be inspected internally at 5-year intervals. If EPA were to approve a 5-year inspection interval, the commenter further proposed that it be considered equivalent to an annual inspection of a single-seal system. The commenter calculated that overall emission rates due to seal failure are equivalent under the two options. Other commenters suggested that VOC emissions be monitored annually from a small fitting on the roof. They said that if monitoring indicates a significant increase in emissions, an internal inspection would be warranted to find and correct the problem. It was suggested that this option either replace or be considered equivalent to the annual visual inspection.

After evaluating this issue, the Agency has determined that it may not be possible to inspect all IFR's without emptying and degassing the vessel. The Agency evaluated the commenters' proposed revisions and has decided to revise the standards. If the operator equips the vessel with a primary and a secondary seal and conducts an internal inspection every 5 years, the controls are considered equivalent to a single-seal system and annual visual inspection. Under the double-seal system option, the addition of a secondary seal will reduce emissions beyond the emission reduction achieved by a single-seal system, thus offsetting the risk of increased emission due to seal failure. In any case, seal failure rates are generally quite low, and a major failure (such as a deck sinking) would be evident to the operator even in

the absence of an annual inspection because of a loss of material.

A worse-case analysis of the possible impact this suggestion would have on emissions was performed. Even if 10 percent of the tanks equipped with primary and secondary seals experienced total failure of one seal, average emissions would be 4 percent lower than if all tanks had been equipped with a primary seal only.

The alternative of VOC monitoring suggested by the commenters has not been incorporated into the final standards. There are no data on which to base a selection of a hydrocarbon concentration that would indicate a problem with the control equipment. The hydrocarbon concentration measured at the roof fitting would be heavily dependent upon recent tank operations (e.g., filling, emptying, or static level) and liquid level. The Agency is not aware of any method by which an annual concentration measurement could be used to establish the condition of the control equipment.

Several commenters said that the 30-day allowance for repairing or emptying storage vessels found to be out of compliance is unreasonble. Commenters said that the provision would necessitate the installation of two small tanks rather than a single large tank to provide the flexibility to transfer material from a vessel in need of repair.

Another commenter noted that the provision would be a problem in the event a facility found that several vessels were simultaneously out of compliance. Commenters suggested that a 45-day to 120-day allowance would give the operator sufficient time to order, receive, and install new equipment without having to request an extension for repairing or emptying the vessel.

Discussion with storage vessel manufacturers indicated that a 30-day allowance for repairing or exempting storage vessels in conjunction with the option of requesting a 30-day extension is reasonable from the supplier's viewpoint. However, in the event that special materials not normally kept in stock (such as Teflon seals) were required, this time would probably be insufficient. The Agency has decided to revise the proposed standards to provide a 45-day allowance to accommodate delays in repairing or emptying the vessel. A 30-day extension may still be requested if repairs are likely to exceed the initial allowance.

VIII. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and affected industries to identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

The effective date of this regulation is April 8, 1987 Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (July 23, 1984).

As prescribed by section 111, the promulgation of these standards is based on the Administrator's determination that SOCMI and VOL storage vessels and handling equipment contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subpart A and Subpart Kb) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060-0074.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule. The regulation results in a net annual credit to the industry, and no price increases are expected. The Agency has concluded, therefore, that this regulation is not a "major rule" under Executive Order 12291. The regulation was submitted to OMB for review as required by Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

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

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Volatile organic liquid storage vessels.

Dated: March 30, 1987

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.16 of Subpart A is amended by revising the first entry in the list to read as follows:

§ 60.16 Priority list.

1. Synthetic Organic Chemical Manufacturing Industry (SOCMI) and

Volatile Organic Liquid Storage Vessels and Handling Equipment
(a) SOCMI unit processes
(b) Volatile organic liquid (VOL) storage vessels and handling equipment
(c) SOCMI fugitive sources
(d) SOCMI secondary sources

3. Section 60.17 of Subpart A is amended by revising paragraph (a)(13), paragraph (a)(37), paragraph (c) introductory text, and paragraph (c)(1) as follows:

§ 60.17 Incorporation by reference.

(a)

(13) ASTM D323–82, Test Method for Vapor Pressure of Petroleum Products (Reid Method), IBR approved April 8, 1987 for §§ 60.111(1), 60.111a(g), 60.111b(g), and 60.116b(f)(2)(ii).

(37) ASTM D2879–83, Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved April 8, 1987 for §§ 60.485(e), 60.111b(f)(3), 60.116b(e)(3)(ii), and 60.116b(f)(2)(i).

(c) The following material is available for purchase from the American Petroleum Institute, 1220 L Street NW Washington, DC 20005.

(1) API Publication 2517 Evaporation Loss from External Floating Roof Tanks, Second Edition, February 1980, IBR approved January 27 1983, for §§ 60.111(i), 60.111a(f), 60.111a(f)(1) and 60.116b(e)(2)(i).

4. The heading for Subpart K is revised to read as follows:

Subpart K—Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978

5. In § 60.111 of Subpart K, paragraph (l) is revised to read as follows:

§ 60.111 Definitions.

(l) "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D323–82 (incorporated by reference—see § 60.17).

6. The heading for Subpart Ka is revised to read as follows:

Subpart Ka—Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984

7 In § 60.111a of Subpart Ka, paragraph (g) is revised to read as follows:

§ 60.111a Definitions.

(g) "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and nonviscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D323–82 (incorporated by reference—see § 60.17).

8. In § 60.113a of Subpart Ka, the introductory text of (a)(1)(i) is revised and (a)(1)(i) (D) and (E) are added to read as follows:

§ 60.113a Testing and procedures.

(a)
(1)
(i) Determine the gap areas and maximum gap widths between the primary seal and the tank wall and between the secondary seal and the tank wall according to the following frequency:

(D) Keep records of each gap measurement at the plant for a period of at least 2 years following the date of measurement. Each record shall identify the vessel on which the measurement was performed and shall contain the date of the seal gap measurement, the raw data obtained in the measurement process required by paragraph (a)(1)(ii) of this section and the calculation required by paragraph (a)(1)(iii) of this section.

(E) If either the seal gap calculated in accord with paragraph (a)(1)(iii) of this section or the measured maximum seal gap exceeds the limitations specified by § 60.112a of this subpart, a report shall be furnished to the Administrator within 60 days of the date of measurements. The report shall identify the vessel and list each reason why the vessel did not meet the specifications of § 60.112a. The report shall also describe the actions necessary to bring the storage vessel into compliance with the specifications of § 60.112a.

9. Subpart Ka § 60.114a is revised as follows:

§ 60.114a Alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions at least equivalent to the reduction in emissions achieved by any requirement in § 60.112a, the Administrator will publish in the Federal Register a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(b) Any notice under paragraph (a) of this section will be published only after notice and an opportunity for a hearing.

(c) Any person seeking permission under this section shall submit to the Administrator a written application including:

(1) An actual emissions test that uses a full-sized or scale-model storage vessel that accurately collects and measures all VOC emissions from a given control device and that accurately simulates wind and accounts for other emission variables such as temperature and barometric pressure.

(2) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(d) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same emissions reduction as specified in § 60.112a.

(e) The primary vapor-mounted seal in the "Volume-Maximizing Seal" manufactured by R.F.I. Services Corporation is approved as equivalent to the vapor-mounted seal required by § 60.112a(a)(1)(i) and must meet the gap criteria specified in § 60.112a(a)(1)(i)(B). There shall be no gaps between the tank wall and any secondary seal used in conjunction with the primary seal in the "Volume-Maximizing Seal"

10. Part 60 is amended by adding Subpart Kb, consisting of §§ 60.110b thru 60.117b, to read as follows:

Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984

Sec.

60.110b Applicability and designation of affected facility.
60.111b Definitions.
60.112b Standard for volatile organic compounds (VOC).
60.113b Testing and procedures.
60.114b Alternative means of emission limitation.
60.115b Recordkeeping and reporting requirements.
60.116b Monitoring of operations.
60.117b Delegation of authority.

Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984

§ 60.110b Applicability and designation of affected facility.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, the affected facility to which this subpart applies is each storage vessel with a capacity greater than or equal to 40 cubic meters (m^3) that is used to store volatile organic liquids (VOL s) for which construction, reconstruction, or modification is commenced after July 23, 1984.

(b) Except as specified in paragraphs (a) and (b) of § 60.116b, storage vessels with design capacity less than 75 m^3 are exempt from the General Provisions (Part 60, Subpart A) and from the provisions of this subpart.

(c) Except as specified in paragraphs (b) and (c) of § 60.116b, vessels either with a capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure less than 3.5 kPa or with a capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a liquid with a maximum true vapor pressure less than 15.0 kPa are exempt from the General Provisions (Part 60, Subpart A) and from the provisions of this subpart.

(d) This subpart does not apply to the following:

(1) Vessels at coke oven by-product plants.

(2) Pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere.

(3) Vessels permanently attached to mobile vehicles such as trucks, railcars, barges, or ships.

(4) Vessels with a design capacity less than or equal to 1,589.874 m^3 used for petroleum or condensate stored, processed, or treated prior to custody transfer.

(5) Vessels located at bulk gasoline plants.

(6) Storage vessels located at gasoline service stations.

(7) Vessels used to store beverage alcohol.

§ 60.111b Definitions.

Terms used in this subpart are defined in the Act, in Subpart A of this part, or in this subpart as follows:

(a) "Bulk gasoline plant" means any gasoline distribution facility that has a gasoline throughput less than or equal to 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal requirement or Federal, State or local law, and discoverable by the Administrator and any other person.

(b) "Condensate" means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.

(c) "Custody transfer" means the transfer of produced petroleum and/or condensate, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation.

(d) "Fill" means the introduction of VOL into a storage vessel but not necessarily to complete capacity.

(e) "Gasoline service station" means any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(f) "Maximum true vapor pressure" means the equilibrium partial pressure exerted by the stored liquid at the temperature equal to the highest calendar-month average of the liquid storage temperature for liquids stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Bulletin 2517 Evaporation Loss From External Floating Roof Tanks, (incorporated by reference—see § 60.17); or

(2) As obtained from standard reference texts; or

(3) As determined by ASTM Method D2879–83 (incorporated by reference—see § 60.17);

(4) Any other method approved by the Administrator.

(g) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquified petroleum gases, as determined by ASTM D323–82 (incorporated by reference—see § 60.17).

(h) "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

(i) "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery.

(j) "Storage vessel" means each tank, reservoir, or container used for the storage of volatile organic liquids but does not include:

(1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors; or

(2) Subsurface caverns or porous rock reservoirs.

(k) "Volatile organic liquid" (VOL) means any organic liquid which can emit volatile organic compounds into the atmosphere except those VOL's that emit only those compounds which the Administrator has determined do not contribute appreciably to the formation of ozone. These compounds are identified in EPA statements on ozone abatement policy for SIP revisions (42 FR 35314, 44 FR 32042, 45 FR 32424, and 45 FR 48941).

(l) "Waste means any liquid resulting from industrial, commercial, mining or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded or recycled.

§ 60.112b Standard for volatile organic compounds (VOC).

(a) The owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kPa but less than 76.6 kPa or with a design capacity greater than or equal to 75 m^3 but less than 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa but less than 76.6 kPa, shall equip each storage vessel with one of the following:

(1) A fixed roof in combination with an internal floating roof meeting the following specifications:

(i) The internal floating roof shall rest or float on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a fixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.

(ii) Each internal floating roof shall be equipped with one of the following closure devices between the wall of the storage vessel and the edge of the internal floating roof:

(A) A foam-or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal). A liquid-mounted

seal means a foam-or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank.

(B) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous.

(C) A mechanical shoe seal. A mechanical shoe seal is a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(iii) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(iv) Each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains is to be equipped with a cover or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. The cover or lid shall be equipped with a gasket. Covers on each access hatch and automatic gauge float well shall be bolted except when they are in use.

(v) Automatic bleeder vents shall be equipped with a gasket and are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(vi) Rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.

(vii) Each penetration of the internal floating roof for the purpose of sampling shall be a sample well. The sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(viii) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(ix) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(2) An external floating roof. An external floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a vessel with no fixed roof. Each external floating roof must meet the following specifications:

(i) Each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be either a mechanical shoe seal or a liquid-mounted seal. Except as provided in § 60.113b(b)(4), the seal shall completely cover the annular space between the edge of the floating roof and tank wall.

(B) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion except as allowed in § 60.113b(b)(4).

(ii) Except for automatic bleeder vents and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof legs supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(iii) The roof shall be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the tank is completely emptied and subsequently refilled. The process of filling, emptying, or refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

(3) A closed vent system and control device meeting the following specifications:

(i) The closed vent system shall be designed to collect all VOC vapors and gases discharged from the storage vessel and operated with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined in Part 60, Subpart VV § 60.485(b).

(ii) The control device shall be designed and operated to reduce inlet VOC emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements (§ 60.18) of the General Provisions.

(4) A system equivalent to those described in paragraphs (a)(1), (a)(2), or (a)(3) of this section as provided in § 60.114b of this subpart.

(b) The owner or operator of each storage vessel with a design capacity greater than or equal to 75 m^3 which contains a VOL that, as stored, has a maximum true vapor pressure greater than or equal to 76.6 kPa shall equip each storage vessel with one of the following:

(1) A closed vent system and control device as specified in § 60.112b(a)(3).

(2) A system equivalent to that described in paragraph (b)(1) as provided in § 60.114b of this subpart.

§ 60.113b Testing and procedures.

The owner or operator of each storage vessel as specified in § 60.112b(a) shall meet the requirements of paragraph (a), (b), or (c) of this section. The applicable paragraph for a particular storage vessel depends on the control equipment installed to meet the requirements of § 60.112b.

(a) After installing the control equipment required to meet § 60.112b(a)(1) (permanently affixed roof and internal floating roof), each owner or operator shall:

(1) Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service), prior to filling the storage vessel with VOL. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric or defects in the internal floating roof, or both, the owner or operator shall repair the items before filling the storage vessel.

(2) For vessels equipped with a liquid-mounted or mechanical shoe primary seal, visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least one every 12 months after initial fill. If the internal floating roof is not resting on the surface of the VOL inside the storage vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel

from service within 45 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Administrator in the inspection report required in § 60.115(a)(b)(3). Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(3) For vessels equipped with a double-seal system as specified in § 60.112b(a)(1)(ii)(B):

(i) Visually inspect the vessel as specified in paragraph (a)(4) of this section at least every 5 years; or

(ii) Visually inspect the vessel as specified in paragraph (a)(2) of this section.

(4) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes (if any), and sleeve seals (if any) each time the storage vessel is emptied and degassed. If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with VOL. In no event shall inspections conducted in accordance with this provision occur at intervals greater than 10 years in the case of vessels conducting the annual visual inspection as specified in paragraph (a)(2) of this section and at intervals no greater than 5 years in the case of vessels specified in paragraph (a)(3) of this section.

(5) Notify the Administrator in writing at least 30 days prior to the filling or refilling of each storage vessel for which an inspection is required by paragraphs (a)(1) and (a)(4) of this section to afford the Administrator the opportunity to have an observer present. If the inspection required by paragraph (a)(4) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance or refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to the refilling.

(b) After installing the control equipment required to meet § 60.112b(a)(2) (external floating roof), the owner or operator shall:

(1) Determine the gap areas and maximum gap widths, between the primary seal and the wall of the storage vessel and between the secondary seal and the wall of the storage vessel according to the following frequency.

(i) Measurements of gaps between the tank wall and the primary seal (seal gaps) shall be performed during the hydrostatic testing of the vessel or within 60 days of the initial fill with VOL and at least once every 5 years thereafter.

(ii) Measurements of gaps between the tank wall and the secondary seal shall be performed within 60 days of the initial fill with VOL and at least once per year thereafter.

(iii) If any source ceases to store VOL for a period of 1 year or more, subsequent introduction of VOL into the vessel shall be considered an initial fill for the purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(2) Determine gap widths and areas in the primary and secondary seals individually by the following procedures:

(i) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof leg supports.

(ii) Measure seal gaps around the entire circumference of the tank in each place where a 0.32-cm diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the storage vessel and measure the circumferential distance of each such location.

(iii) The total surface area of each gap described in paragraph (b)(2)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(3) Add the gap surface area of each gap location for the primary seal and the secondary seal individually and divide the sum for each seal by the nominal diameter of the tank and compare each ratio to the respective standards in paragraphs (b)(4) of this section.

(4) Make necessary repairs or empty the storage vessel within 45 days of identification in any inspection for seals not meeting the requirements listed in (b)(4)(i) and (ii) of this section:

(i) The accumulated area of gaps between the tank wall and the mechanical shoe or liquid-mounted primary seal shall not exceed 212 Cm^2 per meter of tank diameter, and the width of any portion of any gap shall not exceed 3.81 cm.

(A) One end of the mechanical shoe is to extend into the stored liquid, and the other end is to extend a minimum vertical distance of 61 cm above the stored liquid surface.

(B) There are to be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(ii) The secondary seal is to meet the following requirements:

(A) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in paragraph (b)(2)(iii) of this section.

(B) The accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 cm^2 per meter of tank diameter, and the width of any portion of any gap shall not exceed 1.27 cm.

(C) There are to be no holes, tears, or other openings in the seal or seal fabric.

(iii) If a failure that is detected during inspections required in paragraph (b)(1) of § 60.113b(b) cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Administrator in the inspection report required in § 60.115b(b)(4). Such extension request must include a demonstration of unavailability of alternate storage capacity and a specification of a schedule that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(5) Notify the Administrator 30 days in advance of any gap measurements required by paragraph (b)(1) of this section to afford the Administrator the opportunity to have an observer present.

(6) Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

(i) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the storage vessel with VOL.

(ii) For all the inspections required by paragraph (b)(6) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to the filling or refilling of each storage vessel to afford the Administrator the opportunity to inspect the storage vessel prior to refilling. If the inspection required by paragraph (b)(6) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to the refilling.

(c) The owner or operator of each source that is equipped with a closed vent system and control device as required in § 60.112b (a)(3) or (b)(2) (other than a flare) is exempt from § 60.8 of the General Provisions and shall meet the following requirements.

(1) Submit for approval by the Administrator as an attachment to the notification required by § 60.7(a)(1) or, if the facility is exempt from § 60.7(a)(1), as an attachment to the notification required by § 60.7(a)(2), an operating plan containing the information listed below.

(i) Documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions. This documentation is to include a description of the gas stream which enters the control device, including flow and VOC content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases, or liquids other than fuels from sources that are not designated sources under this subpart, the efficiency demonstration is to include consideration of all vapors, gases, and liquids received by the closed vent capture system and control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816 °C is used to meet the 95 percent requirement, documentation that those conditions will exist is sufficient to meet the requirements of this paragraph.

(ii) A description of the parameter or parameters to be monitored to ensure that the control device will be operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(2) Operate the closed vent system and control device and monitor the parameters of the closed vent system and control device in accordance with the operating plan submitted to the Administrator in accordance with paragraph (c)(1) of this section, unless the plan was modified by the Administrator during the review process. In this case, the modified plan applies.

(d) The owner or operator of each source that is equipped with a closed vent system and a flare to meet the requirements in § 60.112b (a)(3) or (b)(2) shall meet the requirements as specified in the general control device requirements, § 60.18 (e) and (f).

§ 60.114b Alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions at least equivalent to the reduction in emissions achieved by any requirement in § 60.112b, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(b) Any notice under paragraph (a) of this section will be published only after notice and an opportunity for a hearing.

(c) Any person seeking permission under this section shall submit to the Administrator a written application including:

(1) An actual emissions test that uses a full-sized or scale-model storage vessel that accurately collects and measures all VOC emissions from a given control device and that accurately simulates wind and accounts for other emission variables such as temperature and barometric pressure.

(2) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(d) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same emissions reduction as specified in § 60.112b.

§ 60.115b Reporting and recordkeeping requirements.

The owner or operator of each storage vessel as specified in § 60.112b(a) shall keep records and furnish reports as required by paragraphs (a), (b), or (c) of this section depending upon the control equipment installed to meet the requirements of § 60.112b. The owner or operator shall keep copies of all reports and records required by this section, except for the record required by (c)(1), for at least 2 years. The record required by (c)(1) will be kept for the life of the control equipment.

(a) After installing control equipment in accordance with § 60.112b(a)(1) (fixed roof and internal floating roof), the owner or operator shall meet the following requirements.

(1) Furnish the Administrator with a report that describes the control equipment and certifies that the control equipment meets the specifications of § 60.112b(a)(1) and § 60.113b(a)(1). This report shall be an attachment to the notification required by § 60.7(a)(3).

(2) Keep a record of each inspection performed as required by § 60.113b (a)(1), (a)(2), (a)(3), and (a)(4). Each record shall identify the storage vessel on which the inspection was performed and shall contain the date the vessel was inspected and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).

(3) If any of the conditions described in § 60.113b(a)(2) are detected during the annual visual inspection required by § 60.113b(a)(2), a report shall be furnished to the Administrator within 30 days of the inspection. Each report shall identify the storage vessel, the nature of the defects, and the date the storage vessel was emptied or the nature of and date the repair was made.

(4) After each inspection required by § 60.113b(a)(3) that finds holes or tears in the seal or seal fabric, or defects in the internal floating roof, or other control equipment defects listed in § 60.113b(a)(3)(ii), a report shall be furnished to the Administrator within 30 days of the inspection. The report shall identify the storage vessel and the reason it did not meet the specifications of § 61.112b(a)(1) or § 60.113b(a)(3) and list each repair made.

(b) After installing control equipment in accordance with § 61.112b(a)(2) (external floating roof), the owner or operator shall meet the following requirements.

(1) Furnish the Administrator with a report that describes the control equipment and certifies that the control equipment meets the specifications of § 60.112b(a)(2) and § 60.113b(b)(2), (b)(3), and (b)(4). This report shall be an attachment to the notification required by § 60.7(a)(3).

(2) Within 60 days of performing the seal gap measurements required by § 60.113b(b)(1), furnish the

Administrator with a report that contains:

(i) The date of measurement.

(ii) The raw data obtained in the measurement.

(iii) The calculations described in § 60.113b (b)(2) and (b)(3).

(3) Keep a record of each gap measurement performed as required by § 60.113b(b). Each record shall identify the storage vessel in which the measurement was performed and shall contain:

(i) The date of measurement.

(ii) The raw data obtained in the measurement.

(iii) The calculations described in § 60.113b (b)(2) and (b)(3).

(4) After each seal gap measurement that detects gaps exceeding the limitations specified by § 60.113b(b)(4), submit a report to the Administrator within 30 days of the inspection. The report will identify the vessel and contain the information specified in paragraph (b)(2) of this section and the date the vessel was emptied or the repairs made and date of repair.

(c) After installing control equipment in accordance with § 60.112b (a)(3) or (b)(1) (closed vent system and control device other than a flare), the owner or operator shall keep the following records.

(1) A copy of the operating plan.

(2) A record of the measured values of the parameters monitored in accordance with § 60.113b(c)(2).

(d) After installing a closed vent system and flare to comply with § 60.112b, the owner or operator shall meet the following requirements.

(1) A report containing the measurements required by § 60.18(f) (1), (2), (3), (4), (5), and (6) shall be furnished to the Administrator as required by § 60.8 of the General Provisions. This report shall be submitted within 6 months of the initial start-up date.

(2) Records shall be kept of all periods of operation during which the flare pilot flame is absent.

(3) Semiannual reports of all periods recorded under § 60.115b(d)(2) in which the pilot flame was absent shall be furnished to the Administrator.

§ 60.116b Monitoring of operations.

(a) The owner or operator shall keep copies of all records required by this section, except for the record required by paragraph (b) of this section, for at least 2 years. The record required by paragraph (b) of this section will be kept for the life of the source.

(b) The owner or operator of each storage vessel as specified in § 60.110b(a) shall keep readily accessible records showing the dimension of the storage vessel and an analysis showing the capacity of the storage vessel. Each storage vessel with a design capacity less than 75 m^3 is subject to no provision of this subpart other than those required by this paragraph.

(c) Except as provided in paragraphs (f) and (g) of this section, the owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure greater than or equal to 3.5 kPa or with a design capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a liquid with a maximum true vapor pressure greater than or equal to 15.0 kPa shall maintain a record of the VOL stored, the period of storage, and the maximum true vapor pressure of that VOL during the respective storage period.

(d) Except as provided in paragraph (g) of this section, the owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure that is normally less than 5.2 kPa or with a design capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a liquid with a maximum true vapor pressure that is normally less than 27.6 kPa shall notify the Administrator within 30 days when the maximum true vapor pressure of the liquid exceeds the respective maximum true vapor vapor pressure values for each volume range.

(e) Available data on the storage temperature may be used to determine the maximum true vapor pressure as determined below.

(1) For vessels operated above or below ambient temperatures, the maximum true vapor pressure is calculated based upon the highest expected calendar-month average of the storage temperature. For vessels operated at ambient temperatures, the maximum true vapor pressure is calculated based upon the maximum local monthly average ambient temperature as reported by the National Weather Service.

(2) For crude oil or refined petroleum products the vapor pressure may be obtained by the following:

(i) Available data on the Reid vapor pressure and the maximum expected storage temperature based on the highest expected calendar-month average temperature of the stored product may be used to determine the maximum true vapor pressure from nomographs contained in API Bulletin 2517 (incorporated by reference—see § 60.17), unless the Administrator specifically requests that the liquid be sampled, the actual storage temperature determined, and the Reid vapor pressure determined from the sample(s).

(ii) The true vapor pressure of each type of crude oil with a Reid vapor pressure less than 13.8 kPa or with physical properties that preclude determination by the recommended method is to be determined from available data and recorded if the estimated maximum true vapor pressure is greater than 3.5 kPa.

(3) For other liquids, the vapor pressure:

(i) May be obtained from standard reference texts, or

(ii) Determined by ASTM Method D2879–83 (incorporated by reference—see § 60.17); or

(iii) Measured by an appropriate method approved by the Administrator; or

(iv) Calculated by an appropriate method approved by the Administrator.

(f) The owner or operator of each vessel storing a waste mixture of indeterminate or variable composition shall be subject to the following requirements.

(1) Prior to the initial filling of the vessel, the highest maximum true vapor pressure for the range of anticipated liquid compositions to be stored will be determined using the methods described in paragraph (e) of this section.

(2) For vessels in which the vapor pressure of the anticipated liquid composition is above the cutoff for monitoring but below the cutoff for controls as defined in §60.112b(a), an initial physical test of the vapor pressure is required; and a physical test at least once every 6 months thereafter is required as determined by the following methods:

(i) ASTM Method D2879–83 (incorporated by reference—see § 60.17); or

(ii) ASTM Method D323–82 (incorporated by reference—see §60.17); or

(iii) As measured by an appropriate method as approved by the Administrator.

(g) The owner or operator of each vessel equipped with a closed vent system and control device meeting the specifications of § 60.112b is exempt from the requirements of paragraphs (c) and (d) of this section.

§ 60.117b Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under Section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: Sections 60.111b(f)(4), 60.113b(c)(1), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).

[FR Doc. 87-7520 Filed 4-7-87; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Wednesday
April 8, 1987

Part III

Department of the Treasury

Office of the Secretary

31 CFR Part 103

Amendments to Implementing Regulations Under the Bank Secrecy Act; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 103

Amendments to Implementing Regulations Under the Bank Secrecy Act

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: The Bank Secrecy Act, Public Law No. 91-508 (12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, 31 U.S.C. 5311 *et seq.*), empowers the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax and regulatory matters. On August 25, 1986, Treasury published in the **Federal Register** (51 FR 30233) a series of proposed changes to the Bank Secrecy Act regulations in 31 CFR Part 103 in order to ensure the collection of needed information, and to strengthen enforcement of the Act.

After review of the many comments received, Treasury is issuing a final rule encompassing all but three of the original proposals. One proposal, regarding exempt list customer certification statements, was enacted as part of the Anti-Drug Abuse Act of 1986 and was incorporated into Part 103 by final rule dated December 17 1986 (51 FR 45108); two proposals, dealing with the purchase of more than $3,000 in monetary instruments, are still under consideration by Treasury and will be the subject of a separate notice to be issued within the next few months.

EFFECTIVE DATE: July 7 1987 for those amendments to 31 CFR 103.11(e), 103.26(b)(2), 103.27 103.33(b), 103.34(b)(13), and 103.37 All other changes to Part 103 made by this final rule are effective May 8, 1987

FOR FURTHER INFORMATION CONTACT: Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Ave., NW Washington, DC 20220, (202) 566-8022.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

Over 300 comments, many quite detailed, were received from individuals and financial institutions. Many general comments concerned the burden on financial institutions and the costs of compliance posed by the proposed amendments. The proposals to which commenters objected most frequently concerned the reporting of cash purchases of more than $3,000 in monetary instruments, and for new recordkeeping requirements placed on the purchase of monetary instruments. Because an initial review of the comments on these proposals indicates that further review of the issue is needed prior to promulgation of any final rule, the proposals relating to the cash purchase of more than $3,000 in monetary instruments, the certification requirement relating to those purchases, and the new recordkeeping requirements on the purchase of monetary instruments are being held in abeyance at this time and are not included in this final rule. Treasury anticipates issuing a notice on this issue in the near future.

Several commenters also asserted that the proposed rule, if adopted, would be considered a "major rule" within the meaning of Executive Order 12291. In their view, the proposed rule would create significantly increased operational costs, high implementation costs, and an ultimate cost burden that would be imposed on consumers. Many of the comments on this issue failed to present any substantial evidence to support the assertion, and apparently misunderstood the extent of the burdens the proposed rule would place upon financial institutions. The only new major substantive requirements that this final rule imposes pertain to records maintained by currency dealers and exchangers, and the majority of those records are ordinary business records. Moreover, a number of provisions in the proposed rule have been modified after review of the comments received, and other provisions (such as the monetary instruments purchase provisions) will be treated separately in a future regulatory proposal. Finally, Treasury emphasizes that no provision in this final rule will obligate financial institutions to purchase computer hardware or software to comply with the revised regulations. In view of these considerations, it is the Department's position that any cost created by this final rule will be far below the 100 million dollar threshold for a Regulatory Impact Analysis under Executive Order 12291.

A general discussion of the comments and Treasury decisions on the various proposals is presented below.

(1) *Expand the definition of "bank" to include Edge Act corporations:* An "Edge" or Agreement" corporation, as defined by 12 U.S.C. 611 *et seq.*, is a corporation organized in the United States for the purpose of engaging in international or foreign banking, or other foreign financial operations; such institutions are supervised by the Board of Governors of the Federal Reserve System. This amendment would clarify that the regulations include these entities. (Amendment #2.)

As this is merely a clarification that comports with Treasury's interpretation of the present regulations, there was no substantial discussion of this issue by the commenters; it will stay as drafted.

(2) *Add a new definition of "common carrier"* This new definition would clarify the reporting responsibilities for currency and monetary instruments that are transported into or out of the United States. (Amendment #2.)

Many commenters desired further clarification and expressed a desire to have armored car services, such as Brinks, and private messenger services covered within the definition. Several also suggested that the term "undertaken to do so [supply services] indiscriminately for all persons" be deleted so that companies that supply services only to banks could be covered. The definition will be clarified to include institutions such as Brinks and businesses that limit their clientele to banks. Private messenger services are not covered by the definition of "common carrier.

(3) *Revise the definition of "financial institution in light of recent case law, and to include certain selling agents of traveler's checks, money orders and similar instruments:* This revision would modify the definition to comport with recent case law defining financial institutions for Bank Secrecy Act purposes, and expand the definition to include selling agents of certain monetary instruments and all transmitters of funds. (Amendment #2.)

Five major issues were raised: (a) Many commenters felt that the proposed definition of "check casher" was so broad that it would cover any business which cashed a check, even if only an incidental part of its business, thus putting the concept of exempt lists in jeopardy; (b) some commenters wanted to know what a person "subject to State or Federal banking supervision" meant and whether it covered nonbanking subsidiaries of banking institutions; (c) some commenters wanted a clarification of the term "transmitter of funds;" (d) some commenters wanted to know what were "similar instruments" to money orders not already listed; and (e) some commenters wanted to know the significance of including "agents" in the definition. In response to these comments, Treasury notes that (a) the term "check casher" has been defined further as someone engaged in the business of cashing checks; (b) coverage

of those persons under "State or Federal banking supervision" was meant to cover all other banking institutions subject to examination by State or Federal banking supervisory authorities not already covered within the term "financial institution;" but the term does not include nonbanking subsidiaries, even if approval for the subsidiary initially must be given by the Federal or State banking authority; (c) "transmitter of funds, including telegraph companies" will be replaced by language that more closely tracks the relevant statute, 31 U.S.C. 5312; (d) the term "similar instruments" will be deleted; and (e) the term "agent" was added in order to make this definition consistent with the others in section 103.11.

(4) *Clarify and expand the definition of "monetary instruments" to include promissory notes, checks made out to fictitious payees, and certain other types of checks:* These substantive changes were proposed because enforcement experience indicated that certain cashier s checks and checks made out to fictitious payees were being used for money laundering, but arguably were not subject to current reporting requirements. Other amendments to the definition were intended to clarify the regulations. (Amendment #2.)

The major issues raised were (a) the use of the term "fictitious payee" and the near impossibility of a bank to determine when a check is made out to a "fictitious payee;" (b) the use of the term "promissory note" and concern as to its scope; (c) a request that the term "traveler's checks be clarified to describe the different ways that a traveler's check could be considered to be in bearer form; and (d) clarification of the term "endorsed without restriction. Treasury has changed the definition in the final rule to clarify that the term "fictitious payee" is applicable only for the purposes of § 103.23. The issue would arise only in the rare case where a bank has to file a report under § 103.23, such as when the bank sends or receives funds from outside the United States by other than common carrier, and the bank knew at the time it filed the report that the payee was fictitious. The term "promissory note" refers to the UCC definition of that term. Treasury has not changed the definition of "traveler s check" because the definition of "monetary instrument" clearly states that the instrument in question, whether personal check, traveler's check, etc., must be in such a form that title would pass upon delivery; accordingly, that definition need not include separate descriptions of the circumstances in which these instruments could be considered to be in bearer form. The term "endorsed without restriction" is included as an example of how an instrument can be considered to be in bearer form; it does not need to be clarified further. The final rule also clarifies in the definition the difference between incomplete instruments and negotiable instruments, a distinction that previously was not as clear.

(5) *Add a new definition for "transition account" and insert it in place of the deleted term "demand deposit account" wherever it appears in the Part:* This new term would combine currently covered demand deposit accounts with recently developed money market and NOW accounts, which have many of the same characteristics as demand deposit accounts. (Amendments #2 & 3.)

There were few comments. One commenter requested clarification of the status of accounts that are not subject to withdrawal by check. As long as withdrawals are by some form of negotiable order, the accounts are covered under this definition. The proposal is adopted as drafted without change.

(6) *Add a new definition for "business day":* This amendment would provide that the term "business day" for banks means banking day. (Amendment #2.)

Many commenters wanted further clarification of the proposed definition, pointing out that the hours the bank is open to the public are not necessarily the same as the hours the bank might be open for other purposes. Several commenters suggested that the definition refer to the day that the transaction is posted to the customer's account. Treasury has adopted that suggestion, and has revised the definition of "business day" to mean that day, as normally communicated to depository customers (such as by teller window sign), on which the bank routinely posts a particular transaction to its customer's account.

(7) *Clarify that financial institutions must report multiple, same-day currency transactions of which they are aware that total more than $10,000:* This amendment would codify the CTR Form 4789 instruction that currently requires financial institutions to report multiple, same-day transactions of which they are aware that are by or on behalf of any person and total more than $10,000. As indicated above, this would not impose any new burden on financial institutions to adopt or purchase systems to reveal the existence of multiple, same-day transactions. (Amendment #4.)

A majority of the comments expressed concern about this proposal. These comments were devoted largely to two issues: the meaning of the term "aware" in discussing the scienter element in reporting transactions; and the extent to which banks would have to adopt or purchase new systems to capture currency transaction data if their present systems cannot do so. In order to clarify the requirement, Treasury has changed the term "is aware" to "has knowledge. This term means knowledge on the part of a partner, director, officer or employee of a financial institution, or on the part of any existing system at the institution that permits it to aggregate transactions.

"Knowledge, as used in the final rule, clearly includes the concept of "willful blindness" as well. *See United States* v. *Jewell*, 532 F 2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976). This concept applies to a person who has deliberately avoided positive knowledge; that is, "if a person has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge." *Jewell* at 700. If a financial institution suspects someone may be structuring transactions in order to avoid the filling out of a record or report, but deliberately refuses to ask questions because it wishes to remain ignorant and therefore, "innocent, the financial institution will be deemed to have knowledge for purposes of assessing liability under the Bank Secrecy Act.

Treasury emphasizes that this regulation does not require institutions to adopt or purchase new systems; however if and when financial institutions are considering the purchase of new computer systems, software or recordkeeping methods, Treasury urges that they consider the systems' ability to aggregate. Therefore, if a bank's existing system provides its officers or employees with information on transactions that may require reporting as aggregated transactions, that bank must make use of that system to comply with the reporting requirements of the Bank Secrecy Act, but need not adopt or purchase enhancements to increase that system's capability to identify multiple related transactions.

The commenters also raised the question of deposits and withdrawals accomplished through the use of night depository slots or automatic teller machines (ATM's). Treasury realizes that there is not a teller physically present when these transactions take place; however, when these transactions are later processed by a teller, if the teller (or the system) has knowledge that

an aggregated deposit or withdrawal has taken place, then there is a duty to file a Form 4789 under this section. Commenters also wished to know whether the term "by or on behalf of any person" in the aggregation requirement required institutions to track multiple transactions to one specific account, even if made by more than one person, or to track transactions by one person making deposits/withdrawals in reportable amounts to or from several accounts. As long as "a transaction in currency of more than $10,000" has occurred, it does not matter if it was done by one person with one account, several persons with the same account, or one person with several accounts. Examples of reportable transactions would be two people depositing more than $10,000 in one account, though neither deposited a reportable amount, or one person making a deposit of more than $10,000, but depositing the money in more than one account. Obviously, the regulations cover more than activity tied to a particular account. Reportable transactions need not, and often do not, involve an account at all. Finally, Treasury also wishes to reiterate that "cash in or cash out totalling more than $10,000" means the total of all deposits *or* the total of all withdrawals. Deposits *and* withdrawals are not to be aggregated together for purposes of the Bank Secrecy Act. However, the total of all deposits or the total of all withdrawals during a particular business day should be aggregated in order to determine if a reportable deposit or withdrawal limit has been reached.

(3) *Require banks to obtain signed statements from their customers attesting to the basis for their exemption from the currency transaction reporting requirements:* (Amendment #4.)

Subtitle H of Title I of the Anti-Drug Abuse Act of 1986 (Pub. L. No. 99-570), the "Money Laundering Control Act of 1986," contained an amendment substantially similar to this proposal. By final rule dated December 17 1986 (51 FR 45108), the Treasury Department issued a final rule incorporating this statutory requirement into Part 103 for all exemptions granted after October 27 1986, the effective date of the legislation.

(9) *Permit banks to exempt from the currency transaction reporting requirement deposits by certain public utilities and commercial passenger carriers:* This proposed amendment to the exemption procedure would permit banks to exempt cash deposits by certain public utilities and commercial passenger carriers. (Amendment #4.)

Most commenters approved of the proposal, and requested that the restrictions be lifted which limited the public utilities to governmentally supervised utilities, and the passenger carriers to those whose stock is publicly traded. After consideration, Treasury is dropping the restrictions and expanding the exemption to include all passenger carriers and public utilities.

(10) *Clarify the prohibition on exempting automobile, boat and airplane dealerships:* This proposed amendment would clarify that no motor vehicle dealership (including, but not limited to, motorcycle, recreational vehicle, and farm equipment dealers), may be exempted from the currency reporting requirements. (Amendment #4.)

There was considerable confusion about use of the term "conveyance." After consideration of the comments, it is being dropped from the final rule, since it seemed to confuse the issue more than clarify it. Several comments were received concerning other exempt issues. Several commenters wanted the exemption privilege extended to other entities such as retail sellers of services or foreign businesses. Others wished the governmental entity exemption to be clarified, and some wished deletion of the requirement to report transactions with foreign correspondent banks. The question of expansion of the exemption privilege was not a matter at issue in this proposal. Also, Treasury feels that the governmental entity exemption is sufficiently clear as written. However, Treasury is clarifying the exemption privilege as it applies to check cashing services in order to resolve an internal inconsistency in § 103.22. Finally, some commenters raised operational difficulties with the requirement that a centralized exempt list be maintained. These commenters should be aware that the requirement to maintain a centralized list is not a new requirement, as it is presently required under 31 CFR 103.22(f).

(11) *Revise the procedures for filing all reports and for recording foreign financial accounts:* This amendment would update and clarify the procedures for filing all reports, and for keeping records of interests in foreign financial accounts. All reports previously subject to filing within 30 days would be filed within 15 days of the reportable event or the request for the report, whichever is applicable. (Amendments #5, 6 & 8.)

Many commenters wanted a universal 30 day filing date; a few commenters were under the mistaken impression that the CTR filing deadline was presently 30 days instead of 15. Many complained about the retention of original records, not copies, of the Form 4789. Some commenters also wanted the forms published for comments. The only changes proposed for 31 CFR 103.26 were to change the date for filing the Form 4790 (CMIR) to 15 days after receipt of the currency or monetary instruments, and to require that any exempt list information requested by Treasury under 31 CFR 103.22(g) be submitted within 15 days. After review of the comments, Treasury is retaining the proposal as originally drafted. As for publishing forms for public comment, information contained on the forms originally is specified in regulations which have been published for notice and comment. There is no need to publish proposed forms and request comments on an issue for which comment had already been solicited. Treasury, however, always is open to any written comments from institutions that may have difficulty dealing with a specific Treasury form.

A few questions were raised about the foreign financial report itself; one bank wanted an assurance that employees authorized to sign *ex officio* on accounts were not required to file the reports. Another commenter wanted to assure that its international interbank transfer accounts ("nostro accounts") also were not included. Employees authorized to sign on accounts are not required to file a report unless they have a personal financial interest in the account. Additionally, nostro accounts are not subject to the foreign financial account report, but are subject to the Forms 4789 and 4790 requirements.

(12) *Require that customer identification be verified by document examination:* This amendment would address a compliance problem Treasury identified with financial institutions that reported insufficient information on Forms 4789 to show proper identification of customers. This amendment would require financial institutions to exercise no less care in identifying the individuals conducting reportable transactions than they do when identifying nondepositors cashing checks. Signature cards alone would not satisfy the identification requirement. (Amendment #7.)

This was a major target for commenters, centering mainly on the proposal's impact on customer services and customer relations problems. Many banks said that they verify the identity of a customer when opening an account, and that they therefore should be permitted to rely on a signature card when filling out a Form 4789. Other commenters raised the issue of whether

they must refuse a transaction if the customer refuses to supply the identification, while others wanted to know to what extent the bank could rely on the identification actually produced. Finally, some commenters wanted clarification of when a report "may be required" for purposes of obtaining the required information. After review of the comments, Treasury has altered the original proposal to permit banks that have obtained sufficient identifying information from the customer when opening the account, and that have noted that specific informaton on the signature card, to refer to the customer's signature card in filling out the Form 4789. Only specific identifying information, *i.e.*, a driver's license or credit card number, may be used on the Form 4789; the notation "known customer" or "signature card on file" still is not permitted. A conforming amendment provides that the signature card need not be consulted prior to conducting the transaction. Other foreign identity requirements are being clarified by specifying a foreign driver's license with a listed residence as an example of an acceptable document proving identity. The term "may be required" has been deleted. While Treasury has not taken the position that a financial institution must refuse a transaction if a customer refuses to supply sufficient identifying information, it reminds financial institutions that § 103.26(a) of the regulations already obligates a financial institution to file complete and accurate Forms 4789 on all reportable transactions. Financial institutions should treat the identification of persons conducting reportable transactions, whether or not account holders, with as much care as they would treat the identification of nondepositors who cash checks.

(13) *Limit financial institution recordkeeping requirements to extensions of credit exceeding $10,000 instead of $5,000:* This amendment would eliminate this recordkeeping requirement since it is no longer justified by the usefulness of the information retained. (Amendment #9.)

There was no dissent on this point. The proposal will stay as originally drafted.

(14) *Expand financial institution recordkeeping requirements to include incoming as well as outgoing transactions with persons, accounts or places outside the United States:* This amendment was proposed to respond to increasingly sophisticated international financial schemes, and would require that recordkeeping cover incoming as well as outgoing transactions, including transactions that are later cancelled or not completed for any reason. (Amendment #9.)

There was major opposition on the requirement to retain records on transactions later cancelled, mostly focusing on the fact that few banks recorded nonevents, and that therefore their systems would not capture this information. The regulation will be clarified in order to require that only where a record ordinarily was made of an order later cancelled should that record be retained.

(15) *Revise additional recordkeeping requirements for banks, casinos and brokers or dealers in securities to simplify the procedures for recording taxpayer identification numbers, and require those financial institutions to keep lists of all persons from whom taxpayer identification numbers have not been obtained:* This amendment would replace the current exemption provisions in §§ 103.34, 103.35 and 103.36 regarding taxpayer identification numbers (TINs) with a simpler requirement in section 103.38(c) that a list be maintained of all persons from whom a taxpayer identification number is not obtained. Similar procedures would be incorporated in the new additional recordkeeping requirements for foreign currency exchanges. (Amendments #10, 12, 13, 14 & 15.)

There was major opposition to this requirement, centering on: (a) What is considered a "financial interest" in the account for the purposes of obtaining the TIN of every person who has a financial interest in an account; (b) a conflict with the regulation in proposed § 103.38 (and present § 103.34(a)(4)) that directs adherences to IRS rules, which require the retention of one TIN; (c) the possible retroactivity of the requirement; (d) possible costly recordkeeping and computer system changes; (e) the ambiguity as to which accounts are included in the new requirement; and (f) the problem of obtaining all of the TINs when not all the parties are present at the time of the transaction. After review of the comments, Treasury has decided to retain the requirement, consistent with IRS rules, that only one TIN be obtained, instead of creating two different sets of requirements for obtaining TINs. The proposal also had eliminated the 45-day grace period to obtain the TIN. Treasury has decided to retain a grace period, but to reduce it to 30 days to be more consistent with IRS TIN rules. In addition, Treasury will retain the requirement contained in the proposal that additional identifying information be acquired from those nonresident aliens subject to the TIN rules, and to use the TIN rules for securities and brokers as a guide to formulating TIN rules for currency dealers and exchangers.

(16) *Clarify that additional recordkeeping requirements for banks include deposit slips and credit tickets:* This amendment would clarify that deposit slips and credit tickets should be retained as part of the paper trail already required by § 103.34 to be recorded, and that such records must stipulate whether transactions involve currency. (Amendment #11.). There was a great deal of opposition, centering primarily on: a) banks that do not have a currency line on their deposit slips; b) businesses that merely submit a register tape with the deposit and do not individually list all items; c) retention of the original as opposed to copies or microfilm; d) the $100 minimum for retention of the deposit slips, which many banks felt was too small; and e) various storage problems.

The regulation presently in effect provides that copies may be kept of any required documents; the proposed change does not alter this. This minimum amount will stay at $100, in order to maintain the consistency and uniformity of the recordkeeping requirements for banks. Treasury again notes that the originals of these slips need not be kept; copies will suffice. The proposal that the individual deposited items be listed on the slip will be deleted. The deletion was made so that businesses that merely attach a register tape to a deposit slip to indicate the total amount deposited would not have to fill out a large number of deposit slips. The requirement that a bank be able to reconstruct a deposit has not been altered.

(17) *Require foreign currency dealers to keep certain additional records:* Treasury's enforcement experience indicates that foreign currency dealers are an increasingly important component of sophisticated money laundering and tax evasion schemes and currently are subject to little or no oversight other than under the Bank Secrecy Act. (Amendment #14.)

The comments received in response to this proposal centered on the low reporting threshold of $500, and the request for a definition of a "foreign currency dealer, with a specific exemption for banks. After review of the comments, it was decided to amend the regulation to change its heading to "currency dealer or exchanger" in order to be consistent with the statute, and to define "currency dealer or exchanger" in the definition section (31 CFR 103.11) as one engaged in business as such. Banks

will be specifically exempted, as they already are subject to detailed recordkeeping requirements under Part 103. Additionally, the threshold reporting amount will be raised to $1,000, and the term "air express" will be changed to "common carrier" in order to make the terminology consistent with the rest of the Part.

(18) *Establish a uniform minimum retention period for transaction account records:* Under present regulations, bank records required to reconstruct deposits to demand deposit accounts can be destroyed two years after the transaction. However, the constraints placed on the Department by the two-year retention period have made it extremely difficult to document violations for more than one year with deposit records. The amendment to the record retention period was proposed to alleviate this problem and make the deposit record retention period consistent with the five-year retention requirement for the other records required by Part 103. (Amendment #15.)

There was major opposition to this proposal, mainly as to the increased costs associated with compliance and storage problems. Many also questioned the law enforcement utility of an increased retention period for these deposit records. As Treasury still feels that the constraints imposed on the Department by the two-year retention period make it difficult to document Bank Secrecy Act violations and tax and related financial crimes, the regulation will remain as drafted. Additionally, some commenters also wrote of the difficulty of retention of proof tapes. The regulation does not specifically require retention of proof tapes, the preamble in the Notice of Proposed Rulemaking merely mentioned proof tapes as the type of record which might be maintained by the bank to be able to reconstruct transactions at a later date.

(19) *Clarify the overall Bank Secrecy Act enforcement and compliance authority of the Assistant Secretary (Enforcement); replace references to "Administrator" of the NCUA with "Chairman of the Board;" delegate certain examination authority to the Commissioner, Internal Revenue Service; specify the criminal investigatory responsibilities of the Commissioners of Customs and Internal Revenue; and specify the requirement for periodic reports to the Assistant Secretary (Enforcement):* These amendments would: (1) Restate the overall responsibility of the Assistant Secretary for implementation and administration of Bank Secrecy Act reporting and recordkeeping requirements; (2) update regulatory language to reflect the recent change in the Assistant Secretary's title from "(Enforcement & Operations)" to "(Enforcement);" (3) correct a technical error in the delegations of Bank Secrecy Act compliance responsibility; (4) delegate to the Commissioner of Internal Revenue responsibility for the criminal investigation of all violations of Part 103 other than section 103.23; (5) restate existing delegations of investigatory responsibility; and (6) restate the requirement of periodic reports to the Assistant Secretary by agencies to which BSA compliance responsibility has been delegated. (Amendment #16.)

No real substantive issues were raised, although one commenter questioned changing the term "responsibility for assuring compliance" to "authority for assuring compliance. Further clarification is being accomplished in the final rule by changing the introductory wording in § 103.46(b) to Authority to examine institutions to determine their compliance with the provisions of this part is delegated as follows:" New language also is being added to the section to incorporate the clarification in the Anti-Drug Abuse Act concerning what documents may be reviewed in a Bank Secrecy Act investigation. Finally, the Department's exclusive authority to impose civil penalties under the Bank Secrecy Act will be specifically stated, as will an assurance that a bank supervisory agency may report specific violations of the Act to the Department at any time.

(20) *Correct the civil penalty amount that can be assessed for willful violations of the recordkeeping requirements of this Part:* This amendment corrects a technical error in the regulations that implemented the increase in civil penalty amount made by the Comprehensive Crime Control Act of 1984. (Amendment #17.)

In order to keep the regulations as current as possible, the amendments to the civil penalty amounts now reflect civil penalties applicable to pre-1984 violations, civil penalties applicable to violations between October 1984 and October 1986 under the Comprehensive Crime Control Act, and civil penalties for violations after October 1986 under the Anti-Drug Abuse Act of 1986. A few commenters wished to have Treasury announce a "safe harbor" of allowable civil violations of the regulations prior to assessing penalties. Treasury has been given the authority and responsibility to enforce the Bank Secrecy Act, and intends to do so to the fullest extent possible. There will be no "safe harbor" of allowable violations.

(21) *A new section is being added to reference the new violation relating to the structuring of transactions:* This amendment merely incorporates into the regulations the new statutory violation of structuring currency transactions in order to avoid the reporting requirements of the Bank Secrecy Act. An addition also is being made to the civil penalty section to reference civil penalties for structuring transactions. (Amendments #17 & 18.)

In addition, readers should note that due to the passage of the Government Securities Act, Pub. L. 99-571, October 28, 1986, the Securities Exchange Act of 1934 has been amended to require government securities brokers and dealers to register with the Securities and Exchange Commission beginning July 25, 1987 Those government securities brokers and dealers presently not registered with the SEC will be required to do so, and therefore also will be subject to Part 103 Bank Secrecy Act regulations by virtue of the definition of "broker or dealer in securities" in 31 CFR 103.11(b).

Finally, because of the changes in the Bank Secrecy Act regulations that this final rule will effect, financial institutions may recognize some inconsistencies between the provisions of the regulations, as revised, and the instructions on the current version of Form 4789. Although Treasury will need to revise the Form 4789 instructions to take the regulatory changes into account, financial institutions are advised in the interim that in the event of conflict or inconsistency between a provision of the regulations and the Form 4789 instructions, the regulatory provisions shall control.

Executive Order 12291

This final rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any 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 foreign markets.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is hereby certified that this

final rule will not have a significant economic impact on a substantial number of small entities. Most of the recordkeeping and reporting requirements imposed by this final rule concern information already found in routine business records. To the extent an affected financial institution has prudent record retention practices, it will already be retaining a substantial portion of the information identified in this proposed regulation.

Paperwork Reduction Act

The collection of information requirements mandated by this final rule have been reviewed and approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No. 1505-0063.)

Drafting Information

The principal authors of this document are the Office of the Assistant General Counsel (Enforcement), and the Office of Financial Enforcement, Department of the Treasury.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

PART 103—[AMENDED]

Amendment

31 CFR Part 103 is amended as set forth below:

1. The authority citation for Part 103 is revised to read as follows:

Authority: Sec. 21 of the Federal Deposit Insurance Act, Pub. L. 91-508, Title I, 84 Stat. 1114, 1116 (12 U.S.C. 1829b, 1951-9); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-24).

2. Section 103.11 is revised to read as follows:

§ 103.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

(a) *Bank.* Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commerical bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State;

(8) a bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611-32).

(b) *Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(c) *Common carrier.* Any person engaged in the business of transporting individuals or goods for a fee holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(d) *Currency.* The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(e) *Currency dealer or exchanger.* A person who engages as a business in dealing in or exchanging currency, except for banks which offer such services as an adjunct to their regular services.

(f) *Domestic.* When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(g) *Financial Institution.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A currency dealer or exchanger, including a person engaged in the business of a check casher;

(4) An issuer, seller, or redeemer of traveler's checks or money orders, except as a selling agent exclusively who does not sell more than $150,000 of such instruments within any given 30-day period;

(5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds;

(6) A telegraph company;

(7) (i) A casino or gambling casino licensed as a casino or gambling casino by a State or local government and having gross annual gaming revenue in excess of $1,000,000.

(ii) A casino or gambling casino includes the principal headquarters and any branch or place of business of the casino or gambling casino.

(8) A person subject to supervision by any state or federal bank supervisory authority.

(h) *Foreign bank.* A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(i) *Foreign financial agency.* A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(j) *Investment security.* An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in enterprise or evidences an obligation of the issuer.

(k) *Monetary instruments.* (1) Monetary instruments include:

(i) Currency;

(ii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's

checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), traveler's checks, and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of section 103.23), or otherwise in such form that title thereto passes upon delivery;

(iii) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), traveler's checks, and money orders) signed but with the payee's name omitted; and

(iv) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(l) *Person.* An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

(m) *Secretary.* The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(n) *Transaction account.* Transaction accounts include those accounts described in 12 U.S.C. § 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(o) *Transaction in currency.* A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.

(p) *United States.* The various States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(q) *Business day.* Business day, as used in this part with respect to banks, means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

3. Part 103 is amended by removing the phrase "demand deposit account" wherever it appears and inserting in its place the phrase "transaction account"

4. Section 103.22 is revised to read as follows:

§ 103.22 Reports of currency transactions.

(a)(1) Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000. Multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any one business day. Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(2) Each casino shall file a report of each deposit, withdrawal, exchange of currency, gambling tokens or chips, or other payment or transfer, by, through, or to such casino which involves a transaction in currency of more than $10,000. Multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any twenty-four hour period.

(3) A financial institution includes all of its domestic branch offices for the purpose of this paragraph's reporting requirements.

(b) Except as otherwise directed in writing by the Assistant Secretary (Enforcement) or the Commissioner of Internal Revenue:

(1) This section shall not require reports:

(i) Of transactions with Federal Reserve Banks or Federal Home Loan banks;

(ii) Of transactions between domestic banks; or

(iii) By nonbank financial institutions of transactions with commercial banks (however, commercial banks must report such transactions with nonbank financial institutions).

(2) A bank may exempt from the reporting requirement of paragraph (a) of this section the following:

(i) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States. For the purpose of this subsection, a retail type of business is a business primarily engaged in providing goods to ultimate consumers and for which the business is paid in substantial portions by currency, except that dealerships which buy or sell motor vehicles, vessels, or aircraft are not included and their transactions may not be exempted from the reporting requirements of this section.

(ii) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a sports arena, race track, amusement park, bar, restaurant, hotel, check cashing service licensed by state or local governments, vending machine company, theater, regularly scheduled passenger carrier or any public utility.

(iii) Deposits or withdrawals, exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities.

(iv) Withdrawals for payroll purposes from an existing account by an established depositor who is a United States resident and operates a firm that regularly withdraws more than $10,000 in order to pay its employees in currency.

(c) In each instance the transactions exempted under paragraph (b) of this section must be in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful, domestic business of that customer, or in the case of transactions with a local or state govenment or the United States or any of its agencies or instrumentalities, in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality. This section does not permit a bank to exempt its transactions with nonbank financial institutions (except for check cashing services licensed by state or local governments), nor will additional exemption authority be granted for such transactions (except transactions by other check cashers).

(d) After October 27 1986, a bank may not place any customer on its exempt list without first obtaining a written statement, signed by the customer, describing the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption. The statement shall include the name, address, nature of business, taxpayer identification number, and account number of the customer being exempted. The signature, including the title and position of the person signing, will attest to the accuracy of the information concerning the name, address, nature of business, and tax identification number of the customer. Immediately above the signature line, the following statement shall appear: "The information contained above is true and correct to the best of my knowledge and belief. I

understand that this information will be read and relied upon by the Government. The bank shall indicate in this statement whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption for both deposits and withdrawals. The bank also shall indicate whether the exemption is limited to certain types of deposits and withdrawals (*e.g.*, withdrawals for payroll purposes). In each instance, the exempted transactions must be in amounts that the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer. The bank is responsible for independently verifying the activity of the account and determining applicable dollar limits for exempted deposits or withdrawals. The bank must retain each statement that it obtains pursuant to this subparagraph as long as the customer is on the exempt list, and for a period of five years following removal of the customer from the bank s exempt list.

(e) A bank may apply to the Commissioner of Internal Revenue for additional authority to grant an exemption to the reporting requirement, not otherwise permitted under paragraph (b) of this section, if the bank believes that circumstances warrent such an exemption. Such requests shall be addressed to: Chief, Currency and Banking Reports Branch, Exemption Review Staff, IRS Data Center, Post Office Box 32063, Detroit, Michigan 48232, and must be accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer required by paragraph (d) of this section.

(f) A record of each exemption granted under this section and the reason therefor must be kept in a centralized list. The record shall include the names and addresses of all banks referred to in paragraph (b)(1)(ii) of this section, as well as the name, address, business, taxpayer identification number and account number of each depositor that has engaged in currency transactions which have not been reported because of the exemption provided in paragraph (b)(2) of this section. The record concerning the group of depositors exempted under the provisions of paragraph (b)(2) of this section shall also indicate whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption.

(g) Upon the request of the Assistant Secretary (Enforcement) or the Commissioner of Internal Revenue, a bank shall provide a report containing the list of the bank's customers whose transactions have been exempted under this section and such related information as the Assistant Secretary or Commissioner shall require, including copies of the statements required in paragraph (d) of this section. The report must be provided within 15 days of the request. Any exemption may be rescinded at the discretion of the requesting official, who may require the bank to file reports required by paragraph (a) of this section with respect to future transactions of any customer whose transactions previously were exempted.

(Approved by the Office of Management and Budget under control number 1505–0063)

5. The first sentence of § 103.24 is revised to read as follows:

§ 103.23 Reports of foreign financial accounts.

Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons.

6. Section 103.26 is revised to read as follows:

§ 103.26 Filing of reports.

(a)(1) A report required by § 103.22(a) shall be filed by the financial institution within 15 days following the day on which the responsible transaction occurred.

(2) A report required by § 103.22(g) shall be filed by the bank within 15 days after receiving a request for the report.

(3) A copy of each report filed pursuant to §103.22 shall be retained by the financial institution for a period of five years from the date of the report.

(4) All reports required to be filed by § 103.22 shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.

(b)(1) A report required by § 103.23(a) shall be filed at the time of entry into the United States or at the time of depature, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs.

(2) A report required by § 103.23(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.

(3) All reports required by § 103.23 shall be filed with the Customs officer in charge at any port of entry or departure, or as otherwise specified by the Commissioner of Customs. Reports required by § 103.23(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by § 103.23(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20226.

(c) Reports required to be filed by § 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial acccounts exceeding $10,000 maintained during the previous calendar year.

(d) Reports required by §§ 103.22, 103.23 or 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by §§ 103.22 and 103.24 may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 103.23 may be obtained from the U.S. Customs Service.

(Approved by the Office of Management and Budget under control number 1505–0063)

7 Section 103.27 is revised to read as follows:

§ 103.27 Identification required.

Before concluding any transaction with respect to which a report is required under § 103.22, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity for whose or which account such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature

card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.*, a drivers license or credit card). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (*i.e.*, the account number of the credit card, the driver's license number, etc.) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of "known customer" or "bank signature care on file" on the report is prohibited.

(Approved by the Office of Management and Budget under control number 1505–0063)

8. The first sentence of § 103.32 is revised to read as follows:

§ 103.32 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 103.24 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. *

9. Section 103.33 introductory text, (a), and (b) are revised and the OMB control number is added to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later cancelled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than $10,000 to or from any person, account, or place outside the United States.

(Approved by the Office of Management and Budget under control number 1505–0063)

10. Section 103.34(a) (1) introductory text and (2) are amended by removing the number "45" wherever it appears and inserting in its place the number "30" and by adding a new sentence at the end of paragraph (a)(1) to read as follows:

§ 103.34 Additional records to be made and retained by banks.

(a)(1) Where a person is a nonresident alien, the bank shall also record the person's passport number or a description of some other government document used to verify his identity.

11. Section 103.34 is further amended by revising paragraph (b)(1) and adding a new paragraph (b)(13) and the OMB control number to read as follows:

§ 103.34 Additional records to be made and retained by banks.

(b) *

(1) Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number);

(13) Each deposit slip or credit ticket reflecting a transaction in excess of $100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

(Approved by the Office of Management and Budget under control number 1505–0063)

12. Paragraphs (a) (1) introductory and (2) § 103.35 are amended by removing the number "45" wherever it appears and inserting in its place the number "30, and by adding a sentence at the end of paragraph (a)(1) and adding the OMB control number to read as follows:

§ 103.35 Additional records to be made and retained by brokers or dealers in securities.

(a) Where a person is a nonresident alien, the broker or dealer in securities shall also record the person's passport number or a description of some other government document used to verify his identity.

(Approved by the Office of Management and Budget under control number 1505–0063)

13. Section 103.36 is amended by adding a sentence to the end of paragraph (a) and adding the OMB control number to read as follows:

§ 103.36 Additional records to be made and retained by casinos.

(a) Where a person is a nonresident alien, the casino shall also record the person's passport number or a description of some other government document used to verify his identity.

*

(Approved by the Office of Management and Budget under control number 1505–0063)

§§ 103.37 and 103.38 [Redesignated as §§ 103.38 and 103.39]

14. Sections 103.37 and 103.38 are redesignated as §§ 103.38 and 103.39, and a new § 103.37 is added to read as follows:

§ 103.37 Additional records to be made and retained by currency dealers or exchangers.

(a)(1) After July 7 1987 each currency dealer or exchanger shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended. Where a person is a non-resident alien, the currency dealer or exchanger shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or credit line is in the names of two or more persons, the currency dealer or exchanger shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a currency dealer or exchanger has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if:

(i) It has made a reasonable effort to secure such identification, and

(ii) It maintains a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account or credit line numbers of those persons available to the Secretary as directed by him.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the currency dealer or exchanger.

(3) A taxpayer identification number for an account or credit line required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, State, local or foreign governments,

(ii) Accounts for aliens who are—

(A) Ambassadors, ministers, career diplomatic or consular officers, or

(B) Naval, military or other attaches of foreign embassies, and legations, and for members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Each currency dealer or exchanger shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Statements of accounts from banks, including paid checks, charges or other debit entry memoranda, deposit slips and other credit memoranda representing the entries reflected on such statements;

(2) Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks;

(3) A record of each exchange of currency involving transactions in excess of $1000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency;

(4) Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name of the depositor, street address, taxpayer identification number (TIN) or employer identification number (EIN) and the signature of the depositor or of a person authorized to sign on the account (if customer accounts are maintained in a code name, a record of the actual owner of the account);

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, or more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States;

(7) Records prepared or received by a dealer in the ordinary course of business, that would be needed to reconstruct an account and trace a check in excess of $100 deposited in such account through its internal recordkeeping system to its depositary institution, or to supply a description of a deposited check in excess of $100;

(8) A record maintaining the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and date of transaction;

(9) A system of books and records that will enable the currency dealer or exchanger to prepare an accurate balance sheet and income statement.

(Approved by the Office of Management and Budget under control number 1505–0063)

15. Paragraph (c) of newly redesignated § 103.38 is redesignated as (d), a new paragraph (c) is added, and newly redesignated paragraph (d) is revised and the OMB control number is added to read as follows:

§ 103.38 Nature of records and retention period.

(c) the rules and regulations issued by the Internal Revenue Service under 26 U.S.C. § 6109 determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(d) All records that are required to be retained by this Part shall be retained for a period of five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

(Approved by the Office of Management and Budget under control number 1505–0063)

16. Section 103.46 is amended by removing paragraph (b), by redesignating paragraph (a) as paragraph (b), by revising the introductory test of newly redesignated (b) and by revising (b)(5) and (b)(8), and by adding new paragraphs (a), (c), (d), (e) and (f) to read as follows:

§ 103.46 Enforcement.

(a) Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this Part, is delegated to the Assistant Secretary (Enforcement).

(b) Authority to examine institutions to determine compliance with the requirements of this Part is delegated as follows:

(5) To the Chairman of the Board of the National Credit Union Administration with respect to those financial institutions regularly examined for safety and soundness by NCUA examiners.

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, not currently examined by Federal bank supervisory agencies for soundness and safety.

(c) Authority for investigating criminal violations of this Part is delegated as follows:

(1) To the Commissioner of Customs with respect to § 103.23;

(2) To the Commissioner of Internal Revenue except with respect to § 103.23.

(d) Authority for the imposition of civil penalties for violations of this part lies with the Assistant Secretary, and in the Assistant Secretary's absence, the Deputy Assistant Secretary (Law Enforcement).

(e) Periodic reports shall be made to the Assistant Secretary by each agency to which compliance authority has been delegated under paragraph (b) of this section. These reports shall be in such a form and submitted at such intervals as the Assistant Secretary may direct. Evidence of specific violations of any of the requirements of this Part may be submitted to the Assistant Secretary at any time.

(f) The Assistant Secretary or his delegate, and any agency to which compliance has been delegated under paragraph (b) of this section, may examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this Part.

17 Paragraph (a) of § 103.47 is revised and redesignated as (b), paragraph (b) is redesignated as (d), and new paragraphs

(a), (c), (e), (f), (g) and (h) are added to read as follows:

§ 103.47 Civil penalty.

(a) For any willful violation, committed on or before October 12, 1984, of any reporting requirement for financial institutions under this Part or of any recordkeeping requirements of § 103.22, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(b) For any willful violation committed after October 12, 1984 and before October 28, 1986, of any reporting requirement for financial institutions under this part or of the recordkeeping requirements of § 103.32, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $10,000.

(c) For any willful violation of any recordkeeping requirement for financial institutions, except violations of § 103.32, under this part, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(e) For any willful of violation § 103.53 committed after January 26, 1987 the Secretary may assess upon any person a civil penalty not to exceed the amount of coins and currency involved in the transaction with respect to which such penalty is imposed. The amount of any civil penalty assessed under this paragraph shall be reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed.

(f) For any willful violation committed after October 27 1986, of any reporting requirement for financial institutions under this part (except §§ 103.24, 103.25 or 103.32), the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000.

(g) For any willful violation committed after October 27 1986, of any requirement of §§ 103.24, 103.25, or 103.32, the Secretary may assess upon any person, a civil penalty:

(1) In the case of a violation of § 103.25 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) of the transaction, or $25,000; and

(2) In the case of a violation of §§ 103.24 or 103.32 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) equal to the balance in the account at the time of the violation, or $25,000.

(h) For each negligent violation of any requirement of this Part, committed after October 27 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed $500.

18. Part 103 is amended by adding at the end a new § 103.53 to read as follows:

§ 103.53 Structured transactions.

No person shall for the purpose of evading the reporting requirements of § 103.22 with respect to such transaction—

(a) Cause or attempt to cause a domestic financial institution to fail to file a report required under § 103.22;

(b) Cause or attempt to cause a domestic financial institution to file a report required under § 103.22 that contains a material omission or misstatement of fact; or

(c) Structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

Dated: March 30, 1987

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 87-7797 Filed 4-6-87; 10:17 am]

BILLING CODE 4810-25-M

federal register

Wednesday
April 8, 1987

Part IV

Department of Education

34 CFR Part 206

Special Programs for Students Whose Families Are Engaged in Migrant and Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 206

Special Programs for Students Whose Families Are Engaged in Migrant and Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the High School Equivalency Program (HEP) and College Assistance Migrant Program (CAMP). These amendments are needed to implement changes to the Higher Education Act of 1965, enacted as part of the Higher Education Amendments of 1986. The proposed regulations would provide for a three-year grant period; a minimum annual award; an expansion of allowable services that can be provided to participating students; inclusion of a management plan in each grant application; and, in evaluating grant applications, consideration of an applicant's prior experience.

DATES: Comments must be received on or before May 26, 1987

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. John F Staehle, Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB-6 (MS 6275), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW Room 2145, FOB-6 (MS 6275), Washington, DC 20202. Telephone No. (202) 732-4758.

SUPPLEMENTARY INFORMATION: In section 101 of the Higher Education Amendments of 1986 (Pub. L. 99-498), Congress amended the Higher Education Act of 1965 by enacting a new Title IV Subpart 5, "Special Programs For Students Whose Families Are Engaged in Migrant and Seasonal Farmwork. Subpart 5 contains a new section 418A that authorizes the HEP and CAMP programs. The new section 418A revises the previous provisions governing these programs that had been contained in the predecessor statute (section 418A of the Higher Education Act of 1965, as amended by the Education Amendments of 1980 (Pub. L. 96-374)).

These proposed regulations for the HEP and CAMP programs would amend 34 CFR Part 206 to implement the new statutory provisions. Like the statute, the proposed regulations would expand the types of services that grant recipients may provide to participating students (§ 206.10). Other changes required by statute provide that only institutions of higher education (IHEs) or private nonprofit agencies (and not public nonprofit agencies) cooperating with IHEs are eligible to receive grants (§ 206.2); except in extraordinary circumstances, projects will be approved for three years; minimum grant awards will be $150,000 (§ 206.20); applicants must submit detailed management plans (§ 206.20); and the Secretary must consider prior experience in evaluating applications and selecting grantees (§§ 206.20, 206.30, and 206.31).

In large part, these proposed regulations derive expressly from the statute. While the public is invited to comment on any aspect of the proposed regulations, the Secretary notes four areas of particular interest.

First, under existing regulations for the HEP and CAMP programs, any child who is a migrant or other seasonal farmworker, or who is a dependent of a migrant or other seasonal farmworker, is eligible to participate in a HEP or CAMP program. The new section 418A (b) and (c) of the Higher Education Act, as amended, authorizes HEP and CAMP project recipients to conduct recruitment services to reach appropriate students who are themselves or whose parents are migrant or seasonal farmworkers. The statute does not expressely authorize the participation of children who may not live with their parents but whose guardians perform migratory or seasonal farmwork. Because the new section 418A(a) of the statute directs the Secretary to maintain and expand existing HEP and CAMP programs, and because Congress has not indicated an intent otherwise with guardians who are migrant or seasonal farmworkers, the Secretary proposes to permit HEP and CAMP grantees to conduct recruitment services to reach these persons as well (§ 206.10(b)(1)(i) and (2)(i)).

Second, proposed § 206.10(b) repeats provisions contained in the new section 418(b) and (c) of the Higher Education Act, as amended, that enumerate newly authorized services that HEP and CAMP grantees may provide. Among other things, the statute authorizes recipients of HEP grants to provide health services and weekly stipends to program participants, and recipients of CAMP grants to provide both health services and assistance to participants in obtaining stipends, student travel and other enumerated forms of financial aid. In the past, individual CAMP grantees have received authorization to use limited amounts of grant funds to provide financial aid, as necessary support services, directly to project participants. In view of Congress intent to maintain and expand existing programs, and again evidence of a contrary congressional intent, the Secretary proposes to permit CAMP grantees to continue providing that financial assistnce, as needed, to appropriate recipients.

However, the Secretary is concerned that without some reasonable limitations, the amount of program funds that a grant recipient might use to provide these support services could detract from the basic educational purposes of the HEP and CAMP programs. The Secretary therefore is considering the establishment of reasonable limits on the kinds and amounts of those health and financial support services that may be provided. Accordingly, the Secretary invites the public to comment on (1) the types of health services, stipends, travel assistance, and other financial aid that HEP or CAMP grantees may furnish or assist project participants in obtaining, (2) the persons who should be eligible to receive supportive health services, and (3) the limits, if any, on the amount of a recipient's receipt's grant that might be available for provision of those health and financial support services. The limitations, if any, will be published in the final version of the regulations.

Third, while the new section 418A(f) of the Higher Education Act, as amended, requires a minimum allocation of $150,000 for any HEP or CAMP project, it does not clarify whether this mimimum award is to be for the entire three-year project period or for each year. In § 206.20(b), the Secretary proposes to approve projects at a minimum annual basis of $150,000. Through the new statute, Congress intended to strengthen HEP and CAMP programs. Since the Department until now has funded each HEP or CAMP project at an annual level that significantly exceeds $50,000, the Secretary believes that in enacting this statutory minimum, Congress intended to ensure a minimum annual level of support of $150,000 per HEP or CAMP project.

The new section 418(e) of the Higher Education Act, as amended, directs the

Secretary in selecting grantees to consider the prior experience of each grant applicant in delivering HEP or CAMP services, and to give that prior experience "the same level of consideration given this factor for applicants for the Special Programs for Students From Disadvantaged Backgrounds (TRIO Program). In addition, Congress expressed its intention that the HEP and CAMP projects "be administered in a manner comparable to the administration" of the TRIO Program (H. Rept. 383, 99th Cong., 1st Sess. 33). Therefore, the Secretary proposes to evaluate the prior experience of applicants for HEP and CAMP grants in a manner that is comparable to that required in 34 CFR 646.32 of the TRIO program regulations. As noted in proposes §§ 206.30 and 206.31(i), the Secretary would provide up to 15 additional points for evidence of the applicant's prior experience during the three previous fiscal years in administering and operating any HEP or CAMP project. In awarding these points, the Secretary proposes to consider the same kinds of reports and other information that applicants for TRIO projects provide and to use the same kinds of criteria as in 34 CFR 646.32(c) of the TRIO regulations. However, the Secretary proposes in § 206.31(i)(2) to consider areas of a HEP or CAMP applicant's prior experience that more specifically pertain to the unique purpose of the HEP and CAMP programs.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed reuglations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are IHEs or private nonprofit organizations that choose to seek Federal financial assistance under this program. However, the regulations would not have a significant economic impact on these institutions or agencies because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 206.20 and 206.31 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this proposed regulation to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F Lackey, Jr.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for consideration and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and action for this program.

Invitation to Comment

Intersted persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Federal Office Building 6, Room 2145, 400 Maryland Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 206

Colleges and universities, Education, Education of disadvantaged, Grant programs—education, Migrant labor, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Nos. 84.141 Migrant Education Program—High School Equivalency Program, and 84.149 Migrant Education Program—College Assistance Migrant Program.)

Dated: March 23, 1987

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 206 of Title 34 of the Code of Federal Regulations as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

1. The authority citation for Part 206 is revised to read as follows:

Authority: 20 U.S.C. 1070d–2, unless otherwise noted.

2. The citation of authority following §§ 206.1 through 206.5 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a))

3. The citation of authority following § 206.10 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(b) and (c))

4. The citation of authority following § 206.20 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a) and (d)–(f))

5. The citation of authority following § 201.30 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a) and (e))

6. The citation of authority following § 201.31 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a) and (E))

7 Section 206.2 (a) and (b) is revised to read as follows:

§ 206.2 Who is eligible to participate as a grantee?

(a) *Eligibility.* An IHE or a private nonprofit organization may apply for a grant to operate a HEP or CAMP project.

(b) *Cooperative planning.* If a private nonprofit organization other than an IHE applies for a HEP or a CAMP grant, that agency must plan the project in cooperation with an IHE and must propose to operate the project with the facilities of that IHE.

8. Section 206.4 is amended by revising paragraph (a) to read as follows:

...

§ 206.4 What regulations apply to these programs?

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions That Apply to Department Regulations), 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

9. Section 206.5 is amended by revising paragraph (c)(1) to read as follows:

§ 206.5 What definitions apply to these programs?

(c)*

(1) Act" means the higher Education Act of 1965, as amended.

10. Section 206.10 is amended by revising paragraphs (b)(1)(i)–(viii) and (b)(2)(i)–(iii), and by adding new paragraphs (b)(2)(iv)–(vi), to read as follows:

§ 206.10 What types of services may be provided?

(b)*

(1)*

(i) Recruitment services to reach persons who are at least 17 years of age, who themselves or whose parents or guardians have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who lack a high school diploma or its equivalent.

(ii) Educational services that provide instruction designed to help students pass an examination and obtain a certificate that meets the guidelines for high school equivalency established by the State in which the project is located.

(iii) Supportive services that include the following—

(A) Personal, vocational, and academic counseling;

(B) Placement services designed to place students in a university, college, or junior college program, or in military services or career positions; and

(C) Health services.

(iv) Information concerning and assistance in obtaining available student financial aid.

(v) Weekly stipends for high school equivalency program participants.

(vi) Housing for those enrolled in residential programs.

(vii) Exposure to cultural events, academic programs, and other educational and cultural activities usually not available to migrant youth.

(viii) Other essential supportive services, as needed, to ensure the success of eligible students.

(2)*

(i) Outreach and recruitment services to reach persons who themselves or whose parents or guardians have spent a minimum of 75 days the past 24 months in migrant and seasonal farmwork, and who meet the minimum qualifications for attendance at a college or university.

(ii) Supportive and instructional services, including—

(A) Personal, academic, and career counseling as an ongoing part of the program;

(B) Tutoring and academic-skill-building instruction and assistance;

(C) Assistance with special admissions;

(D) Health services; and

(E) Other services as necessary to assist students in completing program requirements.

(iii) Assistance in obtaining student financial aid that includes, but is not limited to, the following:

(A) Stipends.

(B) Scholarships.

(C) Student travel.

(D) Career-oriented work-study.

(E) Books and supplies.

(F) Tuition and fees.

(G) Room and board.

(H) Other assistance necessary to assist students in completing their first year of college or university.

(iv) Housing support for student living in institutional facilities and commuting students.

(v) Exposure to cultural events, academic programs, and other activities not usually available to migrant youth.

(vi) Other support services as necessary to ensure the success of eligible students.

Section 206.20 is amended by removing "and" at the end of paragraph (a), redesignating paragraph (b) as (d), and adding new pargraphs (b) and (c) to read as follows:

§ 206.20 What must be included in an application?

(b) Submit a grant application that—

(1) Covers a period of three years, unless extraordinary circumstances warrant a shorter period; and

(2) Includes an annual budget of not less than $150,000;

(c) Include a management plan that contains—

(1) Assurances that the staff has a demonstrated knowledge of and will be sensitive to the unique characteristics and needs of the migrant and seasonal farmworker population; and

(2) Provisions for—

(i) Staff inservice training;

(ii) Training and technical assistance;

(iii) Staff travel;

(iv) Student travel;

(v) Interagency coordination; and

(vi) Project evaluation; and

*

12. Section 206.30 is amended by revising paragraph (b) to read as follows:

§ 206.30 How does the Secretary evaluate an application?

(b) The Secretary awards up to 115 possible points for meeting these criteria.

13. Section 206.31 is amended by revising paragraph (a)(2)(ii), and adding a new paragraph (i), to read as follows:

§ 206.31 What selection criteria does the Secretary use to evaluate an application?

(a)

(2)

(ii) An effective plan of management, as described in § 206.20(d), that ensures the proper and efficient administration of the project.

(i) *Prior experience.* (15 points) (1) The Secretary considers the applicant's success, in any HEP or CAMP project conducted during the three fiscal years preceding the fiscal year for which the applicant is applying, in meeting the administrative requirements and programmatic objectives in paragraphs (a) (2) and (b)(2) of this section.

(2) The Secretary—based on information contained in the project application and in one or more of the following documents at the Secretary's disposal: performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), the application under consideration, and similar reports and applications about the other projects the applicant has managed—considers—

(i) The extent to which the project's anticipated number of students were served and given access to college or university activities as provided in the approved grant application;

(ii) The extent to which project participants persisted toward

completion of the academic programs in which they were enrolled. The Secretary considers—

(A) For a HEP project, the number of participants who successfully completed their specified courses of study and the number of participants who passed an examination and obtained a certificate that meets the guidelines for high school equivalency established by the State in which the project is located.

(B) For a CAMP project, the number of participants who completed their course of study, for the first year of the college or university attended, in good standing;

(iii) The extent to which an effective plan of management existed and was implemented to ensure the proper and cost effective administrative of the project through provisions for—

(A) Staff inservice training and technical assistance; and

(B) Coordination with other existing programs that benefit the participating students and their families;

(iv) The extent to which the project assisted—

(A) HEP graduates to be placed in universities, junior colleges, the military services, career positions, or other post-secondary school activities; and

(B) CAMP students to continue in a post-secondary program of study after completion of the CAMP project; and

(v) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of previously funded awards.

(3) The Secretary gives equal weight to each criterion listed in paragraphs (i)(2)(i)–(v) of this section.

(Authority: 20 U.S.C. 1070d–2)

[FR Doc. 87–7778 Filed 4–7–87; 8:45 am]

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Wednesday, April 8, 1987

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S.J. Res. 96/Pub. L. 100-19

Designating April 3, 1987 as "Interstate Commerce Commission Day. (Apr. 3, 1987· 101 Stat. 263; 2 pages) Price: $1.00