6-30-88
Vol. 53 No. 126
Pages 24671-24920

federal register

Thursday
June 30, 1988

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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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, and 278

[Amdt. No. 304]

Food Stamp Program: Purchase of Prepared Meals by Homeless Food Stamp Recipients

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule and technical amendments.

SUMMARY: On March 11, 1987, the Department published an interim rulemaking at 52 FR 7554 which provided that effective not later than April 1, 1987, homeless food stamp recipients (including newly eligible residents of temporary shelters for the homeless) may use their food stamps to purchase prepared meals served by an authorized public or private nonprofit establishment, approved by an appropriate State or local agency, that feeds homeless persons. The rulemaking was based upon the provisions of the Homeless Eligibility Clarification Act, Pub. L. No. 99-570, Title XI, 100 Stat. 3207-167 (1986) (hereinafter, "Pub. L. 99-570"). This final action implements as final regulations the provisions of that interim rulemaking. In addition, technical amendments are included to correct a typographical error and to correct cross references to certain provisions affected by the interim rule.

DATES: The provision contained in this action which adopts, as final, interim provisions published March 11, 1987, including the correction of a typographical error to § 278.2, is effective retroactive to April 1, 1987. However, as stated in the March 11, 1987 interim rule, homeless meal providers could submit applications for authorization to accept food stamps effective March 11, 1987.

All other provisions of this action are effective August 1, 1988.

The provisions of this action cease to be effective after September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Russ Gardiner, Acting Chief, Administration and Design Branch, Food Stamp Program, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 756-3383.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512.1 and has been classified non-major.

The effect of this action on the economy will be less than $100 million, and it will have an insignificant effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this final rule will not have a significant impact on a substantial number of small entities. State and local welfare agencies are affected to the extent that they administer the program. Public or private nonprofit meal providers will be affected because of changes which will allow them to accept food stamps in payment for meals served to homeless food stamp recipients. The rule will also affect retail food stores and wholesale food concerns which accept and redeem food stamps. Thus, while the rule may affect a substantial number of small entities, the effect on any one entity will not be significant.

Paperwork Reduction Act

The reporting and recordkeeping requirements contained in Part 278 of this rule which permit homeless meal providers to accept food stamps and to redeem such stamps through wholesale food concerns have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approval numbers for these requirements are 0584-0008 (278.1(b) and (h), 278.3(a)), and 0584-0085 (278.4(c)).

Background

On March 11, 1987, the Department published an interim rulemaking at 52 FR 7554, which implemented the food stamp-related amendments of the Homeless Eligibility Clarification Act, Pub. L. 99-570. That law provides that homeless food stamp recipients (including newly eligible residents of temporary shelters for the homeless) may use their food stamps to purchase prepared meals served by an authorized public or private nonprofit establishment, approved by an appropriate State or local agency, that feeds homeless persons. This rule puts those provisions into final regulatory form.

The Department received a total of 30 comment letters on the interim rulemaking. All comments received were reviewed and given full consideration for inclusion in this final rulemaking. The major concerns raised by the commenters are discussed below. Comments which are not relevent to the final rulemaking or which address issues not related to the rulemaking process are not discussed.

Technical Amendments

Technical amendments are being made to 7 CFR 273, 274 and 278 of the current rules. In the interim rule, several regulatory paragraphs were redesignated. At that time, the Department inadvertently failed to redesignate several cross references to these paragraphs in other parts of the rule. To correct this error, amendments are made to the following sections:

7 CFR 273.1(b)(2)(ii)
7 CFR 273.7(b)(1)(vii)

7 CFR 273.8(c)(3)
7 CFR 273.9(b)(4)
7 CFR 273.9(b)(5)(i)
7 CFR 273.11(i)
7 CFR 274.2(h)(1)
7 CFR 274.3(c)(1)

In addition, the Department is making a technical amendment to correct an error in spelling in 7 CFR 278.2(b).

Implementation—Sections 271.2 and 278.9

Four comments were received addressing the implementation timeframes mandated by the interim rule. The commenters felt that the implementation date of April 1, 1987, was too soon and/or unrealistic. However, the implementation date was mandated by Pub. L. 99–570. Therefore, the Department had no discretion to change that date. In addition, the implementation dates for this rulemaking have passed and the issue is no longer relevant to this final rule.

Definitions—Section 271.2

Five comments addressed the definition of a homeless food stamp household. The commenters felt the terms "fixed mailing address" and "permanent dwelling" should be clarified and/or expanded to include individuals or families in hotels without cooking and cold storage facilities. With enactment of Pub. L. 100–77 on July 22, 1987, this definition is no longer necessary. Title VIII, Section 801, of Pub. L. 100–77 amends section 3 of the Food Stamp Act to establish a statutory definition of "homeless individual". The statute defines a homeless individual as an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is: 1) A homeless shelter or welfare hotel; 2) a halfway house or similar institution that provides temporary residence for individuals; 3) a temporary accommodation in the residence of another individual; or 4) in a place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places). The definition of homeless individual is consistent with the Congressional intent surrounding enactment of the Homeless Eligibility Clarification Act enacted in 1986. Therefore, in an interim rule published on September 29, 1987 at 52 FR 36390, the Department amended 7 CFR 271.2 to remove the definition of homeless food stamp household and add the statutory definition of homeless individual.

One commenter proposed that the Department change the definition of homeless meal provider to limit the authorization of homeless meal providers to continuously operating shelters, thus excluding soup kitchens which are typically less established and easily started and stopped. The Department believes that Congress intended to include soup kitchens as homeless meal providers. The pertinent statutory language refers to "public or private nonprofit *establishment(s)*" (Pub. L. 99–570, s. 11002(a)) (emphasis added.). The Department believes that it would be difficult to interpret the term "establishment" in a manner that would exclude soup kitchens. The Department's conclusion in this matter is supported by the legislative history. *E.g.* 132, Congressional Record s15347 (daily ed. October 7, 1986) (statements of Senator Helms and Senator Domenici). Like all establishments seeking authorization, soup kitchens would still have to meet applicable eligibility criteria. The interim provisions defining a homeless meal provider are adopted as final without change.

State/local Agency Approval of Homeless Meal Providers—Section 272.9

Fourteen commenters addressed the provision requiring State and/or local agencies to approve homeless meal providers prior to their authorization to accept food stamps. A majority of the comments opposed or questioned the need for such agencies' involvement in the approval process for various reasons, including an anticipated increase in burden on the agencies. Several commenters requested that the Department be more specific about standards to be used. Two commenters suggested that State approval requirements be strengthened to include compliance with fire, health, safety, zoning and other similar codes, and two proposed that State agencies be required to monitor the operations of homeless meal providers in addition to approving them. Three commenters felt that the Department should assume responsibility for approving homeless meal providers as part of its retailer authorization process. One commenter asked for clarification of the circumstances under which a State agency can rescind approval of a meal provider.

The requirement that establishments be approved by State or local agencies is mandated by Pub. L. 99–570. The Department has no discretion to change that requirement. We note that the interim rulemaking was designed to provide maximum flexibility to State agencies with regard to designating which State or local government agency would be responsible for the approval process. As stated in the preamble to the March 11, 1987 interim rulemaking, the Department's policy is not meant to impose any significant burden on the establishment or shelter, or on the responsible State or local agency. The purpose of approval is to ensure that the establishment is in fact serving meals to the homeless.

As stated in the rule, the appropriate State or local agency "shall approve establishments and shelters serving the homeless upon sufficient evidence, as determined by the agency, that the establishment or shelter does in fact serve meals to homeless persons." 52 FR 7554, 7557 (codified at 7 CFR 272.9). The Department does not believe it would be in the best interest of homeless food stamp recipients nor of State or local agencies to impose additional approval criteria. Because the approval process is not meant to pose an undue burden on either the State or local governments or the homeless meal providers, the Department does not believe that it would be appropriate to require systematic, ongoing monitoring of homeless meal providers by the approving authority. However, the responsible agency should be alert to any information or evidence that the provider is no longer serving homeless persons. If this is found to be the case, approval must be rescinded.

For these reasons, the provisions of the interim rule requiring State or local agency approval of homeless meal providers are adopted as final with no changes.

Certification of Residents of Homeless Shelters—Section 273.1(e)(5)

Five commenters addressed the provisions related to the certification of the newly eligible residents of shelters for the homeless. One commenter applauded the provision which expands the Food Stamp Program to another category of homeless persons. The remaining four commenters questioned the provision as follows.

Some commenters requested certification policy clarifications. One asked whether the nonprofit status of a homeless shelter must be verified prior to certification of one of its residents, if the shelter is not authorized as a homeless meal provider. The interim rule did not change program requirements with regard to verification. State agencies should continue to apply their normal verification requirements, including optional verification consistent with food stamp regulations. (*See*, 7, CFR 273.2(f)) Another commenter requested that the

Department clarify whether residents of homeless shelters are eligible to participate in the Food Stamp Program if the shelter is not an authorized meal provider. The eligibility of residents of homeless shelters is not dependent upon the food stamp authorization status of the shelter. Such residents may be certified if they meet the eligibility requirements, whether or not the shelter is authorized to accept food stamps.

One commenter suggested that the Department restrict the use of stamps by residents of homeless shelters, i.e., stipulate that their food stamps be spendable only in certain places, to prevent abuse. Such restriction was clearly not the intent of the Congress when it passed legislation opening the program to residents of shelters for the homeless. Such a policy would not be in the best interest of any parties concerned particularly given the largely unstable and migratory nature of the homeless population. In daytime, many homeless persons travel from one location to another and may not eat in the same place on any consistent basis even though their primary nighttime residence remains relatively constant. Tying such persons to one location for meals would not be practicable. A restrictive policy could also impose additional burdens on Federal and State agencies, and shelters or meal providers. For example, restricted spending could necessitate either specially-printed or marked coupons, or that meal providers serve as authorized representatives. If meal providers, as authorized representatives, hold a homeless person's coupons, the meal provider must be responsible for the accounting for and return of unused benefits, should the recipient decide to move from the area during a given month and need to spend his/her remaining program benefits in another location. One commenter felt that opening the program to residents of homeless shelters would result in a duplication of benefits since such persons may already be receiving benefits from other sources. While this could be true in some instances, Congress clearly intended that homeless persons be allowed the choice to spend their food stamp benefits for prepared meals or for food purchased through the retail food system. For the reasons cited above, the interim rule provisions on the certification of residents of homeless shelters are adopted as final without change.

Issuance of $1 Coupons

Four State agencies opposed the policy, as described in the interim rule's preamble language, that allows States the option to issue all or a large portion of a homeless person's food stamp allotment in $1 coupons. The objections cited included the belief that such a policy would be administratively burdensome, would endanger recipient safety, and would create storage problems for homeless recipients. The option to issue $1 coupons was primarily an effort to facilitate the changemaking process for both recipients and homeless meal providers. Since cash change may not be returned by meal providers, it is in the best interest of both the provider and the recipient to have a viable way to facilitate the changemaking process. It has been suggested that allotments consisting entirely of $1 coupons could be quite bulky and visible and therefore vulnerable to theft and potentially dangerous for recipients. In areas where State agencies determine that increased potential for theft and endangerment of recipients are factors, coupons should be issued in the normal manner. However, it is the Department's position that this will not completely alleviate the potential problem of theft. Since $1 coupons will be returned to recipients for many purchases made with $5 and $10 coupons, recipients could still accumulate significant numbers of $1 coupons. Further, the Department believes there is a significant potential that loose $1 coupons (for changemaking purposes) will be in short supply among homeless meal providers. A lack of adequate supplies of $1 coupons in circulation among meal providers could result in significant hardship to both providers and recipients.

In view of these factors, the issuance of $1 coupons will remain an option for those State agencies choosing to issue in that manner. This option is being formally included in an upcoming revision to food stamp regulations.

Voluntary Use of Coupons—Section 278.2

Five commenters addressed the provision that coupon use must be voluntary on the part of the homeless recipient. Two commenters wanted to allow meal providers to require food stamp recipients to use their food stamps. This would be directly contrary to the provisions of Pub. L. 99-570, which specifically state that the use of coupons by homeless persons to purchase meals must be voluntary. Three commenters expressed concerns that, given the language of the interim rule, meal providers could abuse the "voluntary" provisions of the rule pressuring recipients to use their coupons. These commenters recommended that the rule be clarified and/or strengthened to ensure compliance by providers. As written, the rule clearly states that use of coupons by the homeless to purchase meals must be voluntary. The rule also specifies that meal providers are subject to the same basic requirements for participation as retailers, and, like retailers, homeless meal providers are also subject to penalties for noncompliance. The Department believes that the wording of the interim rule is sufficient to ensure compliance by homeless meal providers; therefore, the provisions of the interim rule on the voluntary use of coupons are adopted as final without change.

Meal Provider Authorization Process—Section 278.1(a), (b) and (h)

Three commenters addressed the area of general eligibility criteria for meal providers. One felt that the interim rule contained excessive restrictions that would deter providers' applications. Another commenter felt that the disadvantages to meal providers outweighed the advantages, and that it would not be worthwhile to meal providers to participate in the program. Another commenter, however, felt that the Department should strengthen the criteria by requiring that meal providers furnish articles of incorporation or similar chartering documentation; an employer ID issued by the Internal Revenue Service; and the names of principal officers. The Department believes that the nature of many homeless meal providers precludes the imposition of criteria such as those suggested by the third commenter above. The operation of such establishments is often very informally structured and many would not routinely possess employer IDs. Articles of incorporation or chartering documentation are also unlikely to exist. The name of the person responsible for the operation of such establishments is already obtained at the time of application for authorization. On the other hand, Pub. L. 99-570 is explicit that meal providers must meet certain basic minimum requirements. In order to ensure that these minimums are met, the Department believes that the criteria specified in the interim rule are essential.

Two commenters requested clarification of the procedures regarding documentation of the use of donated foods by meal providers. It is FNS' intent that at the time applications from meal providers are processed, FNS field offices shall make the necessary inquiries to determine the extent to which the applicant uses or will use donated foods in the preparation of meals to be served to the homeless in return for food stamps. One State

agency requested clarification of who must verify that a homeless meal provider is nonprofit. Each applicant meal provide must provide documentation of nonprofit status to the FNS field office at the time the meal provider application is processed.

The Department believes that the interim rule provisions as they pertain to the general eligility criteria for homeless meal providers, and as clarified above, are adequate and serve the best interest of both meal providers and other affected parties. Therefore, they are adopted as final without change.

Meal Pricing Requirements—Section 278.2(b)

The interim rule established general meal pricing parameters for use by authorized meal providers. The rule provided that homeless recipients, using food stamps to purchase prepared meals, may not be requested to pay more for a meal than the average cost of the *purchased* food used in the preparation of the meal. In addition, the rule stated that payment in food stamps must be voluntary; that if others have the option of eating free or making a donation, then food stamp recipients must be afforded the same option (equal treatment); that neither cash nor credit slips may be used to provide change to patrons using food stamps to pay for meals; and that voluntary overpayments by recipients may be accepted by meal providers.

The Department received a number of comments on the overall issue of meal pricing. The comments addressed meal pricing in general and other provisions such as equal treatment and voluntary use as they related to meal pricing and compliance by meal providers. Several commenters believe that the administrative burden resulting from the imposition of these provisions is too great or is prohibitive. Other commenters objected to or requested further clarification of the voluntary overpayment provisions. Three commenters want the Department to allow meal providers to require the use of coupons by food stamp recipients to purchase meals. Two others requested that the Department permit providers to consider all related costs, such as costs of food storage and preparation, when determining the average cost of a meal served; another suggested that meal providers be permitted to round the average cost to the nearest dollar amount. Five commenters expressed concerns that the rule's equal treatment provisions were not strong enough and would allow abuse by meal providers. One commenter requested that the rule language be clarified to state that "pressure to donate" by meal providers is grounds for disqualification. One commenter felt that the meal pricing guidelines contradict the cash change provisions and another recommended that the Department require meal providers to display a sign advising clients of applicable rules, their rights, and the appropriate State agency contact for complaints, questions, etc.

The Department is very sensitive to the fact that the informal and often mostly volunteer nature of many homeless meal provider operations precludes the development and implementation of complex, structured operating and recordkeeping systems. For this reason, the requirements set forth in the interim rule were developed with a view to both minimizing the administrative burder on such meal providers and protecting the rights of recipients, while at the same time complying with the provisions and intent of the law. The language of Pub. L. 99-570 is very specific in the area of meal pricing and related provisions such as voluntary use, and little Departmental discretion was possible or practical. For instance, in the area of meal pricing, the law is specific that the amount requested cannot exceed the average cost of the food in a meal served. Nothing in the law or regulations prohibits a meal provider from requesting less than the average cost of food in a meal. Thus, while rounding down to the nearest whole dollar amount is acceptable, rounding up would not be permitted. This does generate problems when the average cost is not a whole dollar amount, and cash change is prohibited. To address this, the Department decided to allow homeless meal providers to accept voluntary overpayments by recipients. The Department believes that the voluntary overpayment provision is in the best interest of the homeless individuals and participating meal providers.

The interim rule provision which provides for equal treatment of homeless recipients is very clear. Homeless recipients may not be treated differently than other persons in similar circumstances. In response to one comment, the Department wishes to clarify that the equal treatment provisions do not preclude a meal provider, which currently offers meals to homeless persons at no charge, from requesting payment in food stamps after the provider is authorized to accept food stamps. However, meal providers may not refuse to provide a free meal simply because they are aware that an individual receives food stamps. If others in similar circumstances have the option to eat free or make payment in some way, then homeless food stamp recipients must be given the same option. These provisions are clearly enforceable under the regulations which subject retailers, including meal providers, to penalties and disqualification for failure to comply with program rules and requirements.

In the area of voluntary use of coupons, Pub. L. 99-570 is specific and mandates that the use of food stamps by homeless recipients must be voluntary. Homeless food stamp recipients can in no way be required to use their coupons to pay for meals. Pressuring homeless recipients to use coupons against their will would constitute a violation of the voluntary use provisions of both the statute and regulations and could result in the disqualification of a meal provider.

The Department does not believe that the development and display of a comprehensive recipient information and rights sign would be administratively cost effective or practical. The development, clearance, production, and distribution process for such signs, at either the State or Federal level would preclude effective implementation within a reasonable period of time. This would result in increased administrative and financial burden on State and Federal agencies, with a relatively small level of benefit, if any, for anyone. The Department does not object to the display of such signs at the discretion of State agencies or meal providers which wish to provide such signs. However, the Department is not requiring that such signs be posted.

For the reasons discussed above, the interim rule provisions on meal pricing, equal treatment and voluntary use of coupons are accepted as final without change.

Meal Providers as Authorized Representatives—Section 273.1(f)(4)(iv)

Seven commenters addressed the interim rule provision prohibiting meal providers from serving as authorized representatives for homeless food stamp households. One welfare advocate supports the Department's position on this issue, while the other six commenters disagree with the Department and want the rules changed to permit meal providers to serve as authorized representatives. It remains the Department's position that permitting homeless meal providers to serve as authorized representatives would not be in the best interest of homeless recipients of the Food Stamp Program, overall, for the reasons set

forth in the preamble to the interim final rule. Accordingly, the interim provisions on authorized representatives are adopted as final, unchanged.

Limiting the Participation of Homeless Meal Providers—Section 278.1(h)

One State agency questioned the circumstances and criteria under which FNS will determine if program integrity will be damaged by the participation of a homeless meal provider. The commenter feels that such determinations could conflict with State agency approvals of providers, especially if the provider is the only one of its kind in the area. FNS will make such determinations in much the same manner as it does when assessing the authorization of other establishments. That is, FNS will consider whether the meal provider is in compliance with applicable Program regulations. The Department sees no way in which such a determination could impact negatively on a State agency's approval process since the State process is wholly independent of the Federal determination to limit participation of a specific provider. The State's approval process is unlikely to address the question of whether a provider is the only one of its kind in an area for food stamp purposes.

Compliance of Homeless Meal Providers

Two commenters requested that the Department clarify who is responsible for monitoring meal provider compliance, and how complaints of noncompliance will be handled. Meal provider compliance, as with other retailers, will be the responsibility of FNS field offices. Complaints will be processed consistent with current procedures for handling retailer complaints.

Cash Change—Section 274.10

Seven commenters objected to or questioned the interim rule provision which prohibits the return of cash change to recipients using food stamps to purchase prepared meals. The commenters wanted the Department to permit the return of cash change or otherwise amend the provision to eliminate problems which could arise when the price of a meal served is not an exact dollar amount. It remains the Department's position that the use of cash change or credit slip systems for purposes of providing change is both not consistent with Congressional intent in establishing the prepared meals provisions of Pub. L. 99-570, and not in the best interest of the Food Stamp Program in general or its homeless recipients. Accordingly, the interim provision on cash change and credit slip systems are adopted as final without change.

As stated in the preamble to the interim rule, the prohibition on cash change is supported by the legislative history. 132 Congressional Record. *Supra.* It is further supported by the practical consideration, also discussed in the interim rule preamble, that because homeless meal providers may not redeem food stamps for cash, they are less likely than other retailers to have the cash necessary to make change. Moreover, allowing cash change in a homeless meal provider setting would invite program abuse. In many instances, homeless meal provider patrons may pay or donate any amount they wish for a meal. If cash change were permitted, a recipient could elect to pay a token amount of food stamps for a meal, receive a relatively large amount of change and in this manner convert food stamps into cash. For example, a patron could inform the provider that he intended to pay 5 cents for a one dollar meal. The provider would have to return 95 cents in change to the patron. This transaction, repeated a number of times, would result in the conversion of most of the patron's food stamp allotment into cash that would be available for expenditures on items other than food. This result would obviously be contrary to the purpose of the Food Stamp Program, as expressed in the Food Stamp Act.

Limiting Participation to Homeless Food Stamp Households (Section 278.2(1))

Ten commenters disagree with the requirement that homeless meal providers ensure that only homeless persons use food stamps to purchase prepared meals. The lack of a specially-marked ID, increased administrative burden, complexity, and lack of guidelines were among the reasons cited for the negative comments. Several commenters requested that the Department suggest or specify the methodology to be used by meal providers for identifying and limiting participation to homeless recipients. The Department is sympathetic with the concerns expressed by the commenters. However, Congressional intent is clear—the provisions apply only to "homeless" food stamp recipients. The Department believes it is impractical to expect that this provision can be enforced at other than the meal provider level. The Department believes that the issuance and use of specially-market identification cards for purchasing prepared meals would place an additional administrative and financial burden on State agencies and is not necessary for effective operations. All homeless recipients are provided a regular food stamp identification card when certified. Meal providers may request that they be displayed if questions arise. Other, non-homeless recipients will have such cards, but it is unlikely they would go to soup kitchens and shelters for meals. In general, when a patron's status is in question, an oral statement from the patron that he/she is homeless and no knowledge by the meal provider to the contrary, will serve as adequate verification of that person's right to use food stamps to purchase prepared meals. The interim rule provision requiring meal providers to establish a person's right to use food stamps for meals is accepted as final without change.

Reporting

One commenter suggested that the Department require authorized meal providers to submit monthly reports identifying the quantity of coupons received from homeless persons and the name and address of establishments where coupons are redeemed. The Department does not believe such a reporting requirement is necessary nor that it would be in the best interest of meal providers of the Food Stamp Program in general. The burden such a requirement would impose on meal providers and the Federal Government cannot be justified at this time. Consequently, the suggestion is rejected.

Redemption Process—Section 278.2(e)

Three comments were received objecting to the provision which prohibits redemption by meal providers through financial institutions. The commenters cite administrative burden and restrictiveness as reasons for their objections. Pub. L. 99-570 specifically prohibits homeless meal providers from redeeming coupons through the financial institution system. Therefore, the Department has no discretion to permit the use of financial institutions for redemption in this instance. Consequently, the interim rule provision prohibiting redemption through financial institutions is adopted as final without change.

Evaluation

One homeless advocate requested that the Department allow the public to comment on any problems or successes encountered by homeless meal providers before the report to Congress required by Pub. L. 99-570 on the effects of the proposed meals provisions of the statute. The commenter feels it is

important to demonstrate the number of providers participating compared to the number of providers eligible and the reasons for non-participation. The Department's evaluation will address these areas in its report. Comments from the public are encouraged; such comments, as well as all other pertinent, available information, will be carefully considered as the report to Congress is prepared.

Outreach

Three comments were received objecting to the lack of Food Stamp Program outreach in general, and particularly as it affects the participation of homeless persons. On September 29, 1987, The Department published interim rules at 52 FR 36390 which provide for Federal funding, in accordance with section 277, of program information to the homeless, which State agencies may undertake at their option.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food and Nutrition Service, Food Stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food and Nutrition Service, Food Stamps, Grant programs—social programs.

7 CFR Part 278

Administrative practice and procedure, Food and Nutrition Service, Food Stamps, Grant programs—social programs.

Accordingly, 7 CFR Part 271, 272, 273, 274, and 278 are amended as follows:

1. The authority citation for Parts 271, 272, 273, 274 and 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. The interim rule amending 7 CFR Parts 271, 272, 273, 274 and 278 which was published at 52 FR 7554–7558 on March 11, 1987, with the exception of the definition of "homeless food stamp household" in 271.2, (the definition of "homeless food stamp household" was removed in the rulemaking at 52 FR 36390 (September 29, 1987)), is adopted as a final rule with the following change. In § 278.2 of the interim rule, paragraph (b) is amended by removing the word "opinion" in the eighth sentence and adding in its place the word "option".

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(99) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation * * *

(99) *Amendment No. 304.* The provisions of Amendment No. 304 which make technical amendments are effective August 1, 1988.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

4. In § 273.1(b)(2)(ii), the reference to "§ 273.11(h)" should read "§ 273.11(i)".

§ 273.7 [Amended]

5. In § 273.7(b)(1)(vii), the reference to "§ 274.10(e)" should read "§ 274.10(f)".

§ 273.8 [Amended]

6. In § 273.8(c)(3), the reference to "§ 273.11(h)(1)" and the two references to "§ 273.11(h)" should read "§ 273.11(i)(1)" and "§ 273.11(i)", respectively.

§ 273.9 [Amended]

7. In § 273.9(b)(4), the reference to "§ 273.11(h)(1)" and the two references to "§ 273.11(h)" should read "§ 273.11(i)(1)" "§ 273.11(i)," respectively.

8. In § 273.9(b)(5)(i), the reference to "§ 273.11(j)" should read "§ 273.11(k)".

§ 273.11 [Amended]

9. In § 273.11, the sixteen references to paragraph "(h)" of that section should read "(i)" in paragraphs: (i)(2)(ii), (2)(iii), (2)(v), (2)(vi), (2)(vii), (4), (5)(i)(B), (5)(ii), (6), and (7).

PART 274—ISSUANCE AND USE OF FOOD COUPONS

§ 274.2 [Amended]

10. In § 274.2(h)(1) the reference to "§ 273.11(i)(2)" should read "§ 273.11(j)(2)".

§ 274.3 [Amended]

11. In § 274.3(c)(1) introductory text the reference to "§ 273.11(i)(1)" should read "§ 273.11(j)(1)".

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

12. Section 278.9 is amended by adding a new paragraph (g) as follows:

§ 278.9 Implementation of amendments relating to participation of retail food stores, wholesale food concerns and insured financial institutions.

* * * * *

(g) *Amendment No. 304.* The technical amendment for Part 278 of *Amendment No. 304* is effective August 1, 1988.

Anna Kondratas,

Administrator.

Date: June 16, 1988.

[FR Doc. 88–14126 Filed 6–28–88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 929

[AMS-FV-88-042FR]

Cranberries Grown in the State of Massachusetts et al.

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule increases the base quantity reserve for the 1988–89 crop year from the required minimum of 2.0 percent to 4.57 percent of the total base quantities currently issued to cranberry growers, in order to update and expand base quantities for the benefit of growers. This will help to facilitate the appropriate and equitable operation of the cranberry marketing order.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is effective under Marketing Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in 10 States. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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

There are approximately 30 handlers of cranberries subject to regulation under the cranberry marketing order, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This final rule increases the reserve base quantity from the minimum 2.0 percent required by the order to 4.57 percent, in order to update and adjust growers' base quantities for the 1988-89 crop year. This rule was unanimously recommended by the Cranberry Marketing Committee (Committee) at its February 24, 1988, meeting. The Committee is the agency responsible for local administration of the marketing order.

Each year prior to May 1, the Committee considers its marketing policy for the coming season and estimates a marketable quantity of cranberries. Such quantity is the amount of cranberries necessary to meet the season's total market demand and provide for an adequate carryover of cranberries to the next season. If the Secretary finds, based on a recommendation of the Committee or from other available information, that limiting the quantity of cranberries that may be purchased or handled on behalf of growers would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity shall be apportioned among all eligible growers by applying an allotment percentage to each grower's base quantity pursuant to § 929.48.

Such base quantities are issued to growers: (a) Based on their sales during the period 1968-69 through 1973-74; (b) as a result of transfers of base quantities from other growers; or (c) as part of an annual reserve of at least 2 percent of the total base quantities. The reserve is used for the issuance of base quantities to new growers and adjustments in base quantities for existing growers, with 25 percent made available for new growers and 75 percent made available for adjustments for existing growers. Any unallocated portion of the 25 percent available to new growers may, at the discretion of the Committee, be prorated among eligible existing growers on an equitable basis.

On February 24, 1988, the Committee held its annual winter meeting to formulate its marketing policy for the 1988-89 crop year. It determined that implementation of § 929.49 (the establishment of a marketable quantity and annual allotment) was not warranted. However, the Committee noted that cranberry production was projected to exceed the total of all allotment bases and recommended that additional base be issued to all qualified new and existing growers to the full amount to which each grower requested, contingent on the grower's demonstrated ability to produce and sell cranberries. The increase will make additional base quantity available to new and existing growers by increasing the 2.0 percent minimum base quantity reserve, currently provided, to 4.57 percent. This increase will also aid in the updating of base quantities which will be necessary for any future establishment of a marketable quantity and annual allotment.

The impact of this regulation will be on growers and will not be significant because the change represents a relaxation of restrictions by increasing the total amount of base quantity available to growers. The increase in the amount of base quantity to be issued represents the total amount of base quantity requested by qualified new and existing growers for the 1988-89 crop year. The Committee intends to distribute base quantity reserve to approximately 54 new growers and 283 existing growers. Any potential costs to growers will be significantly offset when compared to the potential benefits of greater and more equitable allocation of allotment bases to growers. This final rule will not alter any reporting or recordkeeping requirements currently in effect.

Based on the available information, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

A proposed rule on this amendment was published in the **Federal Register** on April 27, 1988, [52 FR 15045] inviting written comments through May 27, 1988. No comments were received.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee and other available information, it is further found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, Cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and New York.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

Note: This section will appear in the Code of Federal Regulations.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

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

2. Section 929.153 is amended by revising paragraph (a) to read as follows:

Subpart—Rules and Regulations

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* That, for the 1988-89 crop year, the reserve base quantity shall be 4.57 percent.

* * * * *

Dated: June 27, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-14740 Filed 6-29-88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 301, 303, 314, 318, 327, 381, and 390

[Docket No. 86-047F]

Freedom of Information; Availability of Records to the Public, and Miscellaneous Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction and miscellaneous amendments.

SUMMARY: This rule amends the Federal meat and poultry products inspection regulations by correcting minor errors and updating various sections of Title 9 of the Code of Federal Regulations. This rule also amends the Food Safety and Inspection Service (FSIS) procedures for obtaining records under the Freedom of Information Act (5 U.S.C. 552) in accordance with revised departmental regulations.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Ralph E. Stafko, Director, Policy Office, Policy and Planning Staff, U.S. Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, (202) 447-8168.

SUPPLEMENTARY INFORMATION: On August 15, 1980, FSIS published in the **Federal Register** (45 FR 54307) a final rule to establish procedures for obtaining FSIS records under the Freedom of Information Act (FOIA) in accordance with departmental regulations issued pursuant to the FOIA (7 CFR Part 1, Subpart A). On December 31, 1987, the Department published revisions to its regulations implementing the FOIA (52 FR 49383). FSIS's regulations are intended to simplify and clarify departmental regulations regarding public access to information, to promote consistency in business notification procedures, and to assess service fees. FSIS must make its FOIA regulations (9 CFR Part 390) consistent with USDA's revised regulations. Therefore, this document revises FSIS's regulations by amending the hours of operation of FSIS's public facilities; by adding the acronym "FOIA", and inserting it in place of "this Act"; by correcting references to regulations; and by revising § 390.5(a). The regulations are also amended to correct typographical errors.

This document also revises the Federal meat inspection regulations to update the list of States and/or territories which are included in various FSIS regions. The lists of States and/or territories in the definition for regional director in § 301.2(iii) (9 CFR 301.2(iii)) have changed due to a reorganization of the regions: West Virginia is transferred from the Northeastern region to the Southeastern region; a part of Virginia (Northwestern) is transferred from the Northeastern region to the Southeastern region; Nebraska is transferred from the North Central region to the Southwestern region; and American Samoa and the Northern Mariana Islands are added to the Western region.

In addition, the addresses for the Southeastern, North Central and Western Regional Directors have changed, requiring correction of footnote 1 of § 301.2(iii) (9 CFR 301.2(iii)).

Due to staffing changes, §§ 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) of the Federal meat and poultry products inspection regulations (9 CFR 303.1(d)(2)(iii)(*b*)) and (9 CFR 381.10(d)(2)(iii)(*b*)) are amended to remove "Dr. John Prucha," from footnote 1.

Sections 314.5, 314.6, 318.12(c), and 327.20 of the Federal meat inspection regulations (9 CFR 314.5, 9 CFR 314.6, 9 CFR 318.12(c), and 9 CFR 327.20), are amended to correct references to the regulations within the specified paragraphs.

These amendments do not substantially affect any member of the public as they are either organizational, editorial in nature, clarify or update information. Accordingly, under the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that public participation in this rulemaking procedure is impracticable and unnecessary, and good cause is found for making the amendments effective less than 30 days after publication in the **Federal Register.**

List of Subjects

9 CFR Part 301

Meat inspection.

9 CFR Part 303

Exemptions, Meat inspection.

9 CFR Part 314

Condemned products, Meat inspection, Official establishments.

9 CFR Part 318

Meat inspection.

9 CFR Part 327

Imported products, Meat inspection.

9 CFR Part 381

Exemptions, Poultry products inspection.

9 CFR Part 390

Fee schedule, Freedom of information, Meat and poultry inspection, Records.

For the reasons set forth in the preamble, Title 9, Subchapter A, Parts 301, 303, 314, 318, 327, 381, and 390 are amended as set forth below.

PART 301—DEFINITIONS

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

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Section 301.2 is amended by updating the list of States, territories, or the District of Columbia, which are included in the regions and correcting the addresses in footnote 1 for the Southeastern, North Central, and Western Regional Directors. Paragraph (iii) of § 301.2 (9 CFR 301.2(iii)) is revised to read as follows:

§ 301.2 Definitions.

* * * * *

(iii) *Regional Director.* The official [1] in charge of the program within each of the following regions:

Northeastern Region—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia (except for Northwestern part).

Southeastern Region—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia (Northwestern), West Virginia, Puerto Rico, and the Virgin Islands.

North Central Region—Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin.

Southwestern Region—Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

Western Region—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, American Samoa, Guam, and the Northern Mariana Islands.

* * * * *

PART 303—EXEMPTIONS

3. The authority citation for Part 303 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; (21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466-

[1] Northeastern Region— * * *

Southeastern Region—Room 299 South, 1718 Peachtree Street, NW., Atlanta, GA 30309.

North Central Region—607 East Second Street, Des Moines, IA 50309.

Southwestern Region— * * *

Western Region—620 Central Avenue, Building 2C, Alameda, CA 94501.

466k); Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*)).

§ 303.1 [Amended]

4. Section 303.1(d)(2)(iii)(*b*) is amended by removing "Dr. John Prucha," from footnote 1.

PART 314—HANDLING AND DISPOSAL OF CONDEMNED OR OTHER INEDIBLE PRODUCTS AT OFFICIAL ESTABLISHMENTS

5. The authority citation for Part 314 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

§ 314.5 [Amended]

6. Section 314.5 is amended to correct references to regulations by replacing "§ 325.11(c)" and "§ 325.11(d)" with "§ 325.11(b)" and "§ 325.11(c)," respectively.

§ 314.6 [Amended]

7. Section 314.6 is amended to correct reference to regulations by removing "§ 325.11(c)" and inserting in its place "§ 325.11(b)".

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

8. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663, (7 U.S.C. 450 *et seq.*).

§ 318.12 [Amended]

9. Section 318.12(c) is amended to correct reference to the regulations by removing "§ 325.11(e)" and inserting in its place "§ 325.11(d)".

PART 327—IMPORTED PRODUCTS

10. The authority citation for Part 327 continues to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

§ 327.20 [Amended]

11. Section 327.20 is amended to correct reference to the regulations by removing "§ 325.11 (c) or (d)" and inserting in its place "§ 325.11 (b) or (c)".

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

12. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

§ 381.10 [Amended]

13. Section 381.10(d)(2)(iii)(*b*) is amended by removing "Dr. John Prucha," from footnote 1.

PART 390—FREEDOM OF INFORMATION

14. The authority citation for Part 390 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 7 CFR 1.3, 2.7.

§ 390.1 [Amended]

15. Section 390.1 is amended by adding in the first sentence "(FOIA)" after "Freedom of Information Act" and by removing in the second sentence "this Act" and inserting in its place "the FOIA".

§ 390.4 [Amended]

16. The first sentence of § 390.4 is amended to correct reference to the regulations by removing "7 CFR 1.4(a)" and inserting in its place "7 CFR 1.5(a)", by removing "8:15 a.m. and 4:45 p.m." and inserting in its place "8:00 a.m. and 4:00 p.m.", and by removing "Freedom on Information Coordinator" and inserting in its place "Freedom of Information Coordinator".

17. Paragraph (a) of § 390.5 is revised to read as follows:

§ 390.5 Requests for records.

(a) The FOIA Coordinator of FSIS is authorized to receive requests and to exercise the authority under 7 CFR 1.3(a) to: (1) make determinations to grant or deny such requests, (2) extend the 10-day deadline, (3) make discretionary releases of exempt records, except where disclosure is specifically prohibited by Executive Order, statute, or applicable regulations, (4) make determinations regarding the charging of fees pursuant to the established schedule, and (5) determine the applicability of 7 CFR 1.8 to requests for records.

* * * * *

§ 390.5 [Amended]

18. Paragraph (b) of § 390.5 is amended to correct reference to the regulations by removing "7 CFR 1.3" and inserting in its place "7 CFR 1.6".

19. Paragraph (c) of § 390.5 is amended to correct reference to the regulations by removing "7 CFR 1.4(c)" and inserting in its place "7 CFR 1.3(a)(3)", and by removing "7 CFR 1.11" and inserting in its place "7 CFR 1.14".

§ 390.6 [Amended]

20. Section 390.6 is amended to correct reference to the regulations by removing "7 CFR 1.10" and inserting in its place "7 CFR 1.16."

§ 390.7 [Amended]

21. Section 390.7 is amended to correct reference to the regulations by removing "7 CFR 1.3(e)" and inserting in its place "7 CFR 1.3(a)(4)"; by removing "7 CFR 1.5(a)(3)" and inserting in its place "7 CFR 1.8(a)(4)"; and by removing "7 CFR 1.4(d)" and inserting in its place "7 CFR 1.3(a)(4)".

§ 390.8 [Amended]

22. Section 390.8 is amended to correct reference to the regulations by removing "7 CFR 1.5" and inserting in its place "7 CFR 1.8".

Done at Washington, DC, on: June 23, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-14769 Filed 6-29-88; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 51, 70 and 72

General Requirements for Decommissioning Nuclear Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of final Generic Environmental Impact Statement.

SUMMARY: The NRC staff is in the process of reappraising its regulatory position relative to the decommissioning of nuclear facilities. The initial part of this activity consisted of obtaining the information base to support subsequent regulatory changes. Highly detailed studies were completed, through technical assistance contracts, of the technology, safety, and costs of decommissioning various nuclear facilities. (These studies are referenced in this document.) These studies were, in turn, utilized along with other information, to prepare a *Draft Generic Environmental Statement on Decommissioning Nuclear Facilities*, draft GEIS, NUREG-0586, January 1981. On February 11, 1985, the Commission published a notice of proposed rulemaking on decommissioning criteria for nuclear facilities (50 FR 5600).

This *Final Generic Environmental Impact Statement on Decommissioning Nuclear Facilities*, NUREG-0586, is being published based on public comment on the draft GEIS and on the proposed rule as well as on updated information in the technical information base. This statement is required because the regulatory changes that might result

from the reevaluation of decommissioning policy may be a major NRC action affecting the quality of the human environment.

The information provided in this Statement, including any comments, will be included in the record for consideration by the Commission in etablishing criteria and new standards for decommissioning.

ADDRESSES: Copies of the final statement as well as supporting, but not yet published, NUREG reports may be examined or copied for a fee in the Commission Public Document Room 1717 H Street NW., Washington, DC 20555. Single copies of the final statement as well as the supporting NUREG reports may be purchased when available, through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

For further information contact: Carl Feldman or Frank Cardile, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 [Phone (301)492-3883]

SUPPLEMENTARY INFORMATION: Copies of the subject environmental impact statement have been sent to EPA, commenters on the draft impact statement, other interested government agencies including DOE, Department of Commerce and Department of the Interior.

A brief summary of the environmental impact statement follows.

At the end of a commercial nuclear facility's useful life, termination of its license by the Nuclear Regulatory Commission (NRC) is a desired objective. Such termination requires that the facility be decommissioned. Decommissioning means the removal of a nuclear facility safely from service and reduction of residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license. It is the objective of NRC regulatory activities in protecting public health and safety to provide to the applicant or licensee appropriate regulations and guidance to accomplish nuclear facility decommissioning.

Past Activities

In support of this reevaluation, a data base on the technology, safety, and cost of decommissioning various nuclear facilities and on other matters related to decommissioning, including financial assurance, is being completed for the NRC by Battelle Pacific Northwest Laboratory (PNL), by Oak Ridge National Laboratory and by other contractors. Based on this data base and on input from other State and Federal government agencies and the public, NRC has modified and amplified its policy considerations and data base requirements in a manner responsive to comments received. Another area addressed is the generic applicability of the data base for specific facility types. This has been addressed through expansion of the PNL facility reports to include sensitivity analyses for a variety of parameters potentially affecting safety and cost considerations. A draft generic environmental impact statement was issued in January 1981 and comments received have been considered in the development of this final statement. On February 11, 1985, the NRC published a notice of proposed rulemaking on Decommissioning Criteria for Nuclear Facilities (50 FR 5600). The proposed amendments covered a number of topics related to decommissioning that would be applicable to 10 CFR Parts 30, 40, 50, 70, and 72 applicants and licensees. These topics included decommissioning altenatives, planning, assurance of funds for decommissioning, environmental review requirements, and residual radioactivity.

Scope of the EIS

Regulatory changes are being considered for both fuel cycle and non-fuel-cycle nuclear facilities. The fuel cycle facilities are pressurized water (PWR) and boiling water (BWR) light water reactors (LWRs) for both single and multiple reactor sites, research and test reactors, fuel reprocessing plants (FRPs) (currently, use of FRPs in the commercial sector is not being considered), small mixed oxide (MOX) fuel fabrication plants, uranium fuel fabrication plants (U-fab), uranium hexafluoride conversion plants (UF_6), and independent spent fuel storage installations (ISFSI). Under non-fuel-cycle facilities, consideration is given to major types such as radiopharmaceutical or industrial radioisotope supplier facilities, various research radioisotope laboratories, and rare metal ore processing plants where uranium and thorium are concentrated in the tailings.

This EIS addresses only those issues involved in the activities carried out at the end of a nuclear facility's useful life which permit the facility to be removed safely from service and the property to be released for unrestricted use. It does not address the considerations involved in extending the life of a nuclear facility. If a licensee makes an application for extending a facility license, an application for license renewal or amendment or for a new license would be submitted and reviewed according to appropriate existing regulations. This is not considered to be decommissioning and therefore is outside the scope of this EIS.

High-level waste repositories, low-level waste burial facilities, and uranium mills and their associated mill tailings piles are covered in separate rulemakings and are not included here. The first two items are covered in Title 10 of the Code of Federal Regulations (10 CFR) Parts 60 and 61. The last item is covered in amendments to 10 CFR Part 40.

Regulatory Objective

It is the responsibility of the NRC to ensure, through regulations and other guidance, that appropriate procedures are followed in decommissioning to protect the health and safety of the public. Present regulatory requirements and guidance cover the requirements and criteria for decommissioning in a limited way and are not adequate to regulate decommissioning actions effectively. Areas needing further criteria include decommissioning alternatives, financial assurance, planning and residual radioactivity levels as discussed below:

Decommissioning Alternatives

It is the responsibility of the NRC, in protecting public health and safety, to ensure that after a nuclear facility ceases operation its license is terminated in a timely manner. License termination requires decommissioning. Analysis of the technical data base, establishes that decommissioning can be accomplished and the facility released for unrestricted use shortly after cessation of operations or, in certain situations for certain facilities, delayed and completed after a period of storage. These situations would include considerations where the potential exists for occupational exposure and waste volume reduction, resulting from radioactive decay, or the inability to dispose of waste due to lack of disposal capacity, or other site specific factors which may affect safety. Completing decommissioning and releasing the site for unrestricted use eliminates the potential problems that may result from an increasing number of sites contaminated with radioactive material, as well as eliminating potential health, safety, and regulatory problems

associated with maintaining the nuclear facility.

Based on the technical data base, it appears that completing decommissioning shortly after cessation of facility operations or delaying completion of decommissioning for a 30 to 50-year period are reasonable options for decommissioning light water power reactors. Delay beyond that period may be acceptable if there is an inability to dispose of waste due to lack of disposal capacity or if there are site specific factors affecting safety such as if the safety of an adjacent reactor might be affected by dismantlement procedures.

For research and test reactors and for nuclear facilities licensed under 10 CFR Parts 30, 40, 70, and 72, occupational doses would be in most cases much less significant than power reactors. Thus, completing decommissioning shortly after cessation of operations is considered the most reasonable option. Delaying completion of decommissioning to allow short lived nuclides to decay may be justified in some cases, however, any extended delay would rarely be justifiable.

Financial Assurance

Consistent with the regulatory objective of decommissioning as described above, reasonable assurance is required from the nuclear facility licensee that adequate funds are available to decommission the facility. The funding mechanisms considered reasonable for providing the necessary assurance include prepayment of funds into a segregated account, insurance, surety bonds, letters of credit, and certain other guarantee methods, and a sinking fund deposited into a segregated account.

Planning

Planning for decommissioning is a critical item for ensuring that the decommissioning activities can be accomplished in a safe and timely manner. Development of detailed plans at the application stage is not possible because many factors (e.g., technology, regulatory requirements, economics) will change before the license period ends. Thus, most of the planning for the actual decommissioning will occur near final shutdown. However, a certain amount of preliminary planning should be done at the application stage.

Information on decommissioning funding provisions must be submitted with an application for a license for a nuclear facility. This information should include the method of assuring funds for decommissioning (as discussed above under Financial Assurance) and an indication of the amount being set aside. Provisions should also be made to adjust cost levels and associated funding levels over the life of the facility.

Facilitation of decommissioning in the design of a facility or during its operation can be beneficial in reducing operational exposures and waste volumes requiring disposal at the time of decommissioning. Although many aspects of facilitation can be covered under existing regulations, specific requirements that records of relevant operational and design information important to decommissioning be maintained should be added.

A final detailed decommissioning plan is required for review and approval by the NRC prior to cessation of facility operation or shortly thereafter. Besides the description of the decommissioning alternative which will be used, the final plan should include a description of the plans to ensure occupational and public safety and to protect the environment during decommissioning; a description of the final radiation survey to ensure that remaining residual radioactivity is within levels permitted for releasing the property for unrestricted use; an updated cost estimate; and for certain facilities as appropriate a description of quality assurance and safeguards provisions. The plan should include an estimate of the cost required to accomplish the decommissioning.

Residual Radioactivity Levels

The selection of an acceptable level is outside the scope of rulemaking supported by this EIS. The Commission is participating in an EPA organized interagency working group which is developing Federal guidance on acceptable residual radioactivity for unrestricted use. Proposed Federal guidance is anticipated to be published by EPA. NRC is planning to implement this guidance through rulemaking as soon as possible, as well as by issuing regulatory guides and standard review plan sections. Currently, criteria for residual contamination levels do exist and research and test reactors are being decommissioned using present guidance contained in Regulatory Guide 1.86 for surface contamination plus 5 μr/hr above background measured at 1 meter from the surface for direct radiation. The cost estimate for decommissioning can be based on current criteria and guidance regarding residual radioactivity levels for unrestricted use. The information in the studies performed as part of the reevaluation on decommissioning have indicated that in any reasonable range of residual radioactivity limits, the cost of decommissioning is relatively insensitive to the radioactivity level and use of cost data based on current criteria should provide a reasonable estimate. Even in situations where the residual radioactivity level might have an effect on decommissioning cost, by use of update provisions in the rulemaking, it is expected that the decommissioning fund available at the end of facility life will approximate closely the actual cost of decommissioning.

It is imperative that decommissioning rule amendments in 10 CFR Parts 30, 40, 50, 51, 70, and 72 be issued at this time because it is important to establish financial assurance provisions, as well as other decommissioning planning provisions, as soon as possible so that funds will be available to carry out decommissioning in a manner which protects public health and safety. Based on this need for the decommissioning provisions currently existing as well as those contained in the proposed rule amendments, the Commission believes that the rule can and should be issued now.

Environmental Impact Statement

Generally, the major environmental impact from decommissioning, especially for power reactors, occurs when the decision in is made to operate the reactor. Provided decommissioning rules are in place and based on the conclusions of Chapters 4 and 5 of this Statement regarding impacts from reactor decommissioning alternatives, it is not expected that any significant environmental impacts will result from decommissioning. Therefore current 10 CFR Part 51 needs to be amended to delete the mandatory EIS requirement for decommissioning of power reactors. An EIS may still be needed but this should be based on site specific factors. Consequently a licensee should submit a supplemental environmental report and safety analysis and, based on these submittals, the NRC should consider preparation and issuance of an environmental assessment and a finding of no environmental impact. This is expected to be reasonable for most situations.

Conclusions on Decommissioning Impacts

Consideration of the decommissioning data base including comments on the Draft Generic Environmental Impact Statement and on the proposed rule and of the need for regulatory activity has led to the following conclusions in the Final Generic Environmental Impact Statement:

(1) The technology for decommissioning nuclear facilities is well in hand and, while technical improvements in decommissioning techniques are to be expected, decommissioning at the present time can be performed safely and at reasonable cost. Radiation dose to the public due to decommissioning activities should be very small and be primarily due to transportation of decommissioning waste to waste burial facilities. Radiation dose to decommissioning workers should be a small fraction of their exposure experienced over the operating lifetime of the facility and be well within the occupational exposure limits imposed by regulatory requirements. Decommissioning costs are reasonable and are, at least for the larger facilities such as reactors, a small fraction of the present worth commissioning costs (i.e., less than 10%).

(2) Decommissioning of nuclear facilities is not an imminent health and safety problem. However, planning for decommissioning as an integral activity prior to commissioning as well as during facility life is a critical item that can have an impact on health and safety as well as cost. Essential to such planning activity is reasonable assurance that funds will be available for performing required decommissioning activities at the cessation of facility operation.

(3) Decommissioning of a nuclear facility generally has a positive environmental impact. At the end of facility life, termination of a nuclear license is the goal. Termination requires decontamination of the facility so that the level of any residual radioactivity remaining in the facility or on the site is low enough to allow unrestricted use of the facility and site. Commitment of resources, compared to operational aspects, is generally small. The principal environmental impact of decommissioning is the commitment of small amounts of land for waste burial in exchange for reuse of the facility and site for other purposes. Since in many instances, such as at a reactor facility, the land is a valuable resource, return of this land to the commercial or public sector is highly desirable.

Incorporation of EIS Conclusions in Regulations

It is recommended that specific implementation of regulatory activities be performed by rulemaking as amendments to existing regulations (i.e., 10 CFR Parts 30, 40, 50, 51, 70, and 72) rather than as a separate regulation solely covering decommissioning. Because decommissioning overlaps so many areas covered by present regulations, such incorporation would be more efficient.

Dated at Rockville, MD, this 17th day of June, 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88-14761 Filed 6-29-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 88-ANE-24; Amdt. 39-5945]

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH, Model DG-100, -200, -300 Glider Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Glaser-Dirks DG-100/200/300 gliders which requires that the markings for emergency opening of the canopy be improved so as to better advise the pilot of the proper opening procedures. This action is prompted by a determination, by the manufacturer, of the possibility that the current markings are inadequate in advising the pilot of the correct procedure. This condition, if not corrected, could result in failure of the canopy to release for opening during an emergency condition.

DATES: *Effective*—June 30, 1988.

Compliance—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of June 30, 1988.

ADDRESSES: The technical information and modification parts specified in this AD may be obtained from Glaser-Dirks, Flugzeugbau GmbH Im Schollengarten 19-20, D-7520 Bruchsal 4, Federal Republic of Germany. A copy of the technical information is contained in the Rules Docket, Docket Number 88-ANE-24, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone 513.58.30 ext. 2710; or Mr. C. Kallis, New York Aircraft Certification Office, ANE-173, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6428.

SUPPLEMENTARY INFORMATION: Glaser-Dirks determined that a potentially unsafe condition involving the canopy emergency release procedure exists on the DG-100, -200 and -300 series gliders. To assure that the correct procedure for emergency canopy release is employed by the pilot, the manufacturer issued Technical Notes (TN's) No. 301/14, 323/6 and 359/9, which require that the canopy-latch lever be painted red to match the red color of the canopy-jettison knob, a placard pertaining to ventilation be relocated on the ventilation knob and revised flight manual pages be inserted in lieu of existing pages.

The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, concurs with the manufacturer's TN's and has issued Airworthiness Directive No. 86-136, requiring compliance with the provisions of the TN's on gliders operated under the Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of the above Glaser-Dirks TN's and the issuance of LBA AD No. 86-136. Based on the foregoing, the FAA has determined that the condition addressed by Glaser-Dirks TN's is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Therefore, an AD is being issued to require compliance with the above TN's involving painting the canopy-opening lever red, to match the red emergency-release knob, relocation of the ventilation operating placard, and exchange of certain flight and maintenance manual pages with those issued June 6, 1986, applicable to Glaser-

Dirks Glider Models DG-100, DG-200, and DG-300.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket, (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Glaser-Dirks Flugzeugbau GmbH: Applies to DG-100, all gliders with single piece canopy, up to Serial Number E195; DG-200 all gliders with single piece canopy; DG-300, Serial Numbers 3E1 through 3E175, certificated in any category.

Compliance is required within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the canopy to release during an inflight emergency procedure, comply with the requirements of the Glaser-Dirks Technical Notes (TN's) as indicated below:

(a) DG-100, must comply with Glaser-Dirks TN 301/14, dated June 24, 1986, paragraphs 1, 2, 3 and 5 ("Measures:").

(b) DG-200, must comply with Glaser-Dirks TN 323/6, dated June 24, 1986, paragraphs 1, 2, 3 and 5 ("Measures:").

(c) DG-300, must comply with Glaser-Dirks TN 359/9, dated June 24, 1986, paragraphs 1, 2, 3 and 5 ("Measures:").

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de La Loi, B-1040 Brussels, Belgium; telephone 513.38.30 ext. 2710; or the Manager, New York Aircraft Certification Office, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6680.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Glaser-Dirks TN No. 301/14, dated June 24, 1986, including DG-100 Flight Manual pages 7 and 9a and Maintenance Manual diagram 6a, dated June, 1986, TN No. 323/6, dated June 24, 1986, including DG-200, -200/17, and -200/17C Flight Manual pages 12, 17/12, 12a, and 13a and Maintenance Manual diagram 3a, dated June, 1986, and TN No. 359/9, dated June 24, 1986, including DG-300 and -300 ELAN Flight Manual pages 8 and 18 and Maintenance Manual diagram 6, dated June, 1986, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents may obtain copies from Glaser-Dirks Flugzeugbau GmbH, Im Schollengarten 19-20, D-7520 Bruchsal 4, Federal Republic of Germany.

These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket No. 88-ANE-24, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on June 30, 1988.

Issued in Burlington, Massachusetts, on May 24, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88-14699 Filed 6-29-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-2640, C-2641, C-2642 and C-2643]

Redman Industries, Inc., Fleetwood Enterprises, Inc., Skyline Corp., and Commodore Corp.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Vacated Consent Orders.

SUMMARY: The Federal Trade Commission has vacated consent orders issued in 1975 against four mobile home companies, concerning their failure to perform warranty services within a reasonable period of time and required the companies to establish and maintain warranty-related complaint and service systems (40 FR 18989, May 1, 1975; 40 FR 18983, May 1, 1975; 40 FR 19460, May 5, 1975; 40 FR 18979, May 1, 1975). The Commission ruled that it would be in the public interest to reopen the proceeding and vacate the consent orders.

DATES: Consent orders issued March 4, 1975. Vacated orders issued June 16, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Thomas Massie or Justin Dingfelder, FTC/S-4631, Washington, DC 20580. (202) 326-2982 or 326-3017.

SUPPLEMENTARY INFORMATION: In the Matter of Redman Industries, Inc., Fleetwood Enterprises, Inc., Skyline Corporation, and Commodore Corporation. The orders prohibiting the trade practices and/or corrective actions, as codified under 16 CFR Part 13, are dismissed.

List of Subjects in 16 CFR Part 13

Mobile homes, Trade practices.

[1] Copies of the order to reopen and vacate the consent orders are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46, Interprets or supplies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 451)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-14587 Filed 6-29-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. R-88-1122; FR-1808]

Technical Changes to Indian Preference Final Rule; Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule contains technical changes to the Indian Preference final rule published on December 4, 1986 in the **Federal Register**. The technical changes in this final rule are intended to correct inadvertent omissions from the December 4, 1986 final rule and will not substantially alter the intent or the purpose of that rule.

EFFECTIVE DATE: September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Joan Ladesh, Office of Indian Housing, Room 4232, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 4, 1986 (51 FR 43734) the Department published a final rule establishing comprehensive new requirements governing the methods to be used in providing Indian preference in contracting, employment, and training in the HUD-assisted Indian Housing program.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2577-0076.

The final rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by the rule is not expected to be substantial. This final rule only contains technical changes to the Indian Preference final rule published on December 4, 1986.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 905

Grant programs: Housing and community development; Loan programs: Housing and community development, Low and moderate income housing, Public housing, Homeownership.

Accordingly, the Department amends 24 CFR Part 905 as follows:

1. The authority citation for 24 CFR Part 905 continues to read as set forth below:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, and 1437n); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

PART 905—[AMENDED]

2. Section 905.106(a) is revised to read as set forth below and an OMB control number is added to the section:

§ 905.106 Preferences, opportunities, and nondiscrimination in employment and contracting.

(a) *Indian Self-Determination and Education Assistance Act (preference for Indians)* HUD has determined that Projects under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

(1) Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible—

(i) Preferences and opportunities for training and employment in connection with the administration of such contracts or subcontracts be given "Indians". That Act defines "Indians" to mean persons who are members of an Indian tribe, and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Preference in the award of contracts, or subcontracts in connection with the administration of contracts, be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974. That act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" is defined to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including corporations organized by Kenai, Jeneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(2) The following language shall be included in all contracts and subcontracts executed in connection

with the development or operation of IHA projects:

Section 7(b) clause

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (A) preferences and opportunities for training and employment shall be given to Indians, and (B) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) and with all HUD requirements adopted pursuant to section 7(b).

(iii) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(iv) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(v) Upon a finding by the IHA or HUD that any party to this contract is not in compliance with the section 7(b) requirements, that party shall, at the direction of the IHA, initiate appropriate action to remedy the noncompliance.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577-0076.)

3. In § 905.204, paragraphs (a)(1)(iii), (c)(1) (i) and (ii) up to the table, (c)(2) (i) and (ii), (f)(4) and (g)(1) are revised to read as follows:

§ 905.204 Indian preference.

(a) * * *

(1) * * *

(iii) The amendments to §§ 905.106(a) and 905.204 published on December 4, 1986 shall only apply to bids and proposals which are advertised after March 15, 1987.

* * * * *

(c) * * *

(1) * * *

(i) The IFB may be restricted to qualified Indian-owned enterprises and Indian organizations. The IFB should, however, not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned enterprises or organizations are likely to submit responsive bids. If two or more (or at the IHA's option, a number greater than two specified in the IFB) qualified Indian enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian enterprises or organizations submit responsive bids, the IHA shall reject all bids, and shall readvertise the IFB in accordance with paragraph (c)(1)(ii) of this section. In unusual circumstances and subject to HUD approval, the IHA may accept one bid, e.g., the IHA determines that the single bid received is of an unusually favorable price, the IHA determines that delays caused by readvertising would subject the project to higher construction costs or the IHA determines that the bid is fair and reasonable. The award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is within the maximum total contract price established for the specific project or activity.

(ii) If the IHA prefers not to restrict the IFB as described in paragraph (c)(1)(i) of this section, or if an insufficient number of qualified Indian enterprises or organizations submit responsive bids in response to an IFB under paragraph (c)(1)(i) of this section, the IHA or contractor shall advertise for bids inviting responses from non-Indian as well as Indian owned economic enterprises and Indian organizations. Award shall be made to the qualified Indian enterprises or organization with the lowest responsive bid if that bid is (A) within the maximum total contract price established for the specific project or activity for which bids are being taken and (B) no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. "X" is determined as follows:

* * * * *

(2) * * *

(i) The RFP may be restricted to qualified Indian-owned economic enterprises and Indian organizations. The RFP should, however, not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned economic enterprises or Indian organizations are likely to submit responsive proposals. If two (or, at the IHA's option, a number, greater than two, specified in the RFP) qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal. If fewer than the minimum required number of qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, the IHA shall reject all proposals and shall readvertise the RFP in accordance with paragraph (c)(2)(ii) of this section, except that in unusual circumstances and subject to HUD approval, the IHA may accept one proposal, *e.g.*, the IHA determines that delays caused by readvertising would cause higher costs or the IHA determines that the proposal is fair and reasonable. The award shall be made to the qualified Indian enterprise or organization with the most responsive proposal if the proposal is within the maximum project total contract price established for the specific project or activity. The IHA shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance the IHA places on each evaluation factor and subfactor.

(ii) If the IHA prefers not to restrict the RFP solicitation as described in paragraph (c)(2)(i) of this section, or if an insufficent number of qualified Indian enterprises or organizations satisfactorily respond under that procedure, the IHA or contractor shall advertise for proposals inviting responses from non-Indian as well as Indian owned economic enterprises and Indian organizations. The award shall be made to the qualified Indian enterprise or organization with the most responsive proposal if the proposal is within the maximum total contract price established for the specific project or activity. The IHA shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance an IHA places on each evaluation factor and subfactor. Notification that Indian preference is applicable to this procurement shall be included in the RFP solicitation.

* * * * *

(f) * * *

(4) Each IHA should include in the IFB or RFP any applicable local preference requirements properly imposed by the tribal governing body, or should advise bidders to contact the tribal governing body to determine any applicable preference requirements. However, IHAs may not in any case authorize or provide a preference for Indians, Indian-owned economic enterprises, or Indian

organizations, based on particular tribal affiliation or membership.

(g) * * *

(1) Each complaint (including complaints against an IHA) shall be in writing, signed, and filed with the IHA. Complaints may be filed only by a person or business entity claiming to have been adversely affected by the actions or inactions of an IHA, a contractor or subcontractor in connection with the provision of preference to Indians in contracting, subcontracting, employment or training.

* * * * *

Date: June 8, 1988.

James E. Baugh,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-14635 Filed 6-29-88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-273; re Notice Nos. 609 & 621]

Commerce in Firearms and Ammunition

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends regulations in 27 CFR Part 178 to provide for an optional simplified recordkeeping procedure for sales or other dispositions of firearms by low-volume dealers.

EFFECTIVE DATE: The final rule is effective August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566-7591.

SUPPLEMENTARY INFORMATION: As provided by 18 U.S.C. 923(g), each licensed dealer must maintain such records of receipt, sale or other disposition of firearms as prescribed by regulations. Accordingly, current regulations require licensed dealers to maintain a record in bound form of each receipt and disposition of firearms. The record is required to show the date of receipt, the name and address or name and license number of the person from whom received, the name of the manufacturer and importer (if any), and specific information identifying the firearm received. When a disposition of a firearm is made, the bound record must show the name and address of the transferee or the Form 4473 serial number if the licensed dealer files such forms numerically. In connection with the disposition of a firearm to a nonlicensee, a licensed dealer must also record the transaction on Form 4473 showing, among other things, the identity of the firearm and the name and address of the transferee. Thus, in the case of firearms dispositions by licensed dealers to a nonlicensee, the dealer's bound record and Form 4473 contain some duplicative information, *i.e.*, information identifying the firearm transferred and the name and address of the transferee.

Notice of proposed rulemaking. Based on the foregoing, ATF published a notice of proposed rulemaking, Notice No. 621, in the **Federal Register** on February 12, 1987 (52 FR 4509), proposing to amend the regulations to allow low-volume dealers to adopt a simplified recordkeeping procedure for sales or other dispositions of firearms.

Comments. During the 90-day comment period, 42 comments were received, two of which had an additional signature. Among the commenters were two groups, one firearms dealer association and twelve individuals who identified themselves as licensees.

Twenty-three commenters opposed the proposal stating that all licensed firearms dealers should keep the same records regardless of the number of firearms transactions in a twelve-month period. Six comments against the proposal suggested that the Form 4473 be eliminated with some modification of the information required to be entered in the bound record book. Seven of the commenters against the proposal offered no further suggestion for change.

Eight comments were received which supported the proposal. In addition, one of these commenters objected to the requirement that Forms 4473 be retained for 20 years by licensed dealers and suggested that the period be reduced to three years.

After reviewing the comments received, ATF continues to believe that in the case of low-volume firearms dealers the required records may be simplified and a burden in recording and maintaining duplicative information alleviated. ATF does not believe that allowing low-volume firearms dealers to maintain an alternative system of records would significantly impair its ability to inspect the records of such dealers or to trace particular firearms through the records of such dealers to assist in a criminal investigation.

ATF chose to use Form 4473, modified to accept more information when it is used as the sole record, since this form implements specific statutory requirements designed to ensure that firearms are distributed by licensees only to those qualified to receive them under the Act.

It should be noted that a licensed dealer maintaining records of firearms transactions on Forms 4473(LV) would still be required to record the disposition of personal firearms in the Disposition Record of Firearms prescribed by § 178.125a.

Therefore, this final rule adds a new § 178.124a, Title 27, CFR, to allow those licensed dealers who dispose of not more than 50 firearms during a 12-month period to maintain an alternate recordkeeping system in lieu of the current requirement to maintain both a bound record and Forms 4473, as required by §§ 178.124 and 178.125. These dealers would be permitted to record their acquisition and disposition of a firearm on a single form, Form 4473(LV).

The 20-year retention period for Forms 4473(LV) has been retained in the final rule since it is necessary to assist State and local law enforcement officials in the enforcement of their own laws through tracing of firearms involved in crime as well as providing similar assistance to Federal law enforcement agencies. Further, the Office of Management and Budget has approved the 20-year record retention period in the regulations for Form 4473.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because there will not be a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities or to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

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

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has

determined that this final rule is not a "major rule" since it will not result in:

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

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) 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.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

Drafting Information

The principal author of this document is Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegation, Customs duties and inspections, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

PART 178—[AMENDED]

Paragraph 1. The authority citation for Part 178 continues to read as follows:

Authority: 18 U.S.C. 926.

Para. 2. A new § 178.124a is added as follows:

§ 178.124a Firearms transaction record in lieu of record of receipt and disposition.

(a) A licensed dealer acquiring firearms after August 1, 1988 and contemplating the disposition of not more than 50 firearms within a succeeding 12-month period to licensees or nonlicensees may maintain a record of the acquisition and disposition of such firearms on a firearms transaction record, Form 4473(LV), Part I or II, in lieu of the records prescribed by § 178.125. Such 12-month period shall commence from the date the licensed dealer first records the purchase or other acquisition of a firearm on Form 4473(LV) pursuant to this section. A licensed dealer who maintains records pursuant to this section, but whose firearms dispositions exceed 50 firearms within such 12-month period, shall make and maintain the acquisition and disposition records required by § 178.125 with respect to each firearm exceeding 50.

(b) Each licensed dealer maintaining firearms acquisition and disposition records pursuant to this section shall record the purchase or other acquisition of a firearm on Form 4473(LV), Part I or II, in accordance with the instructions on the form not later than the close of the next business day following the date of such purchase or acquisition. However, when disposition is made of a firearm before the close of the next business day after the receipt of that firearm, the licensed dealer making such disposition shall enter all required acquisition information regarding the firearm on the Form 4473(LV) at the time such transfer or disposition is made. The record on Form 4473(LV) shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type, and caliber or gauge of the firearm.

(c) Each licensed dealer maintaining firearms acquisition and disposition records pursuant to this section shall retain Form 4473(LV), Part I or II, reflecting firearms possessed by such business in chronological (by date of receipt) or numerical (by transaction serial number) order. Forms 4473(LV) reflecting the licensee's sale or disposition of firearms shall be retained in alphabetical (by name of purchaser), chronological (by date of disposition) or numerical (by transaction serial number) order.

(d) A licensed dealer maintaining records pursuant to this section shall record the sale or other disposition of a firearm to another licensee by entering on the Form 4473(LV), Part I, associated with such firearm, the name and license number of the person to whom transferred and by signing and dating the form.

(e) A licensed dealer shall obtain the Form 4473(LV), Part I, associated with the firearm in lieu of a Form 4473 and comply with the requirements specified in § 178.124(c) prior to making an over-the-counter transfer of a firearm to a nonlicensee.

(1) Who is a resident of the State in which the licensee's business premises is located,

(2) Who is not a resident of the State in which the licensee's business premises is located and the firearm is a shotgun or rifle and the transfer is under the provisions of § 178.96(c), or

(3) Who is not a resident of the State in which the licensee's business premises is located and who is acquiring the firearm by loan or rental for temporary use for lawful sporting purposes.

(f) A licensed dealer shall obtain the Form 4473(LV), Part II, associated with the firearm in lieu of a Form 4473 and comply with the requirements specified in § 178.124(f) prior to making a disposition of a firearm to a nonlicensee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction and who is a resident of the State in which the licensee's business premises is located. If the licensee's record of the acquisition of the firearm is, at the time of the disposition, being maintained on a Form 4473(LV), Part I, for over-the-counter transactions, the licensee shall transfer the information relative to the receipt of the firearm, as required by paragraph (b) of this section, to Form 4473(LV), Part II. The corresponding Form 4473(LV), Part I, may then be destroyed.

Par 3. Section 178.125 is amended by revising the first sentence of paragraph (e) to read as follows:

§ 178.125 Record of receipt and disposition.

* * * * *

(e) *Firearms receipt and disposition by dealers.* Except as provided in § 178.124a with respect to alternate records for the receipt and disposition of firearms by dealers, each licensed dealer shall enter into a record each receipt and disposition of firearms. * * *

* * * * *

Par 4. Section 178.129 is amended by revising paragraph (b) to read as follows:

§ 178.129 Record retention.

* * * * *

(b) *Firearms transaction record.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition.

* * * * *

Signed: May 4, 1988.

W.T. Drake,

Acting Director.

Approved: May 31, 1988.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 88-14736 Filed 6-29-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Revision of Oil Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; correction.

SUMMARY: The Minerals Management Service (MMS) is correcting errors in the final regulations governing valuation of oil for royalty computation purposes which appeared in the **Federal Register** on January 15, 1988 (53 FR 1184).

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The regulations promulgated at 30 CFR Part 206 contained errors which are corrected by this notice.

Date: June 22, 1988.

Jerry D. Hill,

Associate Director for Royalty Management.

The following corrections are made in FR Doc. 88-490, the revised oil product valuation regulations published in the **Federal Register** on January 15, 1988 (53 FR 1184).

PART 206—[CORRECTED]

1. On Page 1218, third column, line 5, item 5 under Part 206, change "43 CFR 3167.7-5" to "43 CFR 3162.7-5."

§ 206.104 [Corrected]

2. On page 1222, first column, line 59 under § 206.104(b)(1), change "(a)(2)" to "(b)(2)."

[FR Doc. 88-14752 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-MR-M

30 CFR Part 251

Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule combines the information collection statement relating to the applications for permits with other information collection statements for this part and revises the statement to include the information required by the Paperwork Reduction Act.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Nina B. Peterson, Federal Register Liaison Officer, Minerals Management Service (MS 632), 12203 Sunrise Valley Drive, Reston, Virginia 22091. Telephone: 703-435-6400.

SUPPLEMENTARY INFORMATION: This rule does not establish any new information collection and reporting requirements but simply places an existing approval within the codified structure in accordance with 1 CFR 21.35.

The Department has determined that it is unnecessary under the Administrative Procedure Act (5 U.S.C. 553(b)) to publish this rule for comment because it is an administrative revision and, therefore, does not change the rights and obligations of the public.

List of Subjects in 30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Research.

David W. Crow,

Acting Director.

Date: June 17, 1988.

For the reasons set forth in the preamble, 30 CFR Part 251 is amended as follows:

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

1. The authority citation for Part 251 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 et seq. (1970).

2. In § 251.0, paragraph (e), the citation to "30 CFR 251.6" is revised to read "30 CFR 251.6-2" and a new paragraph (f) is added as follows:

§ 251.0 Authority for information collection.

* * * * *

(f) The information collection requirements contained in 30 CFR 251.5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1010-0048. The information is being collected to evaluate permit applications to conduct prelease exploration offshore and to monitor activities of scientific exploration conducted under notices to ensure there is no environmental degradation, personal harm, damage to historical or cultural sites, or interference with other uses. The response is required to obtain a benefit.

§ 251.5-1 [Amended]

3. In § 251.5-1, remove paragraph (b).

[FR Doc. 88-14698 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 818

Personal Financial Responsibility

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force has revised the regulation on personal financial responsibility. This regulation establishes Air Force policy governing alleged delinquent financial obligations. This revision is necessary to include statutory requirements not included in the earlier version and to completely reformat the regulation. The intended effect of this revision is to make available to the public updated information and to clarify policy and procedures regarding personal indebtedness and dependent support.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. L.C. Taylor, HQ AFMPC/DPMA, Randolph AFB TX 78150, telephone (512) 652-3578.

SUPPLEMENTARY INFORMATION: This regulation implements higher level directives and therefore is published as a final rule.

This revision changes the title; redefines Air Force policy; provides an explanation of terms; establishes responsibilities; establishes complaint processing procedures; permits unit first sergeants to counsel enlisted members and respond to initial indebtedness complaints; redefines general policies and procedures regarding personal indebtedness and dependent support; and adds sections describing garnishment and statutory allotment procedures.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 818

Alimony, Child support, Claims, Credit, Military personnel.

Accordingly, 32 CFR, Chapter VII, is amended by revising Part 818 as set forth below:

PART 818—PERSONAL FINANCIAL RESPONSIBILITY

Sec.

Subpart A—General

818.0 Purpose.
818.1 Air Force policy.
818.2 Explanation of terms.
818.3 Responsibilities.
818.4 Review of complaints.
818.5 Processing of complaints.
818.6 High-level inquiries (AFR 11-7 Air Froce Relations with Congress).

Subpart B—Personal Indebtedness

818.7 General policies.
818.8 General requirements for acceptance of complaints.
818.9 Dishonored checks and similar instruments.
818.10 Bankruptcy.
818.11 Involuntary deductions for personal indebtedness.

Subpart C—Dependent Support

818.12 General policies.
818.13 Proof of support.
818.14 Basic Allowance for Quarters (BAQ).
818.15 Garnishment.
818.16 Statutory allotments.
818.17 Paternity claims.
818.18 Certificate of compliance.
818.19 Standards of fairness.
818.20 Garnishment of pay of Air Force members and employees only for child support or alimony obligations.
818.21 Statutory allotments.

Authority: 10 U.S.C. 8013, 15 U.S.C. 1673, 42 U.S.C. 659, 661, 662, 665.

Note: This part is derived from Air Force Regulation 35-18.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

Part 807 of this chapter states the procedures for issuing publications and forms to the public.

Subpart A—General

§ 818.0 Purpose.

This part establishes Air Force policy governing alleged delinquent financial obligations. It outlines procedures for processing claims of this nature. It implements 32 CFR Parts 43, 43a and 81. It applies to all active Air Force installations and members and US Air Force Reserve (USAFR) units and members. This part does not apply to Air National Guard (ANG) units and members. This part is affected by the Privacy Act of 1974. System of Records Notice F030MPCB—Indebtedness, Nonsupport, Paternity, applies.

§ 818.1 Air Force policy.

Air Force members are expected to pay their financial obligations in a proper and timely manner. For the purpose of this part, financial obligations are divided into two categories: Personal indebtedness, and dependent support. As a general rule, the Air Force has no legal authority to require its members or their family members to pay personal financial obligations. Enforcement is a matter for civil authorities. However, the Air Force can, under certain conditions, divert part of a member's pay for debts owed to the United States or any of its instrumentalities (see § 818.11) or to satisfy delinquent child support and alimony payments (see §§ 818.15 and 818.16). Administrative or disciplinary action may be taken against Air Force members in cases of continued financial irresponsibility. Such action is taken to improve discipline and maintain the standards of conduct expected of Air Force personnel, but cannot be used to enforce private civil obligations.

§ 818.2 Explanation of terms.

(a) *A proper and timely manner.* A manner which, under the circumstances, does not discredit the Air Force.

(b) *Financial obligation.* A legal obligation acknowledged by the member in which there is no reasonable dispute as to the facts, or one reduced to judgment. The judgment must conform to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. app. 501, (1970)), if applicable.

(c) *Claimant or complainant.* Any business or person seeking help in obtaining settlement of an alleged financial obligation or making a claim of delinquency concerning such matters.

(d) *Creditor.* Any person or business that extends or offers credit, or to whom or to which a debt is owed. This term includes lending institutions (such as centralized charge systems) which, although not a party to the original transaction, seek help in obtaining settlement.

(e) *Debt collector.* Any person or agency whose business is primarily the collection of debts owed to another person or business.

(f) *Dependent.* Spouse and unmarried children—includes stepchildren, adopted children, and illegitimate children dependent on the military member. It may include others duly constituted (see DOD Military Pay and Allowances Entitlements Manual and AFR 30-20, Issue and control of Identification (ID) Cards).

§ 818.3 Responsibilities.

Specific responsibilities for ensuring Air Force standards are met:

(a) Major commands (MAJCOM), separate operating agencies (SOA), and direct reporting units (DRU) monitor and provide guidance to subordinate units, as required, to ensure compliance with established procedures.

(b) Initial active duty indoctrination sites ensure that a comprehensive block of instruction on personal financial management is included in teaching guides or course curriculums, as appropriate. This instruction should emphasize the Air Force policy regarding personal indebtedness and dependent support (§ 818.1) and the merits and benefits of the PFMP and the BRP. (See § 818.5(b)(2) (i) and (ii).

(c) Installation commanders:

(1) Develop appropriate guidance to assure compliance with prescribed procedures.

(2) Coordinate on all responses to high-level, executive, and congressional inquiries.

(d) Chiefs, CBPO:

(1) Through the CBPO Special Actions Unit, process all complaints according to this part.

(2) Upon request, provide UIF policy guidance to the unit commander.

(3) Coordinate on all responses to high level, executive, and congressional inquiries.

(e) Unit commanders:

(1) Implement required procedures at the unit level.

(2) Review all the available facts surrounding a complaint of personal indebtedness, or of nonsupport or inadequate support of dependents, and initiate appropriate action.

(3) Ensure complainants are provided a prompt reply that explains Air Force policy. At the unit commander's discretion, the first sergeant may respond to initial complaints. Second and subsequent inquiries require a reply by the unit commander.

(4) Advise members of the requirement to meet their financial and dependent support obligations and inform them that failure to do so damages their reputation and affects the public image of all Air Force personnel. At the unit commander's discretion the first sergeant may provide initial counseling to enlisted members. Second and subsequent inquiries require counseling by the unit commander.

(5) Refer personnel who have evidenced financial irresponsibility to

the local PFMP manager for counseling on a mandatory but confidential basis.

(6) Coordinate on all responses to high-level, executive, and congressional inquiries that pertain to personnel assigned to the unit.

(7) Consider administrative or disciplinary action against members in cases of continued financial irresponsibility, fraud, deceit, criminal conduct, or failure to support dependents. Consult the staff judge advocate for guidance.

(f) Air Force members:

(1) Are expected to pay their just financial obligations in a proper and timely manner.

(2) Are expected to provide regular and adequate support to their dependents.

(3) Maintain reasonable contact with their creditors and dependents to minimize Air Force involvement.

(g) PFMP managers:

(1) Establish a consultant function to assist personnel in financial management matters, or other subjects as deemed appropriate to the needs of the local base population.

(2) Advise commanders regarding Air Force policy.

(h) Staff judge advocates:

(1) Advise commanders on the application of Air Force policy on individual cases. Include advice on administrative or disciplinary action that may be appropriate in cases involving continued financial irresponsibility, fraud, deceit, criminal conduct, or failure to support dependents, including arrearages.

(2) Provide guidance concerning federal, state, and local laws (e.g., bankruptcy, garnishment, wage earner plans, the Truth in Lending Act (Pub. L. 90–321), Fair Debt Collection Practices Act (Pub. L. 95–109), The Soldiers' and Sailors' Civil Relief Act of 1940, as amended, etc.).

(3) Coordinate on all responses to high-level, executive, and congressional inquiries.

(i) Family support centers serve as a source of information, counseling, and referral for family members in need of support and financial management assistance.

§ 818.4 Review of complaints.

Complaints received regarding personal indebtedness or nonsupport of dependents should first be forwarded to the consolidated base personnel office (CBPO) Special Actions Unit to ensure that they pertain to an Air Force member. Also, indebtedness complaints should be reviewed by the staff judge advocate's office to ensure that they meet the general policies and requirements for acceptance (see §§ 818.7 and 818.8).

(a) The CBPO Special Actions Unit forwards processable cases to the unit commander for action, or:

(1) If the member has been reassigned, forwards the case to the current CBPO Special Actions Unit and advises the complainant of referral.

(2) If member has separated with no further military status or has retired, advises the complainant accordingly and indicates they are unable to assist because the individual is no longer under Air Force jurisdiction.

(3) If the member has been released from active duty, forwards the case to Headquarters Air Reserve Personnel Center, Special Actions Branch (HQ ARPC/DPAS), Denver CO 80280–5000, and advises the complainant of the referral.

(b) Indebtedness complaints that do not meet processing requirements are returned to the complainant with an explanation of the reason or reasons for return.

(c) For dependent nonsupport or inadequate support cases forwarded by HQ AFMPC/DPMASC, the commander must furnish the following information in the reply to that office (if negative, so state):

(1) Requirement of court order or decree, if applicable, and degree of compliance by the member.

(2) Date, amount, and method of prior support payments.

(3) Proposed date, amount, and method (for instance, money order, personal check, allotment, and, if by allotment, the effective date of first payroll deduction, and so forth) of future support payments (primary and arrearages, if any).

(4) If drawing basic allowance for quarters (BAQ), the amount received, type (for instance, with dependents or without dependents), and basis for receipt (wife, child or children in custody of ex-wife, and so forth).

(5) Action taken or projected to be taken to comply with § 818.14, where appropriate, regarding the BAQ.

§ 818.5 Processing of complaints.

Any complaint that meets the requirements of this part will be processed. Processed means that the commander shall, within 15 calendar days of receipt of a complaint:

(a) Review all available facts surrounding the transaction or forming the basis for the complaint, including the member's legal rights and counterclaims. Assess the actions of the member as they apply to Air Force policy in these situations by reviewing the requirements of the credit agreement, court order, separation agreement, or other documents and actions taken by the member to resolve the matter, and the financial status of the member.

(b) Advise the member of Air Force policy appropriate to the complaint—that personal debts are expected to be paid in a proper and timely manner or that Air Force members are expected to provide regular and adequate support for their dependents. Also, explain what the member should do to comply with that policy.

(1) Legal counseling services are available regarding indebtedness and dependent support agreements.

(2) Financial counseling and assistance services are available through the Personal Financial Management Program (PFMP) or the Budget Restructuring Program (BRP).

(i) PFMP is designed to assist personnel in analyzing personal financial problem areas, developing budgets, formulating debt-liquidation plans, obtaining consumer protection, improving checkbook maintenance, and buying on credit. (See AFR 170–32, Personal Financial Management Program (PFMP))

(ii) BRP is a coordinated approach between the PFMP manager, Headquarters Air Force Aid Society (AFAS) and the installation commander, whereby members who are undergoing financial difficulties may obtain a loan. BRP loans are made to deserving members in selected cases where long-term debt problems are such that budget restructuring is essential if the member is to function effectively in the Air Force environment.

(iii) Counseling services may also be available from the onbase military banking facility or credit union.

(c) Advise the complainant of Air Force policy that applies to the situation. Responses to dependent support complaints will include, when appropriate, a copy of the factsheet describing the legal process procedures that may be taken against the Air Force (§ 818.20 and 818.21). Form letters are not permitted.

(1) The Air Force does not arbitrate disputed cases, admit or deny validity of the complaint, or confirm the liability of its members.

(2) Under no circumstances will the response indicate whether or not administrative or disciplinary action has been taken against the member as a result of the complaint.

(3) Replies should be courteous and responsive to the complaint. The commander is not an intermediary and that impression should not be given in the reply.

(4) Commanders must actively monitor complaints until they are resolved. The Air Force cannot tolerate financial irresponsibility, neglect, dishonesty, or evasiveness. Failure to liquidate personal financial obligations promptly and honorably or to provide regular and adequate financial support to dependents could necessitate administrative or disciplinary action. If the commander decides the complaint reflects adversely on the member, the administrative or disciplinary action should be made a part of the unfavorable information file (UIF) according to AFR 35-32 (Unfavorable Information Files, Control Rosters, Administrative Reprimands and Admonitions) or the unit assigned personnel information file (UAPIF) according to AFR 35-44 (Military Personnel Records Systems).

§ 818.6 High-level inquiries (AFR 11-7, Air Force Relations with Congress).

Replies to high-level, executive, and congressional inquiries should be coordinated through the installation commander, the staff judge advocate, director of personnel, and inspector general. As a minimum, replies should state Air Force policy (§ 818.1), and a summary of the position taken by the member, if applicable. For inquiries requiring response to HQ AFMPC Congressional Inquiries Section (DPMRPH2), include that information required by § 818.4(c), as appropriate, in addition to:

(a) Whether or not the member agrees to release of information protected by the Privacy Act of 1974. (See Part 806b of this chapter)

(b) Name of unit commander, address, and base telephone number.

Subpart B—Personal Indebtedness

§ 818.7 General policies.

(a) Members are expected to pay their financial obligations in a proper and timely manner. Claims of indebtedness, including returned checks, if properly supported, are processed as prescribed in § 818.5.

(b) Inform claimants, desiring to contact a military member about indebtedness, that they may obtain the member's military address by writing to the HQ AFMPC Research, Locator Fees Section (HQ AFMPC/DPMD003), Northeast Office Place, 9504 IH 35 North, San Antonio TX 78233-6636. Usually, a research fee of $3.50 is charged for this service. For those cases where an address is not releasable, HQ AFMPC/DPMD003 provides mail forwarding service at no additional cost.

(c) The processing of complaints will not be extended to those:

(1) Who have not made a bona fide effort to collect the debt directly from the military member through personal contact, correspondence, or other means.

(2) Whose claims are patently false and misleading, or are in violation of state laws concerning usury and debt collection practices (§ 818.4).

(3) Whose claims are obviously exorbitant (§ 818.4).

(d) Some states have enacted laws that prohibit creditors from contacting a debtor's employer with respect to indebtedness or communicating facts concerning indebtedness to any employer unless certain conditions are met. The conditions that must be met to remove this prohibition are generally such things as reduction of a debt to judgment and obtaining written permission of the debtor.

(1) At Air Force installations in states having such laws, the processing of debt complaints will not be extended to those creditors who are not in compliance with the state law. Commanders may advise creditors that this rule has been established because it is the general policy of the Air Force to comply with state law when that law does not infringe upon military interests.

(2) This policy will govern even though the creditor is not licensed to do business in the state where the debtor is located.

(e) Under Pub. L. 95-109, contact by a debt collector with third parties for the purpose of aiding debt collection is prohibited without the prior consent of the debtor, given directly to the debt collector, or without a court order. Creditors are generally exempt from Pub. L. 95-109 when they collect on their own behalf.

(f) Denial of privileges:

(1) If a claimant, having been notified of the requirements of this part, refuses or repeatedly fails to comply with its provisions; or a claimant, regardless of the merits of the claim, clearly has shown that an attempt is being made to make unreasonable use of the processing privilege, the CBPO Special Actions Unit documents the case, provides comments and recommendations, and submits the documentation through command channels to HQ AFMPC/DPMASC.

(2) Cases involving usurious, fraudulent, misleading, or deceptive business practices are reported to the Armed Forces Disciplinary Control Board according to AFR 125-11 (Armed Forces Disciplinary Control Boards and Off-Installation Military Enforcement Services), as well as HQ AFMPC/DPMASC if it appears that Air Force-wide action is appropriate.

§ 818.8 General requirements for acceptance of complaints.

Requirements in this section do not apply to claims by Federal, State, or Municipal governments, including foreign, nor to those creditors not otherwise subject to Federal Reserve Board (FRB) Regulation Z (12 CFR 226, 226.3, 226.9 (1978)).

(a) Full disclosure and standards of fairness. The Truth in Lending Act (Pub. L. 90-321) prescribes the general disclosure requirements that must be met by those offering or extending consumer credit. It also prescribes the specific disclosure requirements for both open-end and installment credit transactions.

(1) In place of government requirements, state regulations apply to credit transactions if the FRB determines that the state regulations impose substantially similar requirements and provide adequate enforcement measures.

(2) Commanders should seek advice from their local staff judge advocate to determine whether federal or state laws and regulations apply.

(b) Certificates of compliance:

(1) Creditors subject to FRB regulation Z, and assignees claiming thereunder, must provide an executed copy of the Certificate of Compliance with their request for assistance. They must also include a copy of the general and specific disclosures provided the member as required by Pub. L. 90-321.

(2) Creditors not subject to FRB Regulation Z (for example, public utility companies, grocery stores, and so forth) must include a certification that their request contains neither interest, finance charges, nor other fees in excess of that permitted by the laws of the state in which the obligation was incurred.

(3) Foreign-owned companies having debt complaints against a member must provide a true copy of the terms of the debt, translated into English, and certification of their subscription to the Standards of Fairness.

(c) Evidence of prior actions. Such evidence should include photostatic, file, or other duplicated copies, or documentary proof (for example, chronological account activity listings, notarized personal statements, postal documentation, and so forth) showing that every effort has been made to obtain payment by direct contact with the member.

§ 818.9 Dishonored checks and similar instruments.

Every check, draft, or order for the payment of money drawn on any bank or other depository carries with it the representation of payment in full when presented. If dishonored, checks and similar instruments are considered to be evidence of personal indebtedness until redeemed or the member asserts a valid defense to payment. The procedures in § 818.5 apply, and commanders should counsel members on Air Force policy regarding personal indebtedness. Although redeemed:

(a) Administrative or disciplinary action may be appropriate where criminal conduct is evident. The commander should consult the staff judge advocate to determine whether action under the Uniform Code of Military Justice (UCMJ) or other administrative action is appropriate.

(b) Repeated cases of dishonored checks may serve as the basis for administrative action, to include letters of reprimand, UIF entries, overstamping identification cards to reflect the denial of check cashing privileges (AFR 30-20, Issue and Control of Identification (ID) Cards), or administrative separation. The commander should consult the staff judge advocate on the appropriateness of administrative action.

Note.—These provisions are not appropriate for dishonored checks issued by a military dependent unless the staff judge advocate determines that the member may be held personally liable based on a review of the circumstances.

§ 818.10 Bankruptcy.

Air Force policy is one of strict neutrality. No adverse action may be taken against a member of the Air Force for either filing a petition or because of a discharge in bankruptcy. Underlying facts may involve mismanagement of personal affairs or dishonorable failure to pay just debts and could form a basis for adverse action against a member of the Air Force, but neither filing a petition (for bankruptcy or for payments out of future earnings) nor a discharge in bankruptcy can, of themselves, be considered "mismanagement" or "dishonorable."

(a) Commanders should consult with the servicing staff judge advocate before considering any administrative or disciplinary action against a member for conduct associated with a bankruptcy petition.

(b) Further, the staff judge advocate should be consulted when providing financial counseling for members considering bankruptcy.

(c) The Air Force recognizes and complies with decrees in bankruptcy cases.

§ 818.11 Involuntary deductions for personal indebtedness.

Federal law (5 U.S.C. 5514 and 37 U.S.C. 1007(c)) authorizes the Air Force Accounting and Finance Center (AFAFC) to satisfy a military member's personal indebtedness to the Air Force and other Department of Defense (DOD) Components, federal agencies, and nonappropriated funds instrumentalities by involuntary salary offset or administrative offset (AFR 170-30, Debt Collecting). In addition, the AFAFC is authorized to garnish the wages of Air Force members to satisfy personal indebtedness for the enforcement of child support and alimony payments under certain conditions (§§ 818.15 and 818.16).

Subpart C—Dependent Support

§ 818.12 General policies.

Members are expected to pay their financial obligations in a proper and timely manner. Dependent support, direct or in-kind, is a primary element of an individual's personal financial obligations. Failure to provide adequate dependent support, including the failure to make up arrears in support, is the proper subject of command consideration for disciplinary or administrative action.

(a) Air Force members are expected to comply with the financial support provisions of a court order or written support agreement. If the validity of either is questioned by the member, the issue must be resolved by the parties or through the civil courts. The Air Force does not arbitrate such disputes. Written agreements include such things as separation agreements, property settlement agreements, and correspondence in which the amount of support has been agreed to by the parties concerned.

(b) Air Force members are expected to provide adequate support for dependents in the absence of a court order or written support agreement. The amount of support is generally based on the dependent's needs (for example, food, clothing, shelter, medical care, and so forth) and the ability of the member to pay. Each Air Force member is expected to provide support in an amount, or kind, bearing a reasonable relation to the needs of the dependents and the ability of the member to meet those needs.

(1) The Air Force has no legal authority to arbitrate the amount of support to be provided or to unilaterally deduct money from a member's pay to ensure dependent support.

(2) Commanders must assess the actions of the member with respect to their ability to pay and compliance with Air Force policy.

(i) For example, an individual who purchases a new car for personal use and then claims an inability to provide dependent support because of financial constraints ordinarily would not be viewed as being in compliance with Air Force policy.

(ii) Further, an individual who acknowledges an existing obligation and initiates an allotment for future support but does not provide for past periods of nonsupport ordinarily would not be viewed as being in compliance with Air Force policy.

(3) Commanders must assess the member's compliance with Air Force policy when a family is separated either by choice or due to an assignment action (for example, member volunteers for a dependent-restricted overseas area, elects to serve an unaccompanied tour, early returns dependents from an overseas area, is absent as a result of lengthy temporary duty, and so forth).

(c) Examples of in-kind support includes such things as making the mortgage or rent payments on a home occupied by the dependents, making the payments on an automobile being used by the dependents, paying medical bills, paying for school tuition, and so forth.

(d) Dependents, including ex-spouses on behalf of a member's dependent child or children, are entitled to military legal counseling services and are encouraged to seek such advice when needed.

(e) The member's obligation to support a child or children is not affected by desertion or other misconduct on the part of the spouse or ex-spouse.

(f) Members are expected to initiate changes of address for support allotments and process appropriate applications for issue or renewal of dependent identification cards in a timely manner when requested to do so by or on behalf of dependents.

§ 818.13 Proof of support.

Generally, proof of dependent support is not required. However, on receipt of a complaint of nonsupport or inadequate support from, or on behalf of, a dependent for whom the member is receiving basic allowance for quarters (BAQ), proof of support is required.

§ 818.14 Basic Allowance for Quarters (BAQ).

Under the DOD Military Pay and Allowances Entitlements Manual

(DODPM), paragraph 30236, BAQ is not payable on behalf of a dependent whom a member refuses to support. Failure to support a dependent on whose behalf BAQ is being received requires recoupment for periods of nonsupport. Members should be informed of this provision and be advised that refusal or failure to support dependents requires administrative termination of BAQ entitlement at the with dependents rate.

(a) BAQ termination at the with dependents rate does not relieve a member of responsibility for providing dependent support.

(b) Commanders must assess the member's compliance with Air Force policy in those situations where the member would not otherwise be authorized the BAQ entitlement. For example, member is residing in government quarters and has no other dependents.

§ 818.15 Garnishment.

Federal law authorizes legal process against the Air Force only for the enforcement of child support and alimony payments according to state law. Service of legal process must be accomplished by certified or registered mail, return receipt requested, or by personal service. The Commander, Air Force Accounting and Finance Center, Attention: JA, Denver CO 80279–5000, telephone (303) 370–7524, is the agent designated to accept legal process within the Air Force for active duty, Reserve, and retired military members.

(a) Legal process is defined as any writ, order, summons, or other similar process in the nature of garnishment issued by:

(1) A court of competent jurisdiction within any state, territory, or possession of the United States; or

(2) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(3) An authorized official pursuant to an order of such court of competent jurisdiction or pursuant to state or local law. (See 42 U.S.C. 659, 662.)

(b) Process directed for garnishment must demonstrate, either on its face or by accompanying documentation, that collection is sought only for child support or alimony or both. The process must also show the member's Social Security number and whether the member is active duty, Reserve, or retired.

(c) If the validity of a court's order is questioned by the member concerned, the issue must be resolved by the parties or in court by the member or his or her private attorney. The Air Force has no authority to resolve such disputes.

§ 818.16 Statutory allotments.

An active duty member's pay and allowances are subject to a mandatory allotment to satisfy child or child and spousal support obligations where payments are in arrears for at least 2 months.

(a) A statutory allotment, pursuant to federal law, may be accomplished by the Air Force Accounting and Finance Center upon their being furnished a written notice from a court or state agency with responsibility for administering child support programs under Title IV–D of the Social Security Act.

(b) The notice and the following documents or information must be served on the Commander, Air Force Accounting and Finance Center, Attention: JA, Denver CO 80279–5000:

(1) A statement that the person signing is an agent or an attorney of the state having a Title IV–D plan who has the duty or authority under such plan to seek to recover amounts owed by a member as child or child and spousal support or a notice from a state court or any agent of the court who has authority to issue an order against a member for the support of a child.

(2) The service member's full name and Social Security number.

(3) A recently certified copy of the order awarding support must be included with the notice and a statement that the support payments are in arrears at least 2 months.

(4) A court order showing the amount of the arrears and specifying that payments be made to liquidate such arrears.

(5) The total amount of the allotment (the amount to be paid for current support and the amount to be paid each month towards arrears must be specified), the date or dates that the current support should terminate (for each child), and the name and address of the payee.

§ 818.17 Paternity claims.

The Air Force does not judge paternity claims against its personnel. Paternity must be established either by admission, or by judicial order or decree of paternity, or child support duly ordered by a United States or foreign court of competent jurisdiction.

(a) Allegations of paternity against active duty members will be transmitted to the member concerned through his unit commander. The unit commander will:

(1) If paternity is denied, inform the claimant accordingly and advise of Air Force policy regarding paternity claims.

(2) Once paternity is established, advise the member of his moral and legal obligations as well as his legal rights in the matter. The member will be encouraged to render the necessary financial support to the child and take any other action considered proper under the circumstances. Advise the claimant of Air Force policy as it relates to support of dependents and the position taken by the member, if the member elects to take one.

(3) On receipt of a communication from a judge of a civilian court, including a court summons or a judicial order, concerning the member's availability to appear at an adoption hearing where it is alleged that he is the father of an illegitimate child, provide a reply that:

(i) Due to military requirements, the member cannot be granted leave to attend any court hearing until (date), or

(ii) A request by the member for leave to attend an adoption hearing on *(date)*, if made, would be approved, or

(iii) The member has stated in a sworn written statement (forward a copy with response) that he is not the natural parent of the child, and that only a court of competent jurisdiction can judge the matter, or

(iv) Due to the member's unavailability caused by a specific reason, a completely responsive answer cannot be made.

(v) Inform member of the inquiry and the response. Also, member should be urged to obtain legal assistance (including an explanation of the Soldiers' and Sailors' Civil Relief Act of 1940, if appropriate).

(b) If the member has been released from active duty, the unit commander forwards the inquiry to HQ ARPC/DPAS, Denver CO 80280–5000. Advise complainant of the referral.

(1) HQ ARPC/DPAS, on receipt of an allegation of paternity, provides an appropriate response to the claimant as set forth for members on active duty under paragraph (a) (1) and (2) of this section.

(2) Communications from a judge of a civilian court, including a court summons or judicial order, concerning the availability of personnel to appear at an adoption hearing where it is alleged that the member not on active duty is the father of an illegitimate child, shall receive a reply that such person is not on active duty. A copy of the communication and the reply is forwarded to the named individual.

(3) When requested by a judge of a civilian court, the member's address may be furnished if the request is supported by a:

(i) Certified copy of either a judicial order or decree of paternity or support duly rendered against the member by a United States or foreign court of competent jurisdiction; or

(ii) Document that establishes that the member has made an official admission or statement acknowledging paternity or responsibility for support of a child before a court of competent jurisdiction, administrative or executive agency, or official authorized to receive it; or

(iii) Court summons, judicial order, or similar document of a court within the United States in a case concerning the adoption of an illegitimate child wherein the member is alleged to be the father.

(4) The address may also be furnished if the claimant, with the corroboration of a physician's affidavit, alleges and explains an unusual medical situation that makes it essential to obtain information from the alleged father to protect the physical health of either the prospective mother or the unborn child.

(c) If the member has been separated with no further military status or retired, the unit commander advises the claimant:

(1) Of the date of discharge. Indicate that you are unable to assist because the individual is no longer under Air Force jurisdiction. Also, advise that the Air Force assumes no responsibility for the whereabouts of individuals no longer under its jurisdiction.

(2) In addition, the last known address of the former member may be furnished the requester under the same conditions as set forth for members not on active duty under paragraph (b) of this section.

§ 818.18 Certificate of compliance.

See 32 CFR Part 43a.10.

§ 818.19 Standards of fairness.

See 32 CFR Part 43a.9.

§ 818.20 Garnishment of pay of Air Force members and employees only for child support or alimony obligations.

(a) This section is for general guidance. For more specific information, refer to the United States Code (42 U.S.C. 659, 661, 662; 15 U.S.C. 1673), the Code of Federal Regulations (5 CFR Part 581), and applicable State law.

(b) Federal law authorizes legal process against the United States Air Force only for the enforcement of child support and alimony obligations of members and employees in accordance with State law. This includes active duty, Reserve, Air National Guard (ANG), and retired military members, and civilian employees of the United States Air Force. See 42 U.S.C. 659.

(c) Legal process is defied as any writ, order, summons, or other similar process in the nature of garnishment directed to the US Air Force which is issued by:

(1) A court of competent jurisdiction within any State, territory, or possession of the United States;

(2) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(3) An authorized official pursuant to an order of such court of competent jurisdiction or pursuant to State or local law. See 42 U.S.C. 659, 662.

(d) Child support is the legal obligation of an individual to provide periodic payments of funds for the support and maintenance of a child, subject to, and in accordance with, State law.

(e) Alimony is defined as the obligation of an individual to provide periodic payments for the support and maintenance of the spouse (or former spouse) including separate maintenance, alimony pendente lite, maintenance, and spousal support. The definition of alimony expressly excludes payments or transfers of property made in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses. See 42 U.S.C. 662 (b) and (c).

(f) Attorney's fees, interest, and court costs are within the definition of child support and alimony when, and to the extent, they are recoverable pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(g) State law is to be followed when processing garnishment requests (as to jurisdiction and competency of courts, procedures, exemptions, and the operation of garnishment or similar process). However, State law as it applies to service of process and exemptions from garnishment and similar process may be affected by Federal law. See 42 U.S.C. 659(b) and 15 U.S.C. 1673(b).

(h) Unless an otherwise lesser amount is specified by State law, Federal law provides a limit of 50 percent on the amount that is subject to garnishment for a person supporting a second family (a spouse or dependent child), and 60 percent for a person who is not. The percentages are increased by an additional 5 percent in each situation if there are outstanding arrearages more than 12 weeks old.

(i) A Federal employee's pay subject to garnishment includes wages, salary bonuses, incentive pay, retired pay, or disability retirement pay. (The United States will exclude debts owed to the United States; Federal, State and local income tax withholding; Social Security withholdings (FICA); deductions for health insurance premiums; normal retirement contributions; normal government life insurance premiums; fines and forfeitures ordered by court-martial; Retired Serviceman's Family Protection Plan; and Survivor Benefit Plan.) See 42 U.S.C. 662(g) and 5 CFR 581.105.

(j) Process directed to the Commander, AFAFC/JA, must demonstrate, either on its face or by accompanying documentation, that collection is sought only for child support or alimony or both. The process must also show the social security number and whether the member is retired, Reserve, ANG, active duty, or civilian employee. (If the employee is a civilian, the name of the base where the civilian is employed should also be provided.)

(k) In order to process the request efficiently, these documents should be provided:

(1) If the process does not reflect that it has been brought to enforce an obligation of support, a certified copy of the order, judgment, or decree that originally established the obligation to support (5 CFR 581.202(c));

(2) A copy of any pleading requesting reduction of delinquent amounts to a judgment amount, and a copy of any order resulting therefrom;

(3) Any pleading, affidavit, or application requesting garnishment process; and

(4) The supporting execution, if any.

Documentation will vary depending on State law.

(l) The law directs the Federal government to answer garnishment or similar process within 30 days (or within such longer period as may be prescribed by applicable State law) after date of service. See 42 U.S.C. 659(d).

(m) Service of legal process must be accomplished by certified or registered mail, return receipt requested, or by personal service. Any documents served in any other manner will be returned without action. The following agents have been designated to accept legal process within the Air Force:

(1) Active duty, reserve, Air National Guard (ANG), and retired military members, and civilian employees of appropriated fund activities: Commander, Air Force Accounting and Finance Center, Attention: JA, Denver CO 80279-5000; (303) 370-7524.

(2) Nonappropriated fund civilian employees of base exchanges: Army and Air Force Exchange Service, Attention: GC-G, Dallas TX 75222-3956; (214) 320-2641.

(3) Civilian employees of all other Air Force nonappropriated fund activities: AFMPC/JA, Attention: NAF Law Division, Randolph AFB TX 78150-6001; (512) 652-6691.

(n) See 5 CFR Part 581, Appendix A.

§ 818.21 Statutory allotments.

(a) On 3 September 1982, the President signed into law Sec. 172(a) of Pub. L. 97-248 (codified at 42 U.S.C. 665, effective 1 October 1982) which allows mandatory allotments from an active duty member's pay and allowances to satisfy child or child and spousal support obligations. (Alimony or spousal support alone does not qualify under this law).

(b) A spouse or former spouse may obtain an allotment for child support or child and spousal support in cases where payments are in arrears for at least 2 months.

(c) This act provides that no more than 50 percent of a member's pay and allowances are subject to be allotted from a member who is supporting a second family and no more than 60 percent from a member who is not. The percentages are increased by 5 percent in each situation where there are outstanding arrearages which are 12 or more weeks past due. Pay and allowances and exclusions are defined in the DOD regulations.

(d) After the Air Force member is notified and given an opportunity to be counseled, the allotment will be established in the next available month following 30 days after notice is made on the Air Force member. The payments will be made at the end of the month in which the allotment was established.

(e) An allotment, pursuant to this statute, may be accomplished by furnishing the Air Force Accounting and Finance Center a written notice from a court or state agency administering child support programs under Title IV-D of the Social Security Act. This notice must be signed and must contain the following information:

(1) A statement that the person signing is an agent or an attorney of the State having a IV-D plan who has the duty or authority under such plan to seek to recover amounts owed by a service member as child or child and spousal support or a notice from a state court or any agent of the court which has authority to issue an order against a service member for the support of a child.

(2) The service member's full name and social security number.

(3) A recently certified copy of the order awarding support must be included with the notice.

(4) A statement that the support payments are in arrears at least two months.

(5) A court order showing the amount of the arrears and specifying that payments be made to liquidate such arrears.

(6) The total amount of the allotment. (Specify the amount to be paid for current support and the amount to be paid each month toward arrears.)

(7) The dates that the current support should terminate (for each child).

(8) Name and address of payee.

(f) The notice and documents must be served on the following: Commander, AFAFC, Attn: JA, Denver CO 80279-5000.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-14667 Filed 6-29-88; 8:45 am]

BILLING CODE 3910-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3406-6; FL-025]

Approval and Promulgation of Implementation Plans; Florida; Protection of Visibility in Federal Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMAMRY: In this action, EPA is approving a revision to the Florida State Implementation Plan (SIP) which was submitted on August 27, 1987. This submittal, Florida's plan for the protection of visibility in Class I areas, satisfies EPA's requirements as set forth in 40 CFR 51.300 through 51.304 and 51.306. These visibility provisions were submitted to EPA in order to satisfy the second part of the Settlement Agreement with the Environmental Defense Fund, et. al., described at 49 FR 20647 on May 16, 1984. The schedule for submittal and promulgation of these visibility provisions was renegotiated and subsequently extended by a court order on September 9, 1986.

The second part of the settlement agreement required EPA to propose and promulgate Federal Visibility SIP's, henceforth called Federal Implementation Plans (FIP's), addressing the general visibility plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306) for those States whose SIP's EPA had determined to be inadequate with respect to the above provisions (see January 23, 1986, notice of deficiency (51 FR 3046) and March 12, 1987, notice proposing FIP's for deficient State SIP's (52 FR 7803)). However, as provided in the renegotiated settlement agreement, a state could avoid the promulgation of said provisions if they submitted a visibility SIP by August 31, 1987. The State of Florida submitted such an approvable plan. The principal effect of the Florida visibility plan is to assure that the State is making and continues to make progress towards the national goal of "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."

DATES: This action will become effective on August 29, 1988, unless notice is received by August 1, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Stuart Perry at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

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

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

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

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch, at the address given above, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On August 27, 1987, the Florida Department of Environmental Regulation (FDER) submitted to EPA for approval a revision to the Florida SIP, and EPA is today approving the revision. This submittal contained certification that the revision was preceded by adequate notice and a public hearing. A discussion of the revision now follows.

Background

On December 2, 1980, EPA promulgated visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 *et*

seq. The visibility regulations required that the 36 states listed in § 51.300(b)(2): (1) Develop a program to assess and remedy visibility impairment from new and existing sources, (2) develop a long-term (10 to 15 years) strategy to assure progress toward the national goal, (3) develop a visibility monitoring strategy to collect information on visibility conditions, and (4) consider any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area and considered by the Federal Land Managers (FLM's) to be critical to the visitor's enjoyment of the Class I areas) in all aspects of visibility protection. These regulations only address a type of visibility impairment which can be traced to a single source or small group of sources known as reasonably attributable impairment or "plume blight." The EPA deferred action on the regulation of widespread homogeneous haze (referred to as regional haze) and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods (see 45 FR 80085 col. 3).

In December 1982, environmental groups filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 states that had failed to submit SIP's to EPA (EDF vs. Gorsuch, Number C82-6850 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. The EPA and the plaintiffs negotiated a settlement agreement for the remaining states which the court approved by order on April 20, 1984. EPA announced the details of the settlement agreement at 49 FR 20647 (May 16, 1984).

The settlement agreement required EPA to promulgate federal visibility SIP's, henceforth called Federal Implementation Plans (FIP's), on a specified schedule for those states that had not submitted visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to propose and promulgate FIP's which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307 provided the states did not submit SIP's by certain dates specified in the agreement.

On September 23, 1985, Florida submitted visibility new source review regulations (revisions to Rule 17-2.500 (Prevention of Significant Deterioration)) to EPA for approval which met the requirements of 40 CFR 51.307(a). EPA subsequently approved the revisions on January 21, 1986 (51 FR 2697). Florida also submitted visibility nonattainment NSR regulations (revisions to Rule 17-2.510 (New Source Review for Nonattainment Areas)) to satisfy the requirements to 40 CFR 51.307(b). However, since EPA has not yet approved the original submittal of 17-2.510, EPA stated in the January 21, 1986, notice that action would be taken in a separate notice to approve the entire nonattainment NSR regulation at the same time. Florida did not submit a visibility monitoring plan to meet the 40 CFR 51.305 requirements. Subsequently, EPA promulgated a monitoring plan for the State on July 12, 1985 (50 FR 28544).

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307) and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIP's on a specified schedule to remedy any deficiencies. The original deadlines for promulgating the FIP's were extended by a court order on September 9, 1986. The order provided that a state could avoid federal promulgation if it submitted a SIP to address the Part 2 (remaining visibility provisions) requirements by August 31, 1987.

The remaining visibility provisions are spelled out in § 51.302(c) (General Plan Requirements) and require that the SIP's include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal.
2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources.
3. Provisions to protect integral vistas identified pursuant to § 51.304.
4. Provisions to address any existing impairment certified by the FLM, and
5. A long-term (10-15 year) strategy for making progress toward the national goal pursuant to § 51.306.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined that the SIP's of 32 states (including Florida) were deficient with respect to the remaining visibility provisions. In that same notice, based on information received from the Department of the Interior (DOI) and the Roosevelt Campobello International Park Commission, 10 Class I areas in 7 states were identified as experiencing visibility impairment within the park boundaries which may be traceable to specific sources (reasonably attributable impairment (RAI)). However, the DOI stated in its certification of impairment that the results from the National Park Service (NPS) visibility monitoring program indicate that scenic views are affected by uniform haze at all NPS monitoring locations within the lower 48 states. Florida was not identified as experiencing RAI. Also, no integral vista has been identified for any Class I area in Florida. Since Florida's Class I areas are not experiencing reasonably attributable impairment of visibility, and since no integral vistas have been identified, items 2, 3, and 4 of the above list do not apply (this is so stated in the Florida plan). The Florida plan revolves solely about the State's long-term strategy.

Plan Requirements—Long-Term Strategy

EPA's regulations require that the long-term strategy be a 10- to 15-year plan for making reasonable progress towards the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLM's have declared at least six months before plan submission. A long-term strategy must be developed which covers each Class I area within the state and each Class I area in another state that may be affected by sources within the state. The strategy must be coordinated with existing plans and goals for a Class I area, including those of the FLM's. The stratgey must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal and include provisions for the review of the impact of new sources as required by § 51.307. The state must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;
5. Smoke management techniques for agricultural and forestry management purposes, including such plans as currently exist within the state for these purposes; and
6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not

addressed in developing the long-term strategy.

The state must commit to periodic review, and revision if appropriate, of the SIP on a schedule not less frequent than every three years. At the time of the periodic review, a report must be developed in consultation with the FLM's and submitted to the Administrator and to the public. The report must contain an assessment of the following:

1. The progress achieved in remedying existing impairment of visibility in any mandatory Class I federal area;
2. The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I federal area;
3. Any change in visibility since the last such report, or in the case of the first report, since plan approval;
4. Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;
5. The progress achieved implementing BART and meeting other schedules set forth in the long-term strategy;
6. The impact of any exemption granted under § 51.303; and
7. The need for BART to remedy existing visibility impairment of any integral vista listed in the plan since the last such report, or, in the case of the first report, since plan approval.

Florida's Plan for Protection of Visibility in Federal Class I Areas

The Florida Plan is divided into four main sections as follows:

I. Introduction
II. Federal Land Manager Coordination
III. General Plan Requirements
IV. Conclusion

Section I (Introduction) identifies the purpose and goal of the visibility plan, and identifies the four mandatory Class I areas located in the State, as well as the two other Class I areas located in Georgia that may be affected by sources in Florida. They are as follows:

Florida

1. The Everglades National Park
2. The St. Marks Wilderness Area
3. The Chassahowitzka Wilderness Area
4. The Bradwell Bay Wilderness Area

Georgia

1. The Okefenokee Wilderness Area
2. The Wolf Island Wilderness Area

Florida's plan also identifies the visibility pollutants, such as sulfur dioxide, nitric oxides, particulate emissions, and ozone.

Section II (Federal Land Manager Coordination) provides that the State of Florida has met all of the Federal Land Manager coordination requirements as required in § 51.302. The State of Florida notified the FLM for each of the affected Class I areas via correspondence dated February 11, 1987 (copies included in Appendix A of the plan).

Section III (General Plan Requirements) addresses each of general plan requirements pursuant to 40 CFR 51.302(c) as previously identified. They are as follows:

1. Assessment of visibility impairment—"At this time, the FLM's of the designated Class I areas potentially affected by sources within Florida have identified uniform haze as the only form of visibility impairment in the region. This type of degradation cannot be reasonably attributed to a specific source or small group of sources. Furthermore, the Department has not identified any impairment attributable to such source or source group. Therefore, the development of control strategies to correct this type of impairment is not required at this time." However, the plan states that "the Department or FLM may, at any time, identify a Class I area where a visibility impairment exists." Also, "once an impairment has been identified the Department is required to adopt control strategies to remedy only such impairment."

2. BART—Since no facility in Florida has been identified as causing impairment of visibility in any designated, mandatory Class I area, Florida stated that "a BART analysis is not required." However, the State provides in item 5 below, that if a source-attributable impairment is discovered in the future, then the Department must set emission limitations representing BART and schedules for compliance with BART for each existing stationary facility identified according to 40 CFR 51.302(c)(4).

3. Integral Vistas—"Neither the Department nor the FLM's have identified any integral vistas in or around any of the previously listed Class I areas."

4. Provisions to Address Existing Visibility Impairment—"Provisions to address any existing impairment are not required since neither the Department nor the FLM's have identified any such impairment that can be reasonably attributed to a specific source or small group of sources in Florida." Also, Florida provides that "at this time, the Department will defer to the EPA to develop a Phase II strategy to reduce adverse visibility impacts of regional haze."

5. Long-term (10–15 year) Strategy—The State of Florida provides that "since there is no identified impairment to visibility due to 'plume blight' in any designated Class I area that may be affected by sources in Florida, a single, comprehensive, long-term strategy for all such areas is presented." It also presents that "Florida's long-term strategy consists primarily of the new source review requirements," and that "these requirements effectively prohibit the degradation of visibility due to 'plume blight'." EPA agrees with this interpretation. Florida further states that "since there is no identified impairment due to 'plume blight', the long term strategy need not address the following topics:"

a. Ongoing emission reductions;
b. Additional emission limitations and schedules for compliance;
c. Source retirement and replacement schedules; and
d. The enforceability of emission limitations and control measures, other than those which arise from the new source review requirements and are enforceable under other portions of the SIP.

The State provides discussions regarding the two remaining SIP items required in the long-term strategy. Florida has existing programs for "mitigating the impacts of construction activities" and for "smoke management techniques for agricultural and forestry management purposes." These programs are covered by Florida Administrative Code rules 17–2.610(3) (Unconfined Emissions of Particulate Matter) and 17–5 (Open Burning and Forest Protection Fires), respectively. EPA believes that these programs are adequate for making progress towards the national goal. The final portion of Florida's long-term strategy involves the State's requirement to periodically review and revise (as appropriate) the long-term strategy, and to prepare a report to the Administrator and to the public. The State of Florida has fully met this requirement and will submit the required report to the Administrator and to the public.

Section IV (Conclusion) presents the State's overall view regarding its visibility plan and states that "it is the position of the Department of Environmental Regulation that this plan is adequate to protect against visibility impairment due to 'plume blight' in designated, mandatory Class I areas that are potentially affected by Florida Sources."

Final Action

After reviewing Florida's plan for the protection of visibility in federal Class I areas, EPA finds that the plan satisfies all of the remaining requirements of the

visibility regulations specified in the second part of the settlement agreement. EPA is therefore approving the visibility plan submitted by the State of Florida on August 27, 1987.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 29, 1988, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 29, 1988.

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.

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 August 29, 1988. 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

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

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

Date: June 22, 1988.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart K—Florida

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.520 is amended by adding paragraph (c)(63) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(63) Florida plan for the protection of visibility in federal Class I areas submitted to EPA on August 27, 1987, by the Florida Department of Environmental Regulation (FDER) to satisfy the Part 2 visibility requirements.

(i) Incorporation by reference.

(A) May 26, 1988, letter from the Florida Department of Environmental Regulation, and pages 20 and 21 of the Florida plan for the protection of visibility in federal Class I areas containing the periodic review requirements satisfying 40 CFR 51.306(c), adopted by the Florida Department of Environmental Regulation on August 27, 1987.

(ii) Additional material.

(A) Narrative SIP titled "The Florida Plan for the Protection of Visibility in Federal Class I Areas."

[FR Doc. 88–14595 Filed 6–29–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 60 and 61

[FRL-3406-3]

Standard of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants; Delegation of Additional Standards to Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On February 8, 1988, the Kentucky Natural Resources and Environmental Protection Cabinet requested that EPA delegate to the Commonwealth of Kentucky the authority to implement and enforce two additional categories of Standards of Performance for New Stationary Sources (NSPS) and one additional category of National Emission Standards for Hazardous Air Pollutants (NESHAP). These categories are listed below under "Supplementary Information." Since EPA's review of pertinent Kentucky laws, rules, and regulations has shown them to be adequate to implement and enforce these federal standards, the Agency has delegated authority for them to Kentucky. Affected sources are now under the jurisdiction of the Commonwealth.

EFFECTIVE DATE: June 1, 1988.

ADDRESSES: Copies of the Commonwealth's request and EPA's letter of delegation are available for public inspection at the EPA Region IV office, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (listed below) should be submitted to the Kentucky Natural Resources and Environmental Protection Cabinet, Division for Air Quality, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Pamela Adams of the EPA Region IV Air Programs Branch at the above address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Sections 111 and 112 of the Clean Air Act authorize EPA to delegate authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) to any state which has adequate implementation and enforcement procedures.

On April 12, 1977, EPA delegated to the Commonwealth of Kentucky the authority for implementation of the NSPS and NESHAP categories that had been promulgated by EPA as of March 18, 1977. Since that date, EPA has updated the Commonwealth's delegation several times. On February 8, 1988, the Kentucky Natural Resources and Environmental Protection Cabinet requested a delegation for the following recently revised categories of NSPS and NESHAP:

40 CFR Part 60, Subpart TT: Standards of Performance for Metal Coil Surface Coating

40 CFR Part 60, Subpart VV: Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry

40 CFR Part 61, Subpart N: National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants

After a thorough review of the request, EPA determined that such delegation was appropriate with the conditions set forth in the original delegation letter of April 12, 1977. Therefore, the Commonwealth's request was granted in a letter dated June 1, 1988. Kentucky sources subject to the NSPS and NESHAP listed above are now under the jurisdiction of the Commonwealth of Kentucky. EPA is not delegating enforcement authority of NSPS and NESHAP in federal court under § 113 of the CAA but rather in

State court under State law. Sources which are subject to more stringent regulations, such as those regulations which require Reasonably Available Control Technology (RACT), Lowest Achievable Emission Rate (LAER), or Best Available Control Technology (BACT), must still comply with those more stringent regulations.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant economic impact on a substantial number of small entities.

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

Authority: Secs. 111 and 112 of the Clean Air Act (42 U.S.C. 7411 and 7412).

Date: June 13, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-14744 Filed 6-29-88; 8:45 am]

BILLING CODD 6560-50-M

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40 CFR Part 252

[SWH-FRL-3385-8]

Guideline for Federal Procurement of Lubricating Oils Containing Re-refined Oil

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is issuing a guideline for Federal procurement of lubricating oils containing re-refined oil. The guideline implements section 6002(e) of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, which requires EPA (1) to designate items which can be produced with recovered materials and (2) to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002. Once EPA has designated an item, section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable.

This guideline designates lubricating oils as products for which the procurement requirements of RCRA section 6002 apply. The guideline also contains recommendations for implementing the section 6002 procurement requirements, as well as the requirement to revise specifications to allow use of re-refined oil to the maximum extent practicable.

EFFECTIVE DATES: The guideline is effective June 30, 1988. Procuring agencies must implement the requirements of RCRA section 6002 with respect to procurement of lubricating oils according to the following schedule:

Completion of specification revisions and development of affirmative procurement programs: June 30, 1989.

Commencement of procurement of lubricating oils in accordance with RCRA section 6002: June 30, 1989.

ADDRESSES: The public docket is available for viewing in Room LG-100, U.S. EPA, 401 M Street SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. Materials may be copied from any regulatory docket at a cost of 15 cents per page. Copying totaling less than $15 is free.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382-4502.

SUPPLEMENTARY INFORMATION:

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I. Authority

This guideline is issued under the authority of sections 2002(a) and 6002 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) and 6962.

II. Introduction

A. Purpose and Scope

The Environmental Protection Agency (EPA) today is issuing one in a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses appropriated Federal funds to purchase certain designated items, such items must be composed of the highest

percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230; 40 CFR Part 249). A second guideline, for paper and paper products containing recovered materials, was issued on October 6, 1987 (52 FR 37293; 40 CFR Part 250); EPA concurrently proposed minimum recovered materials content standards for paper and paper products. A third guideline, for asphalt materials containing ground tire rubber, was proposed on February 20, 1986 (51 FR 6202). A fourth guideline, for engine lubricating oils, hydraulic fluids, and gear oils containing re-refined oils, was proposed on October 19, 1987 (52 FR 38838). EPA also proposed a guideline for procurement of retread tires on May 2, 1988 (53 FR 15624). Today EPA is issuing the final guideline for lubricating oils.

This guideline describes the requirements of section 6002, explains the basis for designating lubricating oils as procurement items subject to section 6002, and discusses EPA's recommendations for implementing section 6002 with respect to procurement of lubricating oils. It also responds to the comments received on the proposed lubricating oils guideline and provides information regarding the price, availability, and performance of lubricating oils containing re-refined oil.

B. Requirements of Section 6002

Section 6002 of RCRA, "Federal Procurement," directs all procuring agencies which use Federal funds to procure items composed of the highest percentage of recovered materials practicable, considering competition, availability, technical performance, and cost. Two factors trigger this requirement. First, EPA must designate items to which this requirement applies. Second, the requirement only applies when the purchase price of the item exceeds $10,000 or when the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

Section 6002(c) requires procuring agencies to obtain from suppliers an estimate of and certification regarding the percentage of recovered materials contained in their products.

Federal agencies responsible for drafting or reviewing specifications for procurement items were required under section 6002(d)(1) to review and revise the specifications by May 8, 1986 in order to eliminate both exclusions of recovered materials and requirements that items be manufactured from virgin materials. In addition, within one year after the date of publication of a procurement guideline by EPA, the Federal agencies must revise their specifications to require the use of recovered materials in such items to the maximum extent possible without affecting the intended use of the item.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616) added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to develop an affirmative procurement program for procuring items designated by EPA. The program must assure that items composed of recovered materials will be purchased to the maximum extent practicable, be consistent with applicable provisions of Federal procurement law, and contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification of recovered material content; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Under section 6002(e), EPA is required to issue guidelines for use by procuring agencies in complying with the requirements of section 6002. The EPA guidelines must designate those items which can be produced with recovered materials and whose procurement by procuring agencies will fulfill the objectives of section 6002. They also must provide recommendations for procurement practices and information on availability, relative price, and performance.

Section 6002 is designed to promote materials conservation and thereby to reduce the quantity of materials in the solid waste stream. By using products containing recovered materials, Federal procurement can demonstrate their technical and economic viability. In addition, Federal procurement guidelines can provide guidance to state and local governments interested in procuring products containing recovered materials, and Federal procurement of such products is expected to result in increased procurement of them by these other groups as well.

C. Criteria for Selection of Procurement Items

In the preamble to the fly ash guideline, EPA established the following four criteria for the selection of procurement items for which guidelines will be prepared (48 FR 4231-4232, January 28, 1983):

(1) The waste material must constitute a significant solid waste management problem due either to volume, degree of hazard, or difficulties in disposal;

(2) Economic methods of separation and recovery must exist;

(3) The material must have technically proven uses; and

(4) The Federal government's ability to affect purchasing or use of the final product or recovered material must be substantial.

These criteria incorporate all of the factors which section 6002(e) requires EPA to consider in designating items subject to the section 6002 procurement requirements.

Section 6002(e), as amended by section 501 of the Hazardous and Solid Waste Amendments of 1984, also required EPA to issue guidelines for three procurement items (by October 1, 1985). In order to expedite the promulgation of these guidelines, EPA considered two other factors in selecting items for guidelines: The ready availability of information on technical, economic, and institutional issues associated with the procurement item, and the existence of government or industry specifications allowing use of recovered materials in the item.

As explained in section III of this preamble, lubricating oils containing re-refined oil meet the four selection criteria. In addition, EPA identified both readily available information on re-refined oils and specifications.

D. Background Information on Lubricating Oils

Lubricating oils are used to reduce friction and wear by interposing a film of material between rubbing surfaces. They are compounds of a refined oil or synthetic oil basestock and an additive package tailored to meet the requirements of the intended end use of the oils.

Lubricating oils have many applications. Automotive lubricating oils include engine oils, hydraulic fluids, and gear oils. Industrial lubricating oils include general lubricants, such as hydraulic, circulating, turbine, and gear oils; engine oils; metal working oils, such as rolling, cutting, grinding, and quenching oils; and electrical, rubber, spray, ink, and other process oils. Lubricating oils also are used in railroad, marine, and aviation engines.

Used lubricating oils contain contaminants picked up during use (e.g., lead, iron), as well as the components of the additive packages (e.g., metals, organics). Re-refining removes the

contaminants and additives to produce a new basestock, thereby allowing the oil to be used repeatedly. Re-refining processes are discussed in the next section of the guideline.

III. Rationale for Designating Lubricating Oils

This section of the guideline demonstrates that lubricating oils satisfy EPA's criteria for designating items subject to the procurement requirements of RCRA section 6002.

A. Significant Solid Waste Disposal Problem

The first criterion is that the waste material constitutes a significant solid waste management problem.

Over 2 billion gallons of lubricating oils are sold in the United States annually. Approximately 1.2 billion gallons of used oil are generated, the rest being lost through engine combustion, leakage, and handling. Of this 1.2 billion gallons, 70 percent is recycled; the remaining 30 percent is discharged to land or to sewers. The predominant method of recycling used oil is to burn it as fuel. Other activities include re-refining to remove contaminants, application to land or water for weed or insect control, and use as a dust suppressant (e.g., road oiling).

Used oil frequently is contaminated with organic and inorganic toxics, including lead, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, toluene, and naphthalene. Some of these substances, such as toxic metals, contaminate the oil during ordinary use in automobile engines. Other contaminants, such as solvents, could result from use of the oil, but also often results from incidental contamination or mixing of the used oil with hazardous wastes.

Various studies, which are included in the docket for this rulemaking, have concluded that unregulated land disposal or land application of used oils, discharging used oil to sewers, and oiling roads with used oils as a dust suppressant, threaten human health and the environment. These practices have led to contamination of land, surface water, and food chain crops with lead, phenols, and other contaminants. They also have affected the quality of drinking water.

In addition, when used oils are mixed with hazardous wastes or other hazardous substances prior to disposal or use as a dust suppressant or a fuel, toxic constituents are released to the environment. Recent examples are the dioxin contamination of Times Beach, Missouri and the PCB contamination of roads and horse arenas in Missouri.

Congress has determined that unregulated disposal and recycling of used oil could be a threat to human health and the environment. The Used Oil Recycling Act of 1980 and the Hazardous and Solid Waste Amendments of 1984 require EPA to determine whether used oil should be listed as a hazardous waste. EPA also is required to issue regulations controlling the management of recycled used oil. EPA has issued final regulations for management of used oil burned as fuel (50 FR 49164, November 29, 1985 and technical corrections, 52 FR 11819, April 13, 1987) and proposed other regulations to implement this mandate. In addition, EPA has decided not to list recycled used oil as a hazardous waste, 51 FR 41900 (November 19, 1986). The Agency currently is considering whether to list as hazardous used oil that is disposed of, evaluating the comments received on the management standards, and considering a range of options to control used oil recycling adequately without imposing unwarranted adverse impacts on recycling and ultimate environmental detriment.

Under the proposed regulations, re-refiners would be subject to regulation as a recycled oil facility. The re-refined oil products that they produce, however, would be classified as a product, not a hazardous waste, and would not be subject to the hazardous waste regulations. (See note 18, 51 FR 49218, November 29, 1985 and 40 CFR 261.3(c)(2)(i).)

The lubricating oils procurement guideline complements the used oil regulatory program by encouraging re-refining, which EPA considers to be an acceptable, environmentally sound means of recycling used oil. (See 50 FR 1687.) Specifically, the proposed guideline is designed (1) to develop government demand for lubricating oil containing re-refined oil, (2) to encourage investment in additional re-refining capacity, (3) to create an alternate demand for the 100 million gallons of used oil potentially to be displaced by the used oil fuel restrictions, and (4) to increase use of re-refining technologies that generate little or no hazardous waste.

In sum, used oil presents a significant solid waste disposal problem. EPA is addressing this problem through a regulatory program designed to control used oil disposal and recycling activities and to channel used oil to facilities involved in environmentally sound recycling. This guideline is part of that effort.

B. Feasible Methods of Recovery

The second EPA criterion for selection of reclaimed materials for affirmative procurement under RCRA section 6002 is the existence of economic methods of separation and recovery.

Because re-refining is an established industry, methods for collection of used oil are already in place. All re-refiners operate collection fleets. They typically obtain two-thirds of the used oil feedstock through their fleets and one-third from independent collectors.

Many States have implemented state-wide used oil collection and recycling programs to encourage do-it-yourselfers to recycle their used oil. For example, the States of New Jersey, Maryland, Michigan, Washington, and Minnesota, in commenting on the proposed guideline, indicated that they have used oil recycling and/or collection programs. In addition, private recycling programs collect large quantities of used oil.

Economically feasible methods exist to re-refine used oils to produce basestocks. The major processes presently in use, available for use, or under development in the United States today are acid/clay, vacuum distillation/clay contacting, vacuum distillation/alkaline distillation, vacuum distillation/hydrofinishing, and the Phillips re-refined oil process (PROP). There also are several experimental processes being developed in the U.S. or in Europe.

1. *Acid/Clay.* Until the late 1970s, acid/clay treatment was the primary re-refining process used in the United States. Because it generates a large volume of solid and hazardous waste and cannot easily remove many of the additives in the oil, it has been replaced by other technologies.

During acid/clay treatment, the used oil is screened/settled, dehydrated, treated with sulfuric acid, steam-stripped, and clay-contacted (i.e., filtered). The process yield ranges from 45 to 75 percent of the used oil feedstock. Wastes generated include acid sludge, spent clay, and corrosive condensates from the dehydration and steam stripping units.

2. *Vacuum Distillation/Clay Contacting.* Vacuum distillation recently replaced acid/clay treatment as a primary means of re-refining used oils in the United States. It has several advantages over acid/clay treatment, including easy removal of the additives and contaminants from the used oil, generation of little or no hazardous waste, and yields of 70 to 75 percent of the used oil feedstock as re-refined basestock. In addition, several product

cuts can be taken from the distillation column, which allows the re-refiner to produce different lubricating oil basestocks. This process has three phases: Pretreatment, vacuum distillation, and clay contacting (i.e., filtering). It generates a spent clay solid waste. There are currently eight vacuum distillation/clay contacting re-refineries operating in the United States.

3. *MORECO Vacuum Distillation/ Alkaline Distillation Process.* (Pat. Pend.) Vacuum distillation/alkaline distillation (D.A.D. Process) is a new lubricant re-refining technology. Its processing steps include continuous dehydration, atmospheric distillation, vacuum distillation, alkaline distillation, and fractionation with chemical neutralization. The basestocks produced by this process are of premium quality, and yields approach 80 to 88 percent. No solid waste is generated by this process. Only one re-refining facility presently utilizes this process in North America.

4. *Vacuum Distillation/ Hydrofinishing.* Vacuum distillation/ hydrofinishing also is a new re-refining technology. Its process steps include dehydration, 2-stage vacuum distillation, hydrogenation (treatment with pure hydrogen), and fractionation. The basestocks produced by this process are of premium quality, and yields approach 82 to 85 percent. No solid waste is generated from this process. Presently one vacuum distillation hydrofinishing facility is operational and two facilities which are under construction are scheduled for completion in 1986.

5. *Phillips Re-refined Oil Process (PROP).* PROP consists of chemical demetallization, clay/carbon contacting, hydrotreating, and flash stripping. The process yield ranges from 50 to 75 percent of the used oil feedstock. It generates solid wastes containing insoluble, bound metals, and some hazardous wastes. One re-refinery used PROP experimentally but is now closed.

6. *Experimental Processes.* The Department of Energy's former Bartlesville Energy Research Center (BERC) developed a solvent extraction-vacuum distillation process using a unique mixture of solvents. The BERC process reached the pilot plant stage only.

The French Petroleum Institute is developing a process using ultrafiltration membranes. The process is based on the established practice of using ultrafiltration to recover spent industrial oils.

Supercritical fluid extraction, in which supercritical fluids (gases in a supercritical state) are used as solvents, has been used in a variety of industries to separate mixtures. For example, it has been used to separate caffeine from raw coffee beans. The Krupp Research Institute in Essen, West Germany has recovered usable oils from used oil in pilot plant tests of supercritical fluid extraction. The oils contained additives and required further treatment with acid/clay. However, the amount of acid and clay used was substantially less than the amount used in the traditional acid/clay process.

Two other processes, the Turbo pretreating process and the Selectopropane process, are in use commercially in Canada and Italy, respectively. The Turbo process is a proprietary pretreatment performed in a single vessel continuous reactor. Selectopropane uses propane as a solvent for treating used oil.

C. Technically Proven Uses

The third EPA criterion for selection of reclaimed materials for affirmative procurement under RCRA Section 6002 is that the material has technically proven uses.

1. *Historic Uses of Re-refined Oils.* The American re-refining industry dates back to the early 1900s. At that time, re-refining was a relatively simple process of heating, settling, and separation by centrifugal force. The Armed Forces used re-refined oils for aircraft engines during both World Wars and thereafter. Commercial airlines began using it in 1932. However, the development of jet engines requiring more complex engine oils led to declining use of re-refined oils in aircraft.

At the same time as the aircraft market was declining, the automotive engine market was growing. By 1960, there were over 150 companies producing 300 million gallons of re-refined oils annually. As with aircraft engines, the development of high performance automobile engines requiring complex lubricating oils created problems for re-refiners. The predominant re-refining technology was acid/clay, which was not very effective in removing many of the new, more sophisticated additives and other contaminants in the used oil. Economic and regulatory factors, combined with the technological problems caused by advances in additive technology, forced the industry into decline.

During the late 1970s and early 1980s, new re-refining technologies capable of economically and effectively removing the contaminants from used oil were developed and put into use commercially. The majority of American re-refiners use a modern technology, generally one of the vacuum distillation processes. However, re-refiners currently supply only 5 percent of the lubricating oils used in the U.S.

2. *Equivalence of Re-refined Oils to Virgin Oil.* The quality of lubricating oils is determined through a series of tests, called "engine sequence tests," in which the oils are placed in test engines on laboratory dynamometer test stands. The tests are run in sequence with different loads, speeds, temperatures, etc. The oil must meet prescribed limits to be considered acceptable.

Oil performance also can be demonstrated through field testing. Automobile fleets containing the oil are driven under normal conditions. After a prescribed mileage is reached, the engines are taken apart and examined.

According to the National Bureau of Standards (NBS), there has been sufficient engine and field testing of re-refined engine oils to demonstrate that they can meet the prescribed test limits, are substantially equivalent to virgin oils, and for some parameters, perform better than virgin oils. NBS has found that there are measurable differences between virgin oils and some re-refined oils in some characteristics and some test results. These include levels of oxyacids, viscosity index improvers, chlorine, and additive/wear metals, as well as total acid number and saponification number. However, these differences do not have any apparent effects on engine performance.[1]

The results of four field and engine tests are summarized below:

a. *San Diego Fleet Tests.* As part of a joint EPA/DOD research program, engines from the City of San Diego's fleet were taken apart and compared to those of another city's fleet. San Diego used re-refined oils for three years in its 1,500-vehicle fleet. After 100,000 miles of service, six of the engines were examined and compared to two engines from the fleet of another city using virgin oils. No differences were found in the engines.

b. *Department of Defense Engine Sequence Tests.* The U.S. Army's Mobility Equipment Research and Development Command (MERADCOM), in co-ordination with EPA, tested six lubricating oils containing a re-refined oil basestock. The oils passed most of the engine sequence tests and one oil passed all of the tests. Based on these results, MERADCOM revised its specification for administrative engine oils (MIL-L-46152) to allow the use of re-refined oils.

[1] National Bureau of Standards, U.S. Department of Commerce. *Measurements and Standards for Recycled Oil—IV.* NBS Special Publication 674, July 1984, pg. 309.

c. *Royal Canadian Mounted Police Fleet Tests.* The Royal Canadian Mounted Police tested eight vehicles under normal fleet operating conditions. Four vehicles used virgin oils and four used re-refined oils. Upon examination, all eight engines showed normal wear and deposits. There were no oil-related problems.

d. *Bartlesville Energy Research Center Engine Sequence Tests.* The Department of Energy's Bartlesville Energy Research Center (BERC) conducted engine sequence tests of three re-refined oils. Two of the oils were produced by BERC's experimental re-refining process, while the third was obtained from a commercial re-refinery. The commercial oil passed all engine sequence tests. The BERC oils failed one of the tests; however, after adding more corrosion inhibitors to one of these oils, it passed the test. As with the DOD tests, the BERC tests demonstrate that re-refined oils are capable of passing engine sequence tests.

EPA received several comments on the performance of re-refined oils, none of which were adverse. Two commenters stated that they use re-refined oils in vehicle engines and have experienced no engine problems. One of these commenters noted that a laboratory with which it works could not tell the difference between virgin hydraulic oil and re-refined products. Similarly, a re-refiner submitted documentation that its oil basestock is equivalent or superior to virgin oil; this documentation is included in the docket for this rulemaking. One of the major U.S. automakers stated that it would have no problem with the use of re-refined oils in its vehicles as long as the oils meet applicable performance specifications.

3. *Foreign Use of Re-refined Oils.* Foreign users of re-refined oils include Canada, Great Britain, West Germany, France, Italy, New Zealand, South Africa, Israel, Pakistan, and India. In these countries, re-refiners process 20 to 60 percent of the available used oil, compared to 5 percent in the United States.

4. *National Bureau of Standards Provisional Tests.* One impediment to use of re-refined oils by Federal procuring agencies has been the buyers' uncertainty that the re-refined oil supplied will perform in the same manner as the re-refined oil that was qualified for the Federal Qualified Products List (QPL). Whereas virgin oil is refined from batches of crude oil originating from the same oil field, the used oil used to make batches of re-refined oil may originate from different sources. The re-refined oil batches therefore may differ. To remove this uncertainty, the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6201 *et seq.*, required the National Bureau of Standards (NBS) to develop test procedures for determining the substantial equivalence of re-refined and virgin oils. The purpose of the tests is to assure the consistency of the re-refined oil basestock (i.e., the used oil) during the four-year time period between engine sequence tests.

NBS has proposed a testing regime similar to that required by the military specifications. First, the re-refined oil would be qualified through engine sequence testing and characterization testing. A set of limits would be established for each parameter tested. Then, annually, production samples would be tested for consistency with these limits. The test methods proposed by NBS consist of standard test methods and modified versions of standard test methods that NBS determined to be appropriate for use with re-refined oils.

D. Federal Purchasing Power

The fourth EPA criterion for selection of a procurement item for affirmative procurement under RCRA Section 6002 is that the Federal government's ability to affect purchasing or use of the item, when it contains recovered materials, be substantial.

Federal procurement of engine lubricating oils, hydraulic fluids, and gear oils represents less than 2 percent of annual domestic purchases. EPA expects Federal procurement of re-refined oils to have a substantial impact on their use through a "ripple" effect. In fact, all seven state agencies which commented on the proposed guideline indicated that it would have a ripple effect.

The Federal government purchases items which meet standard industrial specifications and items listed on the QPL. In the case of lubricating oils, a supplier must demonstrate that the product meets the applicable military specification (Mil-Spec) before it will be included on the QPL.

The high cost of qualifying an engine lubricating oil to meet a military specification has proved a significant economic hurdle for the re-refining industry. In order to be qualified, the oil must pass a series of lubricant performance tests, which measure such characteristics as rust, engine sludge, engine varnish, clogging, ring and lifter sticking, and cam wear. Typically, the cost of lubricant performance testing begins at $30,000 for a series of four tests. The oil may fail one or more portions of one or more tests. When that occurs, the additives in the oil are adjusted, and the tests are run again. Thus, the cost of qualifying an oil can be greater than $100,000.

There has not been sufficient incentive for the re-refiners to incur this cost. Changing the Mil-Specs to allow use of re-refined oils has not provided the incentive. Since the revised military specifications have been in place, three re-refiners have qualified their oil, yet there have been no sales of re-refined oil to the Federal government. The re-refiners have not bid because the Federal procurements did not include enough volume in the re-refiners' local markets to warrant bidding. This fact, combined with the memory of past discrimination on the part of the Federal government against procurement of re-refined oils, has tended to discourage re-refiners from investing in the high cost of qualifying their product without assurance of future sales to offset the costs.

EPA believes that procurement of lubricating oil containing re-refined oil will encourage additional suppliers to qualify their products. This, in turn, should result in increased procurement of these oils by State and local governments because many State and local procuring agencies, as well as the private sector, use the Mil-Specs and the QPL when purchasing products.

Another economic hurdle is the difficulty in obtaining capital for plant expansion, modernization, and construction. Affirmative procurement of lubricating oils containing re-refined oil will demonstrate that there is a steady demand for this product. EPA believes that the ability of re-refiners to obtain capital will be increased as a result. In fact, several re-refiners indicated to EPA that their ability to obtain capital had improved as a result of the proposed guideline.

E. Other Considerations

Two other EPA criteria for designation of procurement items under RCRA section 6002 are the availability of background studies and existence of government or industry specifications allowing use of recovered materials in the item.

1. *Availability of Used Oil Studies.* EPA, the Department of Energy, the Department of Defense, the National Bureau of Standards, and others have extensively studied the technical, environmental, economic, energy, and institutional issues associated with re-refining used oils. These studies and other publications were used in developing this guideline and are available in the docket.

2. *Specifications.* Federal procuring agencies use Military or commercial specifications when procuring lubricating oils. Similarly, State and local government agencies and private purchasers procure lubricating oils meeting Military or commercial specifications. Thus, if specifications do not exist for lubricating oils containing re-refined oil or if specifications for lubricating oils justifiably exclude re-refined oils, procuring agencies cannot be required to procure lubricating oils containing re-refined oil.

EPA found that there are no specifications specifically for lubricating oils containing re-refined oil and that there are many lubricating oil specifications which can be met by products containing re-refined oil. Lack of specifications therefore will not be a barrier to procurement of lubricating oils containing re-refined oil.

IV. Contents of the Guideline

This portion of the preamble explains each section of the final guideline and responds to comments received.

A. Purpose and Scope

The purpose of this guideline is to (1) designate lubricating oils as items subject to the procurement requirements of section 6002 of RCRA; and (2) recommend procedures for complying with section 6002.

The proposed guideline designated engine lubricating oils, hydraulic fluids, and gear oils which meet specified Military Specifications (Mil Specs) as items which are subject to the procurement requirements of section 6002 of RCRA. These oils were chosen because the Mil Specs allowed re-refined oils to be used, the oils represent large components of the annual Federal procurement of lubricating oils; and state, local, and private purchasers commonly use the oils. Therefore, EPA expected the guideline to have a broad impact.

Some commenters recommended that EPA also designate used oil reprocessed into fuel oil as an item subject to the section 6002 requirements. One of these commenters submitted a petition requesting EPA to initiate a proceeding to develop a guideline for procurement of fuel containing recycled oil. Preliminarily, EPA notes that the petitioner submitted no information demonstrating that reprocessed fuel oil satisfies the criteria for selection of an item for designation under RCRA section 6002 nor any information demonstrating that Federal specifications and/or procurement procedures unjustifiably discriminate against reprocessed fuel oil. Because this information must be gathered and assessed prior to any determination to designate a procurement item, a time-consuming process, EPA will not delay issuance of the lubricating oil guideline while it considers the petition.

Another commenter recommended that EPA designate "lubricating oils" rather than engine lubricating oils, hydraulic fluids, and gear oils meeting specified Mil Specs. The commenter noted that the guideline would become inaccurate whenever the Mil Specs were revised or the Department of Defense added new categories of oil.

EPA agrees with this commenter. EPA has also determined that procuring agencies other than DOD might use standard industrial specifications, rather than the Mil Specs, when purchasing lubricating oils. Thus, it is more appropriate and less confusing simply to designate "lubricating oils".

In the final guideline issued today, therefore, EPA designates "lubricating oils" as items which are or can be produced with recovered materials (re-refined oils) and whose procurement by procuring agencies will carry out the objectives of RCRA section 6002. "Lubricating oils" is defined as engine lubricating oils, hydraulic fluids, and gear oils, consistent with EPA's determination that there is widespread procurement of these oils by Federal, State, and local procuring agencies.

The final guideline identifies lubricating oil specifications which can be used when procuring oils containing re-refined oil. The *scope* of the guideline is not limited to oils which meet these specifications, however. Rather, the guideline applies to all lubricating oils falling within the designation in § 252.2.

The proposed guideline excluded marine and aviation oils because of the unavailability of studies on the technical, economic, and institutional aspects of using re-refined oil in these oils. As a result, EPA had no information on which to base a guideline for procurement of these items. One commenter disagreed with this exclusion but submitted no technical data to support including these oils. It is not possible to gather the technical data to support expanding the guideline and to issue a final guideline rapidly. Further, consideration of these oils might require an additional notice of proposed rulemaking, and might have no impact on the range of used oils entering the environment. For these reasons, EPA is excluding marine and aviation oils from the final guideline at this time. EPA welcomes information on marine and aviation lubricating oils and will consider issuing a procurement guideline for them in the future as more information becomes available.

In sum, the final guideline issued today designates lubricating oils, excluding marine and aviation oils, as procurement items subject to RCRA section 6002. "Lubricating oils" means engine lubricating oils, hydraulic fluids, and gear oils.

B. Applicability

Many of the requirements of section 6002 apply to "procuring agencies," which is defined by RCRA section 1004(17) as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under section 6002(a), the procurement requirements apply to any purchase by a procuring agency of an item costing $10,000 or more or when the procuring agency purchased $10,000 worth of the item or of a functionally equivalent item during the preceding fiscal year. In response to comments, EPA is further clarifying the applicability of section 6002 to the designated lubricating oils.

1. *Procuring Agencies.* The statutory definition identifies three types of procuring agencies: (1) Federal agencies, (2) State or local agencies using appropriated Federal funds, and (3) contractors. Federal agencies should note that under this definition, the requirements of section 6002 apply to them whether or not *appropriated* Federal funds are used for procurement of items designated by EPA.

In addition, the requirements of section 6002 apply to each Federal agency as a whole. This point is particularly important in determining whether the $10,000 threshold has been reached. For example, the Department of Defense, as a whole, purchases more than $10,000 worth of lubricating oils during each fiscal year. Therefore, the requirements of section 6002 will apply to all DOD procurements of the lubricating oils covered by the guideline, including procurements by the Defense Logistics Agency, procurements by individual installations, and local purchases made at the user level to meet immediate local requirements.[2]

[2] DLA informed EPA that it is not involved with local procurements and assumes that the guideline is not applicable to these kinds of procurements. This assumption is incorrect. For purposes of section 6002, the determining factors governing applicability are the $10,000 threshold and competition, availability, performance, and price.

Not all Federal agencies operate traditional motor pools for which lubricating oils are procured in bulk. Agencies without a traditional motor pool acquire oil changes for their vehicles at service stations or other commercial activities. The requirements of section 6002 apply to these agencies if their lubricating oil procurements exceed the $10,000 threshold. Procurement procedures for these agencies are further discussed in section IV.F.1.d of this guideline.

2. *Direct and Indirect Purchases.* This guideline applies to purchases made directly by a procuring agency or by a government contractor for use in government vehicles, machinery, or equipment. Direct purchases by a contractor would include purchases for maintaining a government fleet [3] and purchases for use in new equipment to be supplied by the contractor (e.g., a new weapons system).

The definition of "procuring agency" in RCRA section 1004(17) makes it clear that the requirements of section 6002 apply to "indirect purchases," i.e., purchases by a State or local agency or its contractors using appropriated Federal funds. Thus, the guideline applies to lubricating oil purchases meeting the $10,000 threshold made by States and their localities or their contractors, subcontractors, grantees, or other persons which are funded by grants, loans, or other forms of disbursements of monies from Federal agencies. However, the guideline does not apply to such purchases if they are unrelated to or incidental to the Federal funding, i.e., not the direct result of the grant, loan, or funds disbursement. An example of a lubricating oil purchase unrelated or incidental to Federal funding is where a contractor purchases an oil change for equipment under a grant for construction of a public works project. The lubricating oil purchases would not be subject to the requirements in section 6002 or this guideline, even though some of the grant funds supporting the contract might be used to finance the purchases.

3. *The $10,000 Threshold.* RCRA section 6002(a) provides that the requirements of section 6002 apply (1) when the purchase price of an item exceeds $10,000 or (2) when the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. In the proposed guideline, EPA repeated this provision and recommended that procuring agencies apply the $10,000 rule to each of the broad categories of lubricating oils designated by EPA.

One commenter stated that the size of individual purchases is not significant, and that procuring agencies must add together all purchases made during a year to determine whether the $10,000 threshold has been reached. EPA disagrees. Section 6002 clearly sets out a two-step procedure for determining whether the $10,000 threshold has been reached. First, a procuring agency must determine whether it purchased $10,000 worth of lubricating oils during the preceding fiscal year. If so, the requirements of section 6002 apply to all lubricating oil procurements occurring in the current fiscal year. Second, if a procuring agency did not procure $10,000 worth of lubricating oils during the preceding fiscal year, it is not subject to section 6002 unless it makes a $10,000 purchase of lubricating oils during the current fiscal year. The requirements of section 6002 apply to the $10,000 purchase of lubricating oils; to all subsequent purchases of lubricating oils made during the current fiscal year, regardless of size; and to all procurements of lubricating oils made in the following fiscal year.

Section 6002(a) does not provide that the procurement requirements are triggered when the quantity of items purchased during the *current* fiscal year is $10,000 or more. EPA does not believe that Congress intended to require procuring agencies to keep a running tally of procurements of items designated by EPA. Maintaining such a running tally would be very burdensome. Rather, procuring agencies only need to compute their total procurements once at the end of the fiscal year and only if they intend to claim an exemption from the requirements of section 6002 in the following fiscal year.

Another commenter noted that the $10,000 threshold cannot be used as a means of avoiding the requirements of section 6002. EPA agrees. As previously discussed, if a procuring agency did not procure $10,000 worth of lubricating oils during the preceding fiscal year, it is not subject to the requirements of section 6002 unless it makes a $10,000 purchase during the current fiscal year. The procuring agency that knows that it needs $10,000 worth of lubricating oil may not substitute two or more procurements of lubricating oils that are worth less than $10,000 each for a single procurement of lubricating oils worth $10,000 or more in order to avoid crossing the $10,000 threshold.

Commenters disagreed with EPA's proposal that procuring agencies apply the $10,000 threshold to each of the three broad categories of lubricating oils designated in the guideline. These commenters stated that the proposed approach would result in insufficient demand for oils containing re-refined oil, would create a loophole, might result in increased unit costs, and would increase the administrative burden on procuring agencies. EPA has reconsidered the proposed approach in light of these comments. In the final version of the guideline issued today, EPA is recommending that the $10,000 threshold be applied to all procurements of lubricating oils. This approach is consistent with the revised scope of the guideline—i.e., lubricating oils rather than engine lubricating oils, hydraulic fluids, and gear oils meeting specified Mil Specs. EPA also is revising its definition of functionally equivalent items, as discussed below, in response to these comments and to be consistent with the new designation.

4. *Functionally Equivalent Items.* Under RCRA section 6002(a), the procurement requirements of section 6002 apply when purchases during the preceding fiscal year of a "procurement item" or "functionally equivalent" procurement items cost $10,000 or more. In common usage, the term "lubricating oils" covers many items manufactured to meet different uses and performance standards. EPA believes that restricting the applicability of section 6002 based on a narrow, technical definition of functional equivalency would limit the effectiveness of the guideline in meeting the objectives of RCRA, because an agency may purchase less than $10,000 of each type of lubricating oil.

The proposed guideline provided that all hydraulic fluids be considered to be functionally equivalent and all engine lubricating oils be considered to be functionally equivalent. The provision was consistent with the proposed approach of applying the $10,000 threshold to three broad categories of lubricating oils. EPA has reconsidered the functional equivalency provision and has concluded that "functionally equivalent items" should be defined as a category of items having substantially or similar end use. Based upon the comments received, EPA no longer believes that this definition would be unduly burdensome nor will it lead to uneconomical supplies. Since all lubricating oils serve similar end uses (reducing friction), all lubricating oils

[3] The term "government fleet" includes (1) vehicles owned by a procuring agency and operated or maintained on behalf of the agency by a contractor, (2) vehicles owned by a contractor or a third party and leased to or used by a procuring agency, and (3) vehicles owned by a contractor and used by the contractor with respect to work performed under contract to a procuring agency.

should be considered to be functionally equivalent for purposes of the $10,000 threshold. Accordingly, EPA has revised § 252.3(a) to provide that all lubricating oils are functionally equivalent items for purposes of the $10,000 threshold.

C. Definitions

Most of the definitions used in this procurement guideline are used in RCRA and therefore need no further explanation.

For purposes of this guideline, the terms lubricating oils, engine lubricating oils, gear oils, and hydraulic fluids refer to petroleum-based oils. These terms include synthetic oils derived from petroleum.

Section 6002(c) requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable* and section 6002(i) requires procuring agencies to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). EPA defined the term "practicable" in the final paper guideline, 52 FR 37297 (October 6, 1987), and is including the definition in all other procurement guidelines as well.

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that Congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: (1) Performance in accordance with applicable specifications; (2) availability at a reasonable price; (3) availability within a reasonable period of time; and (4) maintenance of a satisfactory level of competition. EPA's definition of practicable incorporates these criteria.

D. Requirements vs. Recommendations

RCRA section 6002 requires procuring agencies and contracting officers to perform certain activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. EPA has incorporated the section 6002 requirements into the guideline for the benefit of procuring agencies. As a result, the guideline contains two types of provisions: Requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). As used in this guideline, the verbs "shall" and "must" indicate section 6002 requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations for complying with those requirements.

Procuring agencies must comply with the requirements of section 6002, whereas EPA's recommendations are only advisory in nature. Procuring agencies may choose to use other approaches which satisfy the section 6002 requirements. However, EPA believes that if a procuring agency chooses to follow EPA's recommendations, that agency will be in compliance with the section 6002 requirements.

E. Specifications

Subpart B of the guideline, Specifications, contains two sections, Revisions and Recommendations.

1. *Revisions.* RCRA section 6002(d) contains two requirements for revising specifications for procurement items. First, Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications by May 8, 1986, to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials (section 6002(d)(1)). This requirement applies, in the case of lubricating oils, to the Department of Defense. EPA knows of no other Federal agency that drafts or reviews lubricating oil specifications.

Second, within one year after the date of publication of a guideline as a final rule, Federal agencies must assure that their specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (section 6002(d)(2)). EPA believes that this second requirement is more extensive than the first requirement. Simply eliminating discriminatory provisions, as required by section 6002(d)(1), is not sufficient to meet all the obligations of section 6002(d). EPA believes, however, that compliance with the affirmative procurement requirements of section 6002(i) fulfills the section 6002(d)(2) requirements because an affirmative procurement program should result in procurement to the maximum extent practicable.

EPA believes that the second specification revision requirement also applies to non-Federal procuring agencies which procure lubricating oils with appropriated Federal funds. Unless their specifications are revised to allow the use of re-refined oils, these agencies will be unable to implement the affirmative procurement requirements of RCRA section 6002(c)(1) and (i). For this reason, § 252.10(b) of the guideline provides that all *procuring agencies* (rather than "Federal agencies" as provided in the Act) must assure that their specifications for lubricating oils require the use of re-refined oil to the maximum extent possible without jeopardizing the intended end use of these items.

2. *Recommendations.* The Department of Defense has undertaken an active program to revise its lubricating oil specifications to eliminate discrimination against re-refined oils. The program includes detailed testing of re-refined oils to determine their ability to meet existing military specifications. Military specifications (Mil Specs) for engine lubricating oils, hydraulic fluids, and gear oils that can be met by products containing re-refined oil are identified in § 252.11 of the guideline.

The Mil Specs identified in § 252.11 are the same specifications identified in the proposed guideline. A commenter noted that the current version of MIL-L-21260 excludes re-refined oils. EPA contacted the Department of Defense's Fort Belvoir R & D Center regarding this specification and was informed that a new version of the specification, MIL-L-21260D, has been completed and does allow re-refined oils.

Some Federal agencies, State and local agencies, and private purchasers use commercial specifications when procuring engine lubricating oils. For example, the operator's manual accompanying a new vehicle identifies the American Petroleum Institute (API) engine service categories for the engine oil that should be used in that vehicle. The categories are based on the lubrication requirements of the vehicle engine as well as engine manufacturers' warranties. They also correspond to the Mil Specs for administrative and tactical vehicles.

The proposed guideline did not identify commercial specifications. In response to comments, EPA has added the API service categories to the list of recommended specifications in § 252.11 of the guideline. Table 1 shows the API engine service categories and the related Mil Specs. Note that if an oil meets the Mil Spec, it will meet the corresponding API category.

TABLE 1

API engine service category	Related military specifications
SF—1980 Gasoline Engine Warranty Maintenance Service.	MIL-L-46152B
CC—Diesel Engine Service	MIL-L-46152B

TABLE 1—Continued

API engine service category	Related military specifications
CD—Diesel Engine Service	MIL-L-2104D

EPA recommends that procuring agencies use the specifications identified in § 252.11 when procuring lubricating oils containing re-refined oil. Copies of the Mil Specs can be obtained from:

Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120.

Information about the API engine service classification system can be obtained from: American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

F. Affirmative Procurement Program

RCRA section 6002(i) requires procuring agencies to adopt an affirmative procurement program to ensure that lubricating oils containing re-refined oil are purchased to the maximum extent practicable. The program must contain four elements: (1) A recovered materials preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification; and (4) procedures for annual review and monitoring of the program's effectiveness. The following sections explain EPA's recommendations for each element of the affirmative procurement program. The program must be established within one year of the date of publication of this guideline as a final rule.

1. *Recovered Materials Preference Program.* Under section 6002(i)(3), procuring agencies have three options for implementing the preference program. They can employ a case-by-case approach, adopt minimum content standards, or choose an approach that is substantially equivalent to the preceding approaches. EPA has concluded that in the case of lubricating oils, the minimum content standards approach is the preferred approach for meeting the statutory requirement to procure products containing the highest percentage of recovered materials practicable. Of course, under the statute, EPA retains the option to revise the guideline and to change its recommendation depending on experience with this guideline and information available at that time.

EPA notes that this approach is a recommendation for implementing the preference program requirement of section 6002(i). EPA believes that if a procuring agency follows EPA's recommendations, it will meet the requirements of RCRA. Procuring agencies may employ the other approaches identified in section 6002(i), however, as long as they develop some affirmative program as required by the statute. Procuring agencies that adopt other approaches must ensure that such preference programs achieve the procurement of lubricating oils containing "the maximum percentage of recovered materials practicable."

EPA considered other procurement approaches, such as set-asides, price preferences, and closed loop agreements. As discussed in sections IV.F.1.d. and V.A., respectively, EPA is constrained from recommending set-asides and price preferences. Closed loop agreements do not have national applicability. Procuring agencies can consider any or all of these approaches if they believe that there are no legal or geographic constraints on using them.

In the final guideline issued today, EPA recommends a minimum re-refined oil content standard of 25 percent. The following sections provide a detailed discussion of the basis for the minimum content standard, including legal and technical considerations.

a. *Background.* As discussed in the "Technically Proven Uses" section of this preamble, the re-refining industry has declined during the last twenty years due to technical, regulatory, and economic factors. The technical and regulatory hurdles essentially have been overcome. New re-refining technologies capable of removing the complex additives and contaminants in used oil have been developed and are in use commercially; prejudicial regulatory requirements providing for labeling of re-refined oil as "made from previously used oil" have been eliminated; and a 6 cents per gallon Federal excise tax no longer applies to re-refined oil. However, the economic hurdles remain. EPA believes that the procurement guideline will assist the industry to overcome some of the economic hurdles without providing subsidies as previously discussed.

b. *Legal considerations.* RCRA section 6002(i)(1) requires that affirmative procurement programs be "consistent with applicable Federal procurement law." EPA was concerned that minimum content standards might violate the Competition in Contracting Act of 1984 (CICA) (10 U.S.C. Chapter 137) and the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1). Both provide that specifications restricting what can be offered by bidders are legally permissible only to the extent that they reflect the Government's minimum needs or are authorized by law. (CICA § 2711(a)(1), 48 CFR 10.002(a)(3)(ii).) EPA has concluded that RCRA section 6002 provides the necessary authorization. Section 6002(i)(3)(B) expressly permits agencies to establish specifications which restrict bids to those which meet a minimum content standard. Therefore, minimum content standards are not in violation of general Federal procurement law.

CICA requires agencies to use full and open competitive procedures when procuring property and services. The term "full and open competition" means that all responsible sources must be permitted to submit a bid. In the case of a procurement against a restrictive specification, such as a minimum content standard, "full and open competition" means that all responsible sources who can meet the specification can bid. The preference program recommendation in the final guideline is consistent with this requirement, since any vendor of oil can submit a bid as long as the product offered contains the minimum re-refined oil content.

c. *The minimum content recommendation.* The current capacity of existing re-refineries exceeds government lubricating oil needs. Thus, in theory, procuring agencies could purchase 100 percent of their annual needs from re-refiners. In actuality, there are many factors that will affect the price and availability of re-refined oils. These include the costs of obtaining used oil to use as feedstock, the availability of a constant feedstock for the re-refining process, costs associated with transporting the oils to geographically distant users, costs associated with qualifying the re-refined oil, and requirements that might arise in the future (such as costs of complying with EPA's proposed regulations for used oil). EPA found relatively little data with which to quantify these factors. In fact, a 1983 DOD study concluded that local factors, which could not be generalized, would be determinative.[4]

The Federal government alone annually purchases over 7 million gallons of vehicular lubricating oils, 800,000 gallons of gear oil, and 700,000 gallons of hydraulic fluid. A minimum content standard as low as 5 percent re-refined oils would result in purchases of 425,000 gallons annually. Thus, EPA believes that minimum content

[4] Construction Engineering Research Laboratory U.S. Army Corps of Engineers, *Feasibility of Department of Defense Used Lubricating Oil Re-refining*, December 1983.

standards should provide an incentive to the re-refining industry to qualify and bid their product.

RCRA provides four criteria for establishing a minimum content standard. Section 6002(i)(3)(B) provides that the minimum content required by a specification must be the maximum available without jeopardizing the intended end use of the item or violating the limitations of section 6002(c)(1) (A)-(C). Thus, the four criteria are (1) the intended end use of the item, (2) availability, (3) technical performance, and (4) price.

The first criterion will be satisfied by any re-refined oil content level. Lubricating oils are commercially available containing either 100 percent re-refined oils or blends of virgin and re-refined oils. In addition, DOD has determined that re-refined oils will not jeopardize the intended end use of lubricating oils in tactical and administrative vehicles, as hydraulic fluids, and as general purpose gear oils; the specifications for these items either specifically allow the use of re-refined oils or do not prohibit it. Similarly, the third criterion will be satisfied by any content level because the performance testing required to qualify oils as meeting API performance categories and for the QPL assures that the oils will meet the specifications. Thus, the availability and price criteria will be the key determinants of the minimum content standard.

EPA proposed two alternative approaches to setting a minimum content standard. Under the first alternative, EPA would recommend that procuring agencies use minimum content standards but leave it up to procuring agencies to set a level that both satisfies the statutory criteria and meets their needs. Under the second alternative, EPA would recommend that procuring agencies set a minimum re-refined oil content standard of at least 25 percent.

(1) *Alternative approaches.* With one exception, all commenters that expressed a preference stated that EPA should recommend the minimum re-refined oil content in lubricating oils. The commenters stated that under the first alternative, too lax a standard would be established, procuring agencies would ignore affirmative procurement, and an inconsistent set of standards would be developed. The State of New Jersey noted that when procuring agencies were permitted to set their own minimum recovered materials content standards for paper, the agencies chose paper with virgin content rather than recovered content. New Jersey predicted the same result for lubricating oils.

The one commenter preferring the first alternative stated that individual activities should be permitted flexibility to decide the minimum content. In response to this comment, EPA reiterates that minimum content standards in EPA procurement guidelines are recommendations for implementing the statutory requirement to procure designated items containing the highest percentage of recovered materials practicable. Procuring agencies can set their own minimum content standards, but they must ensure that such standards are the maximum practicable, as required by RCRA section 6002.

(2) *Twenty-five percent standard.* The second alternative to establishing minimum content standards set out in the proposed guideline recommended that procuring agencies set their minimum content standard at the highest level of re-refined oil that they determine meets the statutory criteria (i.e., performance, availability, and price) but at least at 25 percent. Under this approach, if a procuring agency determines that lubricating oils containing more than 25 percent re-refined oil is available at a reasonable price and with satisfactory competition, then the agency should establish a higher minimum content standard. Otherwise, the agency should use 25 percent.

In the proposed guideline, EPA stated that there are several advantages to the 25 percent minimum content level. First, a 25 percent level can be achieved with existing re-refining capacity. Second, blending of re-refined oil and virgin oil is a common industry practice, and blends containing 25 percent re-refined oil are common. Third, blends of virgin and re-refined oil can be sold to procuring agencies by re-refiners, compounders (i.e., blenders), or virgin oil vendors. This larger number of vendors should be able to supply the procuring agencies' needs at a reasonable price. In addition, vendors of virgin oil currently on the Qualified Products List may be willing to continue supplying oil since the blends will still be 75 percent virgin oil. Two of these vendors submitted comments to EPA specifically endorsing the proposed 25 percent minimum content standard, and no commenters that identified themselves as vendors to the Federal government opposed use of the minimum content standard. Fourth, although these oils must be requalified due to the addition of re-refined oils, industry spokespeople have suggested that the re-refiners and/or the additive manufacturers may be willing to bear some or all of the cost of requalification. Finally, EPA recognizes that it is important to the Department of Defense, for national security reasons, that there be a large number of vendors on the Qualified Products List. Thus, a level that both encourages existing vendors to *stay* in the government market and new vendors to enter the market is necessary.

EPA requested and received comments on the proposed 25 percent minimum content standard. No commenters suggested a standard lower than 25 percent. Several commenters suggested a higher standard (35 or 50 percent) but for the reasons discussed below, EPA has decided to recommend a 25 percent standard in the final guideline.

First, the commenters did not provide EPA with any information demonstrating that a higher standard is the highest level practicable. As EPA explained in the proposed guideline, re-refiners might not be able to supply procuring agencies' needs nationwide if the standard were higher than 25 percent due to availability and price constraints, 52 FR 38845 (October 19, 1987). EPA still believes this to be true. Certainly, if lubricating oils containing a higher percentage of re-refined oil are available at a reasonable price in a particular geographic area, they can be offered to and purchased by procuring agencies located in that area.

Second, once a minimum content standard level is established, vendors must offer lubricating oils containing *at least* that percentage of re-refined oil in order to be responsive to the procuring agencies' invitations for bid. If lubricating oils containing the minimum percentage of re-refined oil are not available, then there will be no procurement of these oils at all. Procuring agencies cannot consider bids from vendors offering less than the minimum because such bids are nonresponsive.

Third, the re-refining industry supports the 25 percent standard as the maximum practicable at this time. Similarly, several vendors of oil, including two vendors currently supplying the Federal government, endorsed the 25 percent standard. This support from the suppliers and vendors indicates that lubricating oil containing 25 percent re-refined oil will be available to procuring agencies.

Finally, as affirmative procurement of lubricating oils containing re-refined oil is implemented, evidence of national availability might show that a higher minimum content standard is warranted. EPA then will consider revising the guideline.

d. *Other related comments.* One commenter stated that the 25 percent standard should be measured against total annual lubricating oil procurements rather than applying it to each procurement. Under this scheme, individual purchases could range from 0 percent to 100 percent re-refined oil, as long as 25 percent of the annual purchase is re-refined. This proposed approach is not a minimum content standard at all. Rather, it is a procurement goal. EPA believes that this approach would be difficult to implement. Lubricating oils are purchased against military or industrial specifications, both of which require performance testing. Changes in the lubricating oil basestock, such as use of different mixtures of virgin and re-refined oil, requires new performance testing. Since the tests are costly, EPA believes that vendors will not be willing to constantly retest their product. The incentive for vendors to offer lubricating oils containing re-refined oil may be reduced unless a procuring agency uses a set minimum content standard.

Another means to implement a 25 percent goal is through set asides. EPA believes that Congress did not contemplate the adoption of set-asides to fulfill the objectives of section 6002. As discussed in the final paper guideline, 52 FR 37298–37299 (October 6, 1987), section 6002(i) also requires that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congress has established preferential procurement programs in order to attain socioeconomic goals. Among those are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and set-asides are currently being used in some state programs for the procurement of paper and paper products containing recovered materials. As of January 1988, five states and two cities use price preference programs in which products containing recovered materials may cost from 5 to 10 percent more than virgin materials. Two states have set-aside programs, one for paper and paper products, the other for all types of products. These states report that they successfully procure products containing recovered materials.

EPA has considered recommending these programs at the Federal level. However, in the case of existing Federal preferential procurement programs that allow a price preference or set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of section 6002 seems to contemplate the adoption of either price preferences or set-asides, and doing so would conflict with existing Federal procurement regulations. Therefore, rather than recommending price preferences or set-asides, EPA is recommending that procuring agencies use the procurement mechanisms provided in RCRA section 6002(i)(3).

A commenter stated that once a mixing level (i.e., minimum content standard) has been established, it should continue without constant change due to the expense associated with requalifying products. EPA believes that this point pertains to both the price and availability criteria for establishing minimum content standards. EPA believes that this is a legitimate concern and will consider it in the future when deciding whether to recommend a different minimum content standard.

A commenter suggested that the preference program include a preference for United States-manufactured re-refined oil and United States-generated used oil feedstock. The commenter further stated that products manufactured outside the United States must be excluded. These concerns are addressed by the Buy America Act, 41 U.S.C. 10, and implementing regulations in the Federal Acquisition Regulation, 48 CFR Part 25, Subpart 25.1, which require that domestic end products be acquired for public use unless one of five exceptions is satisfied. RCRA section 6002(i) provides that affirmative procurement programs shall be "consistent with applicable provisions of Federal procurement law", and applicable Federal procurement law addresses preferences for domestic products through the Buy America Act. Thus, it is not necessary specifically to address such concerns in the procurement guideline issued today.

Some Federal agencies procure lubricating oil changes for their vehicles at service stations or other commercial establishments. A Federal agency suggested that the requirements of section 6002 do not apply to these type of transactions. As discussed above under "Applicability," section 6002 does apply as long as the $10,000 threshold is exceeded. Procuring agencies which procure lubricating oil changes at service stations or other commercial establishments should also use the minimum content standards approach. These agencies could issue dual invitations for bid—one specifying lubricating oils containing the minimum re-refined oil content standard and one specifying simply lubricating oils. The agencies could then open the bids from vendors offering oil containing re-refined oil. If these bids are satisfactory (e.g., satisfactory competition, reasonable price, reasonable availability), then the contract will be awarded to one or more of these bidders, and the bids from the second group of bidders will be discarded unopened. If the bids from the first group are not satisfactory, then the bids from the second group will also be opened.

Similarly, a commenter expressed concern that use of minimum content standards conflicts with current Federal procurement policy, which strongly emphasizes the need to "buy commercial" rather than to create unique Federal specifications and requirements. EPA wishes to emphasize to procuring agencies that RCRA section 6002 and procurement guidelines issued pursuant to it preempt the "buy commercial" policy. The section 6002(i) affirmative procurement program is a mechanism deliberately established by Congress to alter the status quo in order to implement environmental policy.

e. *Limitations set by RCRA.* As mentioned above, the minimum content standard would be subject to the limitations provided in RCRA section 6002, namely, not jeopardizing the intended end use of the product, reasonable availability, reasonable price, ability to meet the specifications, and maintenance of competition. For example, if a procuring agency determines that it cannot obtain a designated oil containing the minimum amount of re-refined oil or that it cannot obtain the oil at a reasonable price, then the procuring agency can suspend the minimum content standard.

One objection to a minimum re-refined oil content standard is that the virgin oil suppliers will not bid because they will not want to requalify their oils. This is an availability issue. If procuring agencies find that the designated oils with the specified minimum re-refined oil content are unavailable, then they are not required to solicit bids for that specification. Instead, they may solicit bids for virgin oil.

A related objection is that re-refiners cannot supply procuring agencies with

all grades of the designated oils. Again, this is an availability issue. If prospective bidders have not qualified their oils or have not qualified them for all grades of the designated oils, then procuring agencies are not required to solicit bids for re-refined oils for those grades.

Similarly, if there will not be a satisfactory level of competition,[5] procuring agencies are not required to solicit bids for the minimum content specification.

f. *Procurement procedures.* Congress provided in section 6002(d) of RCRA that procuring agencies must revise their specifications for procurement items designated by EPA to assure that such specifications require the use of recovered materials to the maximum extent possible. As used in this provision, the term "specifications" should not be viewed in the narrow technical sense of an item specification. Congress intended to refer to all procurement practices related to specifying what a procuring agency intends to purchase. As a result, procuring agencies must review all aspects of their procurement practices for lubricating oils and eliminate any practice that discriminates against re-refined oils. For example, if a procuring agency invites bids to supply a broad range of lubricating oils on an "all or none" basis, while vendors of lubricating oils containing re-refined oil are qualified to supply some but not all of these items, then these vendors will not be able to bid on the contract. Other examples of potentially discriminatory procurement practices are excessively long contract terms, excessively large contract quantities, and excessively broad geographic or market coverage.

g. *Case-by-case approach.* In the preamble to the proposed guideline, EPA explained that it considered the case-by-case approach for procurement of lubricating oils containing re-refined oil but was not recommending it. EPA concluded, based on the experience of the Department of Defense procurement procedures for procuring lubricating oils, that the case-by-case approach would not result in procurement of re-refined oil to the maximum extent practicable, 52 FR 38844 (October 19, 1987). As part of that discussion, EPA described the mechanics of the case-by-case approach. Several commenters disagreed with this description of the mechanics of the case-by-case approach and stated that if EPA were to recommend use of this approach in the final lubricating oils guideline, the description of the approach should be revised. (These commenters did not suggest that EPA recommend the case-by-case approach.) As noted, EPA has decided not to recommend use of the case-by-case approach in the final guideline issued today.

h. *Substantially equivalent alternative.* As noted above, EPA considered closed loop and quasi-closed loop contracts for procurement of lubricating oil containing re-refined oil. EPA decided not to recommend them because they do not have national applicability. These types of contractual arrangements might be a feasible means of procuring lubricating oil containing re-refined oil, however, for procuring agencies purchasing lubricating oil for smaller geographic areas.

2. *Promotion Program.* The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. The proposed guideline recommended several methods for procuring agencies to use for disseminating information about their preference programs, such as placing statements in invitations to bid, discussing the program at bidders' conferences, and informing industry trade associations about the program. These methods are recommended in the final guideline. In addition, EPA has added a recommendation to issue a press release describing the preference program to recycling industry journals.

3. *Estimates, Certification, and Verification.* The third requirement of the affirmative procurement program set forth in section 6002(i) concerns estimates, certification, and verification of recovered material content in procurements. Estimates and certifications of content in an item are most easily expressed as a percentage of total content and can range from 0 percent to 100 percent, depending on the amount of re-refined oil in the blend. Many questions have been raised about these requirements, such as when the information should be provided, who is to provide it, how it is to be obtained, and how it is to be verified. To clarify this subject, it is necessary to review the requirements of the statute.

a. *Estimation.* RCRA sections 6002(c)(3)(B) and 6002(i)(2)(C) require that, after the effective date of a guideline, contracting officers must require vendors who supply Federal procuring agencies with products covered by the guideline to provide an estimate of the total percentage of recovered materials contained in the items. EPA believes that this requirement is for the purpose of gathering statistical information on price, quantity, availability, and performance of products made from recovered materials. EPA further believes that this requirement applies regardless of whether the procurement solicitation specifies that recovered materials can or must be used. Estimates may differ from the percentages of minimum recovered content specified in certifications. The estimates will provide current data for the procuring agency's annual review of its procurement program. EPA is recommending that procuring agencies retain these data for three years by type of product, quantity purchased, and price paid.

b. *Certification.* The use of certifications is common in government procurement. A certification is written assurance that goods or services delivered will fulfill the contractual requirements. Failure to meet conditions which have been certified can result in penalties to a vendor. RCRA section 6002(c)(3)(A) requires that after the effective date of this guideline, vendors must "certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements". RCRA section 6002(i)(2)(C) requires "certification of minimum recovered materials content actually utilized * * *".

Together, these sections could be interpreted to mean that multiple certifications will be required: One when bids are offered, and another with each shipment. This issue was addressed in EPA's guideline for paper and paper products issued October 6, 1987 (52 FR 37300). EPA concluded that one certification would fulfill both statutory requirements. In the proposed lubricating oils guideline, however, EPA stated that two certifications were required. In response to comments recommending use of a single certification and to be consistent with the paper guideline, EPA is recommending in the final guideline issued today that procuring agencies meet the certification requirement in RCRA sections 6002(c)(3)(A) and

[5] The Federal Acquisition Regulation requires submission of certified cost or price data before awarding a negotiated contract (one awarded without using sealed bidding procedures) or modifying certain contracts, unless the contracting officer determines that the prices are based on "adequate price competition. 48 CFR 15.804-3(b) states that price competition exists if offers are solicited; two or more responsible offerors that can satisfy the Government's requirements submit price offers responsive to the solicitation's expressed requirements; and these offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

6002(i)(2)(C) by using a single certification. EPA recommends that procuring agencies require certifications as a condition of a responsive bid when bids are offered.

Note that there is no requirement to certify the actual recovered content, but rather that the recovered content actually used meets the contract minimum. When minimum content standards are used, the contract minimum is the standard specified in the solicitation or invitation for bid.

Accordingly, EPA recommends that procuring agencies require certification as a condition of a responsive bid when bids are offered, regardless of whether the case-by-case, minimum content standard, or a substantially equivalent approach is used. Also, as previously stated, the successful vendor must estimate the actual recovered content in lubricating oils that are supplied. The estimate may or may not be different than the minimum percentage that is certified.

EPA understands that for both estimation and certification, the vendor might not have direct knowledge of recovered materials content, particularly if the vendor is not the manufacturer or the blender. Only the manufacturer or blender that produces the lubricating oil will have that information. However, there is no direct authority in RCRA section 6002 for the Federal government to require this information from anyone but the vendor. Therefore, the vendor must make its own arrangements for obtaining this information from the manufacturer.

c. *Verification.* Procuring agencies also are required to establish reasonable procedures to verify the estimates and certification (RCRA section 6002(i)(2)(C)). While it is not possilble to verify re-refined oil content by chemical analysis, it is possible to verify content by reviewing mixing records of the manufacturer or blender. Note that the procuring agency must use some authority other than RCRA to inspect these records or must require vendors to have an agreement with the manufacturer to supply such information or access to the procuring agency. Accordingly, EPA recommended in the proposed guideline that procuring agencies simply modify their existing quality assurance procedures, as developed under Part 46 of the Federal Acquisition Regulation, to include verification of estimates.

During development of the proposed guideline, EPA received information from the National Bureau of Standards and DOD's Fort Belvoir R & D Center (which develops lubricating oil Mil Specs) regarding procedures for verifying the quality of lubricating oils containing re-refined oil. One commenter, the procurement arm of a large Federal agency, questioned the availability of verification procedures. EPA suggests that this commenter and anyone else interested in a more detailed description of verification procedures, consult the following sources:

- The Mil Specs identified in § 252.10,
- "Measurements and Standards for Recycled Oil—IV, Proceedings of a Conference Held at NBS September 14–16, 1982," NBS SP–674, National Bureau of Standards, Washington, DC, July 1984, or
- U.S. Army Belvoir Research and Development Center, Attn: STRBE–VF, Ft. Belvoir, VA 22060–5606, (703) 664–3576.

The Mil Specs and the NBS publication are in the public docket for this guideline. The address for obtaining the Mil Specs is provided in § 252.10. The NBS publication can be obtained from National Technical Information Service, 5285 Port Royal Road, Springfield, VA, (703) 487–4650. The document number is PB 84235902.

4. *Annual Review and Monitoring.* The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. In the proposed guideline, EPA recommended that the review include an estimate of the quantity of lubricating oils containing re-refined oils purchased during the year, an assessment of the effectiveness of the agency promotion program, and an assessment of any remaining barriers to procurement of re-refined oils. In assessing barriers to procurement, procuring agencies should determine whether they are internal or external. Internal barriers, such as resistance to use of lubricating oils containing re-refined oil by agency personnel, without cause, can be corrected by the procuring agencies. External barriers, such as unavailability of lubricating oils containing re-refined oil, may well be beyond the agencies' control. These recommendations are unchanged in the final guideline.

EPA received three categories of comments on the annual review and monitoring portion of the guideline. These categories are recordkeeping, excusing procuring agencies from compliance with the requirement, and annual reviews by EPA.

a. *Recordkeeping.* In the proposed amendments to the paper and paper products procurement guideline, EPA recommended that procuring agencies compile statistical records of paper and paper products procurements. EPA identified six categories of data, recommended that a summary of the data be included in the procuring agency's annual review, and recommended that procuring agencies send a report discussing the findings made during the annual review to the Office of Federal Procurement Policy (OFPP) for inclusion in OFPP's biennial report to Congress. Commenters on the proposed lubricating oils guideline recommended that EPA include the recordkeeping provisions in the final lubricating oils guideline. EPA agrees with this recommendation, with one exception.

OFPP has informed EPA that it does not have the technical expertise to review the data. For this reason, EPA is no longer recommending that procuring agencies send a report discussing their findings to OFPP. EPA continues to believe that this information will be useful to the public, however. EPA notes that this guideline will apply to state and local procuring agencies and contractors, as explained under "Applicability." Information drawn from the experience of Federal procuring agencies about purchases of lubricating oils containing re-refined oil would therefore be useful to these persons. Accordingly, EPA encourages Federal procuring agencies to make their reports available to the public.

EPA has concluded that one purpose of the estimation requirement in RCRA section 6002 is to provide information to procuring agencies that can be used in future procurements. For example, if vendors consistently estimate that their lubricating oils contain a higher percentage of re-refined oil than the minimum content standard, the procuring agency should determine whether it should raise its minimum content standard in order to satisfy the statutory requirement of procuring lubricating oils containing the highest percentage of re-refined oil practicable. EPA believes that unless a procuring agency compiles such information, it will not be fulfilling its statutory obligations.

A program for gathering statistics need not be elaborate to be effective. However, procuring agencies should monitor their procurements to compile data on the following:

(a) The percentages of re-refined oil content in the products procured or offered;

(b) Comparative price information on competitive procurements;

(c) A quantity of each type of lubricating oil procured over a fiscal year;

(d) The availability of lubricating oils to procuring agencies;

(e) Types of quality verification tests conducted, if any, together with the categories of lubricating oils containing re-refined oil that failed the tests, the percentage of total virgin products and products containing re-refined oil, respectively, that failed each test, and the nature of the failure;

(f) Agency experience with the performance of the procured products.

Rather than keep records of each test performed, procuring agencies should identify the quality verification tests used and maintain records, by test, on the percentage of failures by virgin oils and by lubricating oils containing re-refined oil, as well as the nature of these failures.

EPA recommends that each procuring agency prepare a report on its annual review and monitoring of the effectiveness of its procurement program. As part of the report, agencies using minimum content standards should determine whether their minimum content standard should be raised, lowered, or remain constant. Agencies using the case-by-case approach or a substantially equivalent alternative should ensure that their preference program results in procurement of lubricating oils containing re-refined oil to the maximum extent practicable. The basis for these determinations should be a review of the data compiled on re-refined oil content, price, availability, and performance, as well as a comparison of estimates and certification provided by the vendors. Agencies should also document specification revisions made during the reporting period.

In the final guideline issued today, EPA has added several paragraphs to § 252.24 to incorporate the recordkeeping recommendations. Paragraph (c) identifies the six categories of records. Paragraph (b)(4) recommends that the annual review include a summary of the data compiled in each category. Paragraph (d) recommends that the results of the annual review be made available to the public.

A commenter stated that the recordkeeping provisions should be requirements rather than recommendations. The commenter argues that EPA has full authority to make the recordkeeping provisions requirements and that the statutory basis is as firm as the basis for stating in § 252.23 (a) and (b) that contracting officers must require vendors to submit estimates and certifications of re-refined oil content. EPA disagrees. Section 6002 clearly identifies what is required of procuring agencies, and recordkeeping is not included. On the other hand, contracting officers are required to obtain estimates and certifications from vendors. Section 6002 does not authorize EPA to require anything of procuring agencies, let alone recordkeeping. Thus, EPA can only recommend that procuring agencies keep records on procurements of items containing recovered materials.

b. *Compliance with the annual review and monitoring requirement.* A commenter recommended that the guideline relieve procuring agencies of the annual review and monitoring requirement if a re-refiner is not in their geographic area. This commenter should note that the annual review is required by statute; as such, neither EPA nor the guideline can relieve procuring agencies from compliance. Further, even if a procuring agency does not procure lubricating oils containing re-refined oil during the year, the agency must conduct a review of its affirmative procurement program. The agency must determine whether its promotion program is achieving its objective, whether procurement practices or procedures are providing obstacles to procurement of lubricating oils containing re-refined oil, and whether oil was not procured due to lack of competition, reasonable price, or reasonable availability.

c. *Annual reviews by EPA.* A commenter suggested that EPA take an active role in reviewing procuring agency's affirmative procurement programs, determining program effectiveness, and assessing barriers. As previously indicated, EPA will from time to time review and revise the guideline as required by section 6002. At that time, the Agency will be assessing the effectiveness of affirmative programs in order to decide how its guideline may need to be amended.

V. Price, Competition, Availability, and Performance

Section 6002(c)(1) of RCRA provides that a procuring agency may decide not to purchase an item designated by EPA if it determines that the item is available only at an unreasonable price, a satisfactory level of competition cannot be maintained, the item is not reasonably available within a reasonable period of time, or the item fails to meet the performance standards. EPA has considered the effect of these limitations on procurement of lubricating oils containing re-refined oil.

A. Price

Several factors will affect the market price, or bid price, of lubricating oils containing re-refined oil, including the availability and cost of used oil feedstock, transportation costs, qualification costs, excess re-refining capacity, and the yield of oil from the re-refining process. Since these factors are site-specific and variable, EPA believes that the best method of determining price is through the marketplace.

Section 6002 provides that a procuring agency may not purchase a designated item if the price is "unreasonable." In the proposed guideline, EPA recommended that procuring agencies interpret this provision to mean that there is *little or no increase* over the price of virgin oil (emphasis added). Several commenters interpreted this statement to mean that EPA was recommending payment of price premiums. In addition, commenters on several of the other procurement guidelines stated that a "reasonable price" includes price preferences. EPA is clarifying its interpretation of the unreasonable price provision today.

Each procuring agency may decide whether or not a "reasonable price" includes a price preference. As EPA stated in the paper guideline, 52 FR 37298–37299 (October 6, 1987), RCRA section 6002 does not provide explicit authority to EPA to authorize or recommend payment of a price preference or to create a set-aside. Therefore, unless an agency has an independent authority to provide a price preference or to create a set-aside, EPA believes that a price is "unreasonable" if it is greater than the price of a competing product made of virgin material.

However, it should be borne in mind that, when product specifications require a recovered material content, there is no way to guarantee that every item procured under those specifications was procured at a price no greater than the price that would have been paid in the absence of those specifications. On the contrary, EPA expects that there will be fluctuations in price in both directions. Therefore, EPA interprets the reasonable price provision of RCRA section 6002(c)(1)(C) for those specifications to mean that there is no projected or observed long-term or average increase over the price of comparable virgin items.

A commenter stated that EPA had provided an inadequate analysis of the issues that go into determining what constitutes a reasonable price. EPA believes that it has identified the factors which will influence the price of lubricating oils containing re-refined oil and that a more detailed analysis is unwarranted. A more detailed analysis that translates the factors into specific

dollar amounts would require extensive modeling, which would require considerable time and funding. Any dollar amounts derived from this exercise would be valid only for a short period of time and probably would be obsolete by the time it was published in the **Federal Register**. More importantly, after delaying issuance of the guideline in order to generate this analysis, EPA would not change its recommendation for interpreting the reasonable price provisions because EPA is not authorized to require procuring agencies to expend additional funds for procurement of items containing recovered materials.

B. Competition

EPA recommends that determinations of "satisfactory" competition be made in accordance with Federal procurement law. For example, 48 CFR Part 14, Sealed Bidding, allows for award of bids even when a small number of bids have been received; see 48 CFR 14.407-1. In the case of negotiated contracts, 48 CFR 15.804-3(b) provides that competition exists if offers are solicited; two or more responsible offerors that can satisfy the Government's requirements submit price offers responsive to the solicitation's expressed requirements; and these offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

If there is inadequate competition, a procuring agency is not required to procure lubricating oils containing re-refined oil. Therefore, EPA considered competition when establishing the recommended minimum content standard and chose a level at which there was reasonable assurance of adequate competition. EPA knows of no analytical method of accurately setting minimum content standards that are low enough to assure satisfactory competition, and yet high enough to maximize the use of recovered materials, except through experience. Thus, EPA and procuring agencies must learn through trial and error how best to ensure competition while fulfilling the primary goals of this guideline.

DOD currently procures lubricating oils from ten to twelve businesses, at least two of which submitted comments supporting the proposed guideline with a 25 percent minimum content standard. EPA also received supportive comments from five re-refiners. If these seven companies alone submit bids, there will be a satisfactory level of competition.

EPA notes that procurement practices can have an impact on competition. For example, a procurement to supply large geographic areas or requiring delivery to geographic centers located throughout the United States could result in otherwise-qualified vendors not submitting bids. Section 6002 requires procuring agencies to review and revise such practices.

C. Availability

In the proposed guideline, EPA stated that lubricating oils containing re-refined oil would be available given the excess capacity in the re-refining industry. Commenters submitted conflicting data regarding the quantity of used oil available for re-refining and conflicting assertions regarding the availability of lubricating oils containing re-refined oil. EPA continues to believe that lubricating oils containing re-refined oil will be reasonably available within a reasonable period of time in the long-term, although there could be short-term unavailability or periodic fluctuations in availability.

If lubricating oils containing re-refined oil are not available, then procuring agencies are not required to buy them *at that time*. Procuring agencies are required to continue to promote their affirmative procurement programs, however, in order to encourage availability. In addition, procuring agencies are required to review procurement practices, such as requiring delivery to geographic centers located throughout the United States, and revise such practices if they discourage the availability of lubricating oils containing re-refined oil.

A commenter suggested that EPA provide a list of potential vendors and suppliers of re-refined oil products. EPA has not identified these persons and instead encourages procuring agencies to contact the Association of Petroleum Re-refiners, 1915 I Street NW., Suite 500, Washington, DC 20006, (202) 639-4490, for current information on vendors.

D. Performance

As discussed elsewhere in this guideline, the Federal government purchases petroleum products that meet American Petroleum Institute performance categories, commercial specifications, or government specifications. A product cannot carry an API designation and is not included on the Federal QPL until it successfully meets all qualification tests identified in the applicable specification. For this reason, once a lubricating oil containing re-refined oil carries an API designation or is included on the QPL, performance will not be a reason for procuring agencies to decline to purchase it.

VI. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1986 (i.e., 18 months after enactment of HSWA), (2) one year after the date of publication of an EPA guideline, and (3) the date specified in an EPA guideline. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the guideline explains these requirements.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items were to eliminate from such specifications any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was to be completed by May 8, 1986.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (section 6002(d)(2)). In addition, procuring agencies must develop an affirmative procurement program for purchasing designated items, in this instance, lubricating oils containing re-refined oils (section 6002(i)(1)). Both of these activities must be completed within one year after the date of publication of this guideline as a final rule.

Third, procuring agencies which procure items designated by EPA must procure such items containing the highest percentage of recovered materials practicable (section 6002(c)(1)). In addition, contracting officers must require vendors to submit estimates and certifications of recovered materials content (section 6002(c)(3)). Both of these activities must begin after the date specified by EPA in the applicable guideline. EPA believes that procuring agencies should begin to procure lubricating oils containing re-refined oil as soon as the specification revisions have been completed and the affirmative procurement programs have been developed. Since these latter activities must be completed within one year after publication of this guideline as a final rule, affirmative procurement should begin no later than one year from publication as well. Section 252.26 specifies this implementation date.

DOD asked EPA to delay promulgation of the final guideline for 12 months to allow completion of a series

of test solicitations. Since the requirement to begin affirmative procurement is not effective until one year after promulgation of the final guideline, EPA has concluded that delaying promulgation is unnecessary. The statute gives procuring agencies one year after promulgation of a guideline to develop an affirmative procurement program; DOD can pursue test solicitations during this period.

EPA expects cooperation from affected procuring agencies in implementing this guideline. Under section 6002(g) of RCRA, the Office of Federal Procurement Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of the requirements of section 6002 and for coordinating it with other Federal procurement policies. OFPP is required to report to Congress on actions taken by Federal agencies to implement section 6002.

VII. Other Comments

Several commenters suggested that EPA provide seminars to procuring agencies and vendors on such topics as procurement programs, price, and availability. EPA agrees that further guidance will need to be provided to procuring agencies and vendors regarding the implementation of this as well as the other procurement guidelines. Therefore, the Agency will be developing a plan for educating the various Federal agencies and vendors.

A commenter suggested several other methods to assist the re-refining industry, including tax credits and tax incentives. EPA is not authorized by RCRA to consider or recommend these mechanisms. Changes to the tax law will require Congressional action and implementation by other Federal agencies.

VIII. Supporting Analyses

Existing EPA, Department of Energy, Department of Defense, and National Bureau of Standards studies on the technical, economic, environmental, and institutional impacts of using re-refined oils were used as background documents for the guideline. In addition, EPA prepared an assessment of the impacts of the guideline, "Environmental, Economic, and Energy Impacts of Proposed 'Guideline for Federal Procurement of Re-refined Lubricating Oils.'" The bibliography to this document identifies the other EPA, DOE, DOD, and NBS studies.

One commenter stated that EPA should provide quantification of environmental impacts and overall energy savings in addition to unit energy savings. EPA does not believe that a more detailed analysis is necessary. It would require extensive modeling and would be both time-consuming and expensive. After delaying issuance of the guideline to generate this analysis, EPA would not change its decision to designate lubricating oils as an item subject to the requirements of RCRA section 6002.

A. Environmental Impacts

EPA expects the guideline to have a net positive impact on the environment by promoting recovery and re-use of used oil.

Re-refineries generate solid and hazardous wastes in the form of distillation bottoms, sludges, and contaminated clays. The quantity of waste depends on the type of re-refining process used and, in any event, is less than the quantity of used oil that would require disposal in the absence of re-refining. Some of these wastes (e.g., distillation bottoms) are sold as products. Other wastes must be disposed of. Re-refining also generates oily wastewater, which must be treated prior to discharge or re-use.

B. Energy Impacts

The re-refining process is a net consumer of energy. Re-refining uses between 5,000 and 14,000 British thermal units (Btus) per barrel of oil produced. In addition, because the re-refined oil product will be used as a lubricant, rather than as a fuel, the heating value of the oil is foregone.

However, re-refining is no different than virgin oil refining in this respect. Virgin oil refining requires 500–1,000,000 Btus per barrel of oil, depending on the type of crude oil used. And, because the oil is used as a lubricant, rather than as a fuel, the heating value of the virgin oil likewise is foregone.

C. Executive Order 12291

Under Executive Order 12291, EPA must determine whether a regulation is major or nonmajor. The guideline is not a major rule because it is unlikely to result in:

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

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

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

Increased usage of lubricating oils containing re-refined oil is not expected to produce recurring annual effects on the economy. The re-refining industry will incur some one-time costs in implementing the guideline, including product qualification and expansion of production to meet increased demand. The Federal government will also incur some one-time costs for implementing administrative procedures associated with the guideline. However, these one-time costs are not expected to be major.

An expanded market for used oil, coupled with EPA's new burning and blending regulations, might increase the cost of used oil to vendors (recyclers and blenders) but decrease the cost of used oil to re-refiners. Additionally, the cost of the final re-refined product itself is expected to be no less than that of a virgin refined product of the same category. To the extent it is less, civilian purchasers and various government procuring agencies can expect to benefit from this re-refined product cost advantage.

In the highly mechanized re-refining industry, production expansion is not expected to change the level of employment. Some vendors of the particular products affected by this guideline may not continue to sell those products to government agencies. However, it is not expected that government sales of these particular products, in most cases, represent a significant portion of the vendors' revenue. Therefore, the level of employment is expected to be unaffected by the guideline, while productivity measures may actually increase with its implementation. In conclusion, no significant adverse effects are expected to result from the guideline.

The final guideline was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

D. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As described in the environmental, energy, and economic impact document, the economic impact on both small businesses and small governmental

jurisdictions is expected to be in some cases, negligible and in other instances, beneficial. An extremely limited number of business and governmental entities are affected at all by the guideline.

For the above reasons, EPA certifies that this guideline will not have a significant economic impact on a substantial number of small entities. As a result, the guideline does not require a Regulatory Flexibility Analysis.

List of Subjects in 40 CFR Part 252

Engine lubricating oil, Gear oil, Government procurement, Hydraulic fluid, Military specifications, Recycling, Re-refined oils, Resource recovery.

Dated: June 23, 1988.

A. James Barnes,

Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended by adding a new Part 252 to read as follows:

PART 252—GUIDELINE FOR FEDERAL PROCUREMENT OF LUBRICATING OILS CONTAINING RE-REFINED OIL

Subpart A—General

Sec.
252.1 Purpose.
252.2 Designation.
252.3 Applicability.
252.4 Definitions.

Subpart B—Specifications

252.10 Revisions.
252.11 Recommendations.

Subpart C—Affirmative Procurement Program

252.20 General.
252.21 Preference program.
252.22 Promotion program.
252.23 Estimates, certification, and verification.
252.24 Annual review and monitoring.
252.25 Implementation.

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 252.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, as that section applies to procurement of lubricating oils containing re-refined oil.

(b) This guideline contains recommendations for use in implementing the requirements of section 6002, including revision of specifications, purchasing activities, and procurement.

(c) The Agency believes that adherence to the recommendations in the guideline constitutes compliance with section 6002. However, procuring agencies may adopt other types of procurement programs consistent with section 6002.

§ 252.2 Designation.

EPA designates lubricating oils as items which are or can be produced with recovered materials (re-refined oil) and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA. For purposes of this designation, "lubricating oils" means engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils.

§ 252.3 Applicability.

(a) (1) This guideline applies to all procuring agencies and to all procurement actions involving lubricating oils where the procuring agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. For purposes of the $10,000 threshold, all lubricating oils are considered to be "functionally equivalent."

(2) This guideline applies to Federal agencies, to State or local agencies using appropriated Federal funds, and to persons contracting with any such agencies with respect to work performed under such contracts. Federal agencies should note that the requirements of RCRA section 6002 apply to them whether or not appropriated Federal funds are used for procurement of items designated by EPA.

(3) The $10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies.

(b) The term "procurement actions" includes purchases made directly by a procuring agency and purchases made by any person directly in support of work being performed for a procuring agency (e.g., by a contractor).

(c) This guideline does not apply to purchases which are not the direct result of a contract, grant, loan, funds disbursement, or agreement with a procuring agency.

§ 252.4 Definitions.

As used in this guideline:

(a) "Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*

(b) "Engine lubricating oils" means petroleum-based oils used for reducing friction in engine parts.

(c) "Federal agency" means any department, agency, or other instrumentality of the Federal Government; any independent agency or establishment of the Federal Government including any Government corporation; and the Government Printing Office.

(d) "Gear oils" means petroleum-based oils used for lubricating machinery gears.

(e) "Hydraulic fluids" means petroleum-based hydraulic fluids.

(f) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body.

(g) "Practicable" means capable of being used consistent with: Performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition.

(h) "Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item.

(i) "Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(j) "Re-refined oils" means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(k) "Specification" means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references.

Subpart B—Specifications

§ 252.10 Revisions.

(a) Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications by May 8, 1986 to eliminate any exclusion of recovered materials and any

requirement that items be manufactured from virgin materials.

(b) Within one year after the effective date of this guideline, each procuring agency must assure that its specifications for lubricating oils require the use of re-refined oils to the maximum extent possible without jeopardizing the intended end use of these items.

(c) EPA recommends that procuring agencies use the specifications identified in § 252.11 of this part when procuring lubricating oils containing re-refined oil.

§ 252.11 Recommendations.

(a) EPA recommends that procuring agencies use the following specifications when procuring lubricating oils containing re-refined oil:

(1) Engine lubricating oils.

(i) MIL-L-46152B (or current version)—Lubricating Oil, Internal Combustion Engine, Administrative Service

(ii) API Engine Service Category SF—1980 Gasoline Engine Warranty Maintenance Service

(iii) API Engine Service Category CC—Diesel Engine Service

(iv) MIL-L-2104D (or current version)—Lubricating Oil, Internal Combustion Engine, Tactical Service

(v) API Engine Service Category CD—Diesel Engine Service

(vi) MIL-L-21260D (or current version)—Lubricating Oil, Internal Combustion Engine, Preservative and Break-In

(vii) MIL-L-46167 (current version)—Lubricating Oil, Internal Combustion Engine, Arctic

(2) Hydraulic fluids.

(i) MIL-H-5606 (current version)—Hydraulic Fluid, Petroleum Base; Aircraft, Missile, and Ordnance

(ii) MIL-H-6083 (current version)—Hydraulic Fluid, Petroleum Base, For Preservation and Operation

(3) Gear oils.

MIL-L-2105D (or current version) Lubricating Oil, Gear, Multipurpose

(b) Copies of the military specifications can be obtained from: Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120.

Subpart C—Affirmative Procurement Program

§ 252.20 General.

Within one year after the date of publication of this guideline as a final rule, each procuring agency which procures lubricating oils must establish an affirmative program for procuring such oils containing re-refined oil. The program must meet the requirements of section 6002(i) of RCRA, including the establishment of a preference program; a promotion program; procedures for obtaining estimates and certification of recovered materials content and for verifying the estimates and certifications; and an annual review and monitoring program. This subpart provides recommendations for implementing section 6002(i).

§ 252.21 Preference program.

(a)(1) EPA recommends that procuring agencies establish minimum re-refined oil content standards for lubricating oils subject to the limitations described in paragraph (b) of this section, so as to achieve procurement of lubricating oils containing re-refined oil to the maximum extent practicable.

(2) EPA recommends that procuring agencies set their minimum re-refined oil content standard at the highest level of re-refined oil that they determine meets the statutory criteria of performance, availability, and price (described in paragraph (b) of this section, but no lower than 25 percent re-refined oil.

(3) From time to time, procuring agencies should reconsider their minimum content standards to determine whether they should be raised or lowered. The determination should be based on a review of the data compiled on re-refined oil content, price, availability, and performance, as recommended in § 252.24(c) of this part, as well as on a comparison of estimates and certifications provided by the vendors.

(b) The recommendations in paragraph (a) of this section, as well as any other affirmative procurement program that an agency may adopt, are subject to the following limitations provided in section 6002(c)(1) of RCRA:

(1) Maintenance of a satisfactory level of competition;

(2) Availability within a reasonable period of time;

(3) Ability to meet the specifications in the invitation for bids;

(4) Availability at a reasonable price.

(c) Procuring agencies must review their procurement practices and eliminate those which would inhibit or preclude procurement of lubricating oils containing re-refined oil. For example, procuring agencies should review the practices of inviting bids and issuing contracts to do the following:

(1) Supply a broad range of lubricating oil products on an "all or none" basis.

(2) Supply lubricating oils for an excessively long period of time.

(3) Deliver lubricating oils to geographic locations throughout the United States or to an excessively broad geographic area.

(4) Supply excessively large contract quantities.

(d) Procuring agencies should make determinations regarding competition and availability in accordance with the Federal Acquisition Regulation (FAR), 48 CFR Ch. 1 *et seq.*

§ 252.22 Promotion program.

EPA recommends that procuring agencies use the following methods, at a minimum, to promote their preference programs:

(a) Place a statement in procurement invitations in the *Commerce Business Daily* or similar publications describing the preference program.

(b) Describe the preference program in lubricating oil procurement solicitations or invitations to bid.

(c) Discuss the preference program at bidders' conferences.

(d) Inform industry trade associations about the preference program.

(e) Issue press releases describing the affirmative procurement program to recycling industry journals.

§ 252.23 Estimates, certification, and verification.

Each procuring agency must develop estimation, certification, and verification procedures:

(a) When a vendor supplies lubricating oils, the contracting officer must require the vendor to estimate the total percentage of re-refined oil in the lubricating oils. EPA recommends that procuring agencies maintain records of these estimates for three years by type of product, quantity purchased, and price paid.

(b) When a procurement solicitation or invitation for bid requires a minimum re-refined oil content, procuring agencies must require vendors to certify that the percentage of re-refined oil to be used in the performance of the contract will be at least the amount required by the solicitation or invitation for bid.

(c) The affirmative procurement program must contain reasonable verification procedures for estimates and certifications. EPA recommends that procuring agencies revise the contract quality assurance procedures developed under Part 46 of the FAR to include verification of estimates and certifications of re-refined oil content. EPA recommends that procuring agencies verify content by reviewing the mixing records of the manufacturer or blender.

§ 252.24 Annual review and monitoring.

(a) Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(b) EPA recommends that the annual review include the following items:

(1) An estimate of the quantity of lubricating oils containing re-refined oil purchased and the total quantity of lubricating oils purchased.

(2) An assessment of the effectiveness of the promotion program.

(3) An assessment of any remaining barriers to purchase of lubricating oils containing re-refined oil to determine whether the barriers are internal (e.g., resistance to use) or external (e.g., unavailability).

(4) A summary of the data compiled in each category listed in paragraph (c) of this section.

(5) A review of the range of estimates and certifications of re-refined oil content in lubricating oils provided by vendors during the year to determine whether minimum content standards should be raised or lowered.

(c) Procuring agencies should monitor their procurements to compile data on the following:

(1) The percentages of re-refined oil content in the products procured or offered;

(2) Comparative price information on competitive procurements;

(3) The quantity of each type of lubricating oil procured over a fiscal year;

(4) The availability of lubricating oils to procuring agencies;

(5) Types of quality verification tests conducted, if any, together with the categories of lubricating oils containing re-refined oil that failed the tests, the percentages of total virgin products and products containing re-refined oil, respectively, that failed each test, and the nature of the failure;

(6) Agency experience with the performance of the procured products.

(d) Procuring agencies should prepare a report on their annual review and monitoring of the effectiveness of their procurement programs and make it available to the public. The report should include:

(1)(i) A discussion of the procuring agency's decision to raise or lower the minimum content standards in use, if the agency uses the minimum content standards approach; or

(ii) A demonstration that the procuring agency's use of the case-by-case approach or a substantially equivalent alternative satisfies the requirement to procure lubricating oils containing re-refined oil to the maximum extent practicable; and

(2) Documentation of specification revisions made during the reporting period.

§ 252.25 Implementation.

(a) Procuring agencies must complete specification revisions in accordance with RCRA section 6002(d)(2) and development of affirmative procurement programs in accordance with RCRA section 6002(i) within one year from the date of publication of this guideline.

(b) Procuring agencies must begin procurement of lubricating oils containing re-refined oil, in compliance with RCRA section 6002, one year from the date of publication of this guideline.

[FR Doc. 88-14612 Filed 6-29-88; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 264 and 265

[FRL-3405-9]

Hazardous Waste Treatment, Storage and Disposal Facilities; Surface Impoundment Retrofitting Requirements; Closure Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency view on retrofitting.

SUMMARY: On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) added new requirements with which owners and operators of certain surface impoundments must comply. These requirements provide that all surface impoundments, in existence on November 8, 1984 and qualifying for interim status, be retrofitted to meet the minimum technological requirements of section 3004(o)(1)(A), or cease the receipt of hazardous waste by November 8, 1988, unless the owner or operator has obtained an exemption from these requirements. Accordingly, existing surface impoundments that have not been retrofitted and have not received an exemption, must cease the receipt of hazardous waste by November 8, 1988 and begin closure in accordance with 40 CFR Subpart G. This Notice sets forth the Environmental Protection Agency's (EPA) view regarding section 3005(j)(1) and its effect upon closure requirements.

DATE: All surface impoundments, in existence on November 8, 1984 and qualifying for interim status, must cease the receipt of hazardous waste by November 8, 1988 unless the surface impoundment is in compliance with the requirements of section 3004(o)(1)(A) or is the subject of an applicable exemption. A discussion of EPA's closure regulations and the time frames for compliance with closure requirements is contained in Section III of this notice.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area.

ADDRESSES: For information on the impact of these requirements upon a specific facility, contact the appropriate EPA Regional office listed below.

Region I: John Hackler, Chief, Compliance Monitoring & Enforcement Section, U.S. EPA, John F. Kennedy Federal Building, Room 1903 HER-CAUS, Boston, MA 02203 (617) 573-9670.

Region II: Stanley Siegel, Chief, RCRA Compliance & Enforcement Section, Room 900 (AWM-SW) U.S. EPA, 26 Federal Plaza, New York, NY 10278, (212) 264-0504.

Region III: Vicki Binetti, Acting Chief, RCRA Enforcement Section 3HW11, U.S. EPA, 841 Chesnut Street, Philadelphia, PA 19107, (215) 597-3039.

Region IV: Allen Antley, Chief, Waste Compliance Section, U.S. EPA, 345 Courtland Street, NE., Atlanta GA 30365 (404) 347-4552.

Region V: William Muno, Chief, RCRA Enforcement Branch, 5HE-12, U.S. EPA, 230 South Dearborn Street, Chicago, IL 60604 (312) 886-4434.

Region VI: William Taylor, Chief, RCRA Enforcement Section, (6H-CE) U.S. EPA, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202-2733 (214) 655-6775.

Region VII: David Doyle, Chief, RCRA Compliance Section, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 236-2891.

Region VIII: Diana Shannon, Chief, RCRA Compliance Section (8HWM-WM), US EPA 999 18th Street, Suite 500, Denver CO 80202-1603 (303) 293-1500.

Region IX: Karen Schwinn, Chief, Waste Compliance Branch, (T-2-4), U.S. EPA, 215 Fremont Street, San Francisco, CA 94105 (415) 974-8129.

Region X: Charles Rice, Chief, RCRA Enforcement Section, M/S-533, U.S. EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 442-0695.

SUPPLEMENTARY INFORMATION: The contents of today's notice are listed in the following outline:

I. Surface Impoundment Retrofitting Requirements
A. General Requirements
B. Applicability
1. Surface Impoundments Operating Under Interim Status.
2. Facilities Permitted After November 8, 1984.
3. Surface Impoundments Which Have Lost Interim Status for Failure to Comply with RCRA Certification and Part B Permit Application Requirements.
4. Surface Impoundments Eligible for Interim Status as of November 8, 1984, But Whose Owner-Operator Failed to Comply with RCRA Notification or Permit Application Requirements.
5. Surface Impoundments that Became Subject to RCRA After November 8, 1984.
6. Facilities Permitted Before November 8, 1984.
II. Closure
A. Closure Requirements
1. Closure Plan Submittal Requirements for Owners and Operators without Approved Closure Plans.
2. Notification Requirements for Owners and Operators with Approved Closure Plans.
3. Time Allowed for Closure Activities.
B. Interpretation of the Relationship of section 3005(j)(1) to Closure Requirements
III. Summary
IV. Guidance and Regulations Relevant to the Retrofitting Requirements

I. Surface Impoundment Retrofitting Requirements

A. General Requirements

On November 8, 1984, Congress enacted the Hazardous and Solid Waste Amendments of 1984 (HSWA) which amended the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901, in a number of respects. These amendments added a new subsection (j) to section 3005 of RCRA. Section 3005(j)(1) requires that surface impoundments which were in existence on November 8, 1984 and qualified to operate under interim status, be retrofitted to meet the minimum technological requirements specified in section 3004(o)(1)(A), or cease the receipt of hazardous waste by November 8, 1988. Section 3004(o)(1)(A) requires that the owner or operator of a surface impoundment install two or more liners, a leachate collection system between such liners and groundwater monitoring for each unit. This retrofit/cessation requirement applies unless the owner/operator of such an impoundment obtains one of the limited exceptions also specified in section 3005(j)

Accordingly, surface impoundments that do not retrofit and have not received an exemption, must cease receipt of hazardous waste by November 8, 1988. By ceasing receipt of hazardous waste the Agency expects that no additional hazardous waste or waste that generates a hazardous waste or sludge shall be placed in the unit. Such surface impoundments also must begin closure in accordance with 40 CFR Part 265, Subpart G. Closure requirements are discussed in Section III of this notice.

The exemptions available from the retrofit/cessation requirement and the procedures and deadlines for submitting and processing exemption applications are discussed in the Interim Status Surface Impoundments Retrofitting Variances Guidance Document, July 8, 1986. (OSWER Policy Directive 9894.00-1B). Five exemptions are available. (See section 3005(j)(2), (j)(3), (j)(4), (j)(13); section 3004(o)(2)).[1] For the exemptions in sections 3005(j)(2), (j)(3), and (j)(4), the statute establishes an application deadline of November 8, 1986 and a deadline of November 8, 1987 for EPA approval. The statute, however, does not specifically provide for application deadlines or procedural requirements for the exemptions set forth in section 3005(j)(13) or section 3004(o)(2). The Agency, however, believes it is appropriate to require deadlines and procedures for section 3005(j)(13) and section 3004(o)(2) exemptions which are equivalent to the other section 3005(j) variances. Furthermore, as a practical matter EPA may no longer be able to process requests for waivers under these authorities in time to give owners and operators adequate lead time to prepare for retrofitting before the November 8, 1988 deadline should a variance be denied. The statute does not permit EPA to waive the November 8, 1988 deadline to allow time to consider a variance application.

In sum, owners and operators must meet the November 8, 1988 deadline by retrofitting or ceasing the receipt of hazardous waste unless EPA grants an exemption prior to that date.

B. Applicability

The requirements of section 3005(j)(1) are applicable to surface impoundments which are used for the treatment, storage, or disposal of hazardous wastes. Section 3005(j)(1) addresses all surface impoundments which were "in existence on the date of enactment of the Hazardous and Solid Waste Amendments of 1984 and qualifying for the authorization to operate under subsection (e) of this section." Section 3005(e) sets forth the requirements for obtaining and maintaining interim status.

The Agency interprets section 3005(j)(1) to apply to all surface impoundments that had or should have had interim status on November 8, 1984. This includes units which have continued to operate under interim status; facilities that obtained permits after November 8, 1984; facilities that failed to qualify for interim status and units which subsequently lost interim status. Section 3005(j) also applies to surface impoundments which became subject to RCRA after November 8, 1984. The applicability of section 3005(j) is discussed more fully below.

1. Surface Impoundments Operating Under Interim Status

Under section 3005(a) of RCRA, owners or operators of hazardous waste treatment, storage or disposal facilities are required to obtain a RCRA permit. Recognizing that EPA would not be able to issue permits to all hazardous waste management facilities at once, section 3005(e) of RCRA provides that a hazardous waste management facility that meets certain requirements will be treated as having been issued a permit. This statutorily-conferred authorization to operate pending issuance or denial of a permit is known as "interim status." A facility may lawfully operate only if it has a permit or interim status. The surface impoundment retrofitting requirements are applicable to existing surface impoundments which are operating under interim status, in accordance with the provisions of section 3005(e).

2. Facilities Permitted After November 8, 1984

The retrofitting requirements are applicable to existing surface impoundments which qualified for interim status on November 8, 1984 but which subsequently have been issued a permit. These units fall plainly within the phrase "qualifying for the authorization to operate" under interim status on November 8, 1984. This conclusion is also consistent with the

[1] Because it is doubtful that Congress intended to treat existing surface impoundments more stringently than new ones, EPA has interpreted section 3005(j) to allow existing interim status surface impoundments to be eligible for section 3004(o) exemptions.

legislative history of section 3005(j). (See, e.g., 130 Cong. Rec. 59182 (July 30, 1984)). Information on permit requirements to implement the retrofit requirement was provided in the RCRA Reauthorization Statutory Interpretation (RSI) #1, issued on November 9, 1984, "Immediate Permit Requirements." The retrofitting requirements should be addressed in the HSWA portion of the permit issued by EPA, where a state approved to administer the RCRA program has not received authorization to implement the HSWA requirements. RCRA permits issued after November 8, 1984 that fail to require compliance with section 3005(j)(l) may not be used as shields against the implementation of this provision. The HSWA retrofitting requirement takes precedence over any less stringent permit conditions. On December 1, 1987, the Agency published a final Codification Rule, clarifying that the "permit as a shield" provision (40 CFR 270.4(a)) does not apply to HSWA requirements. (See 52 FR 45788, at 47593; see also the OSWER Policy Directive No. 9484.00-5-a issued on October 15, 1987 for further discussion of permit requirements at interim status surface impoundments.)

3. Surface Impoundments Which Have Lost Interim Status for Failure To Comply With RCRA Certification and Part B Permit Application Requirements

Similarly, facilities which qualified for the authorization to operate under interim status on November 8, 1984, but subsequently failed to submit certification and application information as required by section 3005(e)(2) to maintain interim status are also subject to the retrofit/cessation requirement. (See also 40 CFR 270.73.) These facilities also fall within the plain language of section 3005(j) and, accordingly, EPA will enforce the requirements of section 3005(j) against such facilities in addition to enforcing the requirements of section 3005(e)(2).

4. Surface Impoundments Eligible for Interim Status as of November 8, 1984, Owner/Operator Failed To Comply With RCRA Notification or Permit Application Requirements.

EPA considers those facilities which were eligible for interim status (e.g. in existence on November 9, 1980) but which failed to comply with the notification or permit application requirements of section 3005(e)(1) necessary to obtain interim status, to fall within the scope of the statutory language "qualifying for the authorization to operate under section 3005(e)." The Agency believes that the intent of section 3005(j)(1) was to apply the retrofitting requirements to all unpermitted surface impoundments. Congress would not have intended to relieve owners and operators who violate interim status requirements from the duty of compliance with the retrofit/cessation requirements.

The Agency has previously interpreted statutory interim status requirements to apply to those units which never fully satisfied all the requirements to obtain interim status. In its September 25, 1985 **Federal Register** notice, 50 FR 38946, EPA concluded that the certification and Part B permit application requirements of section 3005(e)(2), with which an owner or operator must comply to maintain interim status, were applicable to those units which never satistified the notification and application requirements necessary to obtain interim status pursuant to section 3005(e)(1). In EPA's view, the intent of section 3005(e)(2) was to bring all unpermitted land disposal units into compliance with groundwater monitoring and financial responsibility requirements through the certification process. Moreover, applying section 3005(e)(2) and section 3005(j) to non-notifiers is generally consistent with existing regulations which specifically provide that all the 40 CFR Part 265 regulations which apply to interim status facilities also apply to facilities in existence on November 19, 1980 for which the owner or operator failed to provide notification or failed to file Part A of a permit application. (40 CFR 265.1(b)). Consequently, EPA intends to enforce the retrofit/cessation requirements of section 3005(j), in addition to enforcing the requirements of section 3005(e)(1), against facilities that were in existence in November 1980, but failed to file or notify.

5. Surface Impoundments That Became Subject to RCRA After November 8, 1984.

Surface impoundments that became subject to RCRA after November 8, 1984 due to the promulgation of additional hazardous waste listings or characteristics are also subject to the surface impoundment retrofitting requirements. (Section 3005(j)(6)(A)). For example, if an impoundment was managing non-hazardous waste, it would be subject to the retrofitting requirements if the waste that it received becomes a RCRA regulated hazardous waste. This would occur if the Agency promulgated a regulation which lists that waste as hazardous or defines it as hazardous by establishing a new characteristic. For such an impoundment, the period allowed to come into compliance with the retrofitting requirements is four years from the effective date of the regulation listing or identifying that waste.

6. Facilities Permitted Before November 8, 1984

Section 3005(j) imposes retrofitting requirements on all surface impoundments qualifying for interim status on November 8, 1984. Surface impoundments permitted prior to November 8, 1984 did not qualify for interim status on that date, and therefore are not subject to the retrofitting requirements.

II. Closure

A. Closure Requirements

1. Closure Plan Submittal Requirements for Owners and Operators Without Approved Closed Plans

Under 40 CFR 264.112(d) (1) and (2)/265.112(d) (1) and (2), surface impoundments without approved closure plans that cease receiving hazardous wastes on November 8 were required to submit closure plans by June 13, 1988. (Closure plans are required to be submitted no later than 180 days before the date on which the owner/operator "expects to begin closure". The date the owner/operator expects to begin closure is 30 days after the last receipt of hazardous waste or December 8, 1988. 40 CFR 264.112(d) (1) and (2)/265.112(d) (1) and (2)).

2. Notification Requirements for Owners and Operators with Approved Closure Plans

The Agency's closure regulations require owner/operators of surface impoundments with approved closure plans to notify the Regional Administrator at least 60 days prior to the date closure is expected to begin. (See 40 CFR 264.112(d)/265.112(d)). Since the last receipt of hazardous wastes must be by November 8, 1988, making the expected date of closure December 8, facilities with approved closure plans must notify EPA or an authorized State by October 10, 1988.

3. Time Allowed for Closure Activities

Owners and operators of surface impoundments must treat, remove from the unit, or dispose of on-site, all hazardous wastes in the impoundment in accordance with the approved closure

plan. These activities must be conducted within 90 days after the last receipt of hazardous waste or approval of the closure plan, whichever is later (40 CFR 264.113(a)/265.113(a)). Longer time frames may be approved under conditions set out in the closure regulations.

Closure activities must be completed within 180 days after receipt of the final volume of hazardous waste, or 180 days after approval of the closure plan, or a longer time if approved. (40 CFR 264.113(b)/265.113(b)).

Owners and operators [of interim status facilities] may remove hazardous wastes, and decontaminate or dismantle equipment prior to approval of the closure plan if the activities are consistent with the applicable closure requirements. (51 FR 16422, 16430, May 2, 1986, 264.112(e)/265.112(e)).

B. Interpretation of the Relationship of section 3005(j)(1) to Closure Requirements

Section 3005(j) provides that existing surface impoundments shall not "receive, store, or treat" hazardous waste after November 8, 1988, unless the surface impoundment is in compliance with the minimum technological requirements or the subject of an applicable exemption. EPA's current closure regulations require the expeditious closure of impoundments that no longer receive hazardous wastes. The legislative history of section 3005(j)(1) indicates that the intent of the provision is to ensure that after the November 8, 1988 deadline, hazardous wastes are received only in impoundments meeting the minimum technological requirements. (130 Cong. Rec. S9182. (daily ed., July 25, 1984)).

The Agency has recently proposed amendments to its closure regulations to allow for the continued receipt of non-hazardous wastes if certain conditions and requirements are met. (53 FR 20738, June 6, 1988) These amendments will in no way affect the requirement for surface impoundments to cease the receipt of hazardous waste by November 8, 1988. Further, until specific amendments are finalized, the current closure regulations remain in full force.

III. Summary

In summary, all surface impoundments in existence and qualifying for interim status on November 8, 1984 must cease the receipt of hazardous waste by November 8, 1988, unless the surface impoundment is in compliance with the minimum technological requirements, or has obtained a variance from EPA. In addition, the owner or operator of a surface impoundment that must cease the receipt of hazardous waste must additionally comply with all applicable State or Federal closure and post-closure requirements.

IV. Guidance and Regulations Relevant to the Retrofitting Requirements

The relevant guidance for hazardous waste surface impoundments are listed below:

Interim Status Surface Impoundments Retrofitting Variances Guidance Document, July 8, 1986. OSWER 9894.00-1B.

Guidance on Implementation of the Minimum Technology Requirements of HSWA of 1984, Respecting Liners and Leachate Collection Systems, May 24, 1985. (EPA/530-SW-85-012).

Draft Minimum Technology Guidance on Double Liners Systems for Landfills and Surface Impoundments—Design, Construction, and Operation, May 24, 1985. (EPA/530-SW-85-014).

RCRA Guidance Manual for Subpart G Closure and Post-Closure Care Standards and Subpart H Cost Estimating Requirements. January 1987. OSWER 9476.00-5.

Construction Quality Assurance for Hazardous Waste Land Disposal Facilities, October 1986. (EPA/530-SW-86-031).

Draft RCRA Guidance Document on Surface Impoundment Liner Systems, Final Covers, and Freeboard Control, July 1982.

Existing regulations pertaining to the minimum technological requirements are found at 40 CFR Part 264.221-231 for Permitted Surface Impoundments, and at 40 CFR Part 265.221-230 for Interim Status Surface Impoundments. These regulations were promulgated pursuant to the authority of Section 3004(o)(1) which sets forth the requirements for new, replacement and expanded surface impoundments. The requirements of these sections are also applicable to existing impoundments pursuant to section 3005(j)(1) which makes applicable the requirements of section 3004(o)(1)(A) to existing surface impoundments by November 8, 1988.

Date: June 20, 1988.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste, and Emergency Response.

[FR Doc. 88-14520 Filed 6-29-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-2, 201-6, 201-20, 201-21, 201-22, 201-24, 201-26, 201-30, 201-31, 201-32, 201-34, 201-39, and 201-45

[FIRMR Amendment 12]

Revision to Immediately Remove Redundant and Nonregulatory Provisions

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: In response to some user agencies' perception that the FIRMR is too detailed and complex, the General Services Administration conducted a comprehensive review of the FIRMR to identify actions necessary to streamline and simplify provisions. The study resulted in recommendations to improve the FIRMR by (a) eliminating redundancies and cross-references; (b) removing general information not belonging in the regulation; and (c) updating FIRMR provisions that have been overtaken by other events. This regulation is the first of two amendments implementing recommendations to streamline and simplify the FIRMR by immediately removing material not needed in the regulation. It makes no changes to regulatory requirements, policies, or procedures. The intent is to streamline and simplify provisions to facilitate useability.

EFFECTIVE DATE: This rule is effective [August 29, 1988] but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Thomas, Regulations Branch, Information Resources Management Service, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) The purpose of this amendment is to streamline and simplify FIRMR provisions to facilitate ease of use. Specifically, it immediately removes redundancies and provisions that primarily serve to cross-reference other provisions within the regulation; removes general information pertaining to GSA programs and other guidance provisions that are nonregulatory in nature; and makes editorial changes to clarify general information, reflect internal GSA organizational changes, and reflect the issuance of OMB Circular A-130. Any guidance or general information removed from regulatory coverage as a result of this amendment

will be reissued, as determined necessary, using the appropriate issuance vehicle. Since the amendment makes no changes to Governmentwide IRM regulatory requirements, procedures, or policies, public comments were not solicited prior to its publication as a final rule.

(2) Changes made in 41 CFR Chapter 201 are explained in the following paragraphs.

(a) In Part 201-1, Federal Information Resources Management Regulations System, the following changes are made.

(i) Section 201-1.101-1 is amended by removing obsolete paragraphs (b) through (e) containing general information on the FIRMR/FPMR and FIRMR/FPR relationships and interim implementation of the FIRMR.

(ii) Section 201-1.101-2 is revised to clarify information on the issuance of FIRMR bulletins and the FIRMR Index of Current Handbooks and Reports.

(iii) Section 201-102-1 is removed to eliminate redundant information on GSA delegations of procurement authority. Such information is already adequately covered in FIRMR Part 201-23.

(b) In Part 201-2, Definitions of Words and Terms, the following changes are made in § 201-2.001.

(i) The definition for "Commercial ADP servcies and support services subject to the Privacy Act" is revised to reflect the issuance of OMB Circular No. A-130.

(ii) The following terms, already defined in OMB Circular A-130, are removed: "Data processing facility subject to OMB Circular A-121"; "Full cost for purposes of OMB circular A-121"; and "General management computer for purposes of OMB circular A-121".

(iii) Under "Software terms", the definition entry for "Recording" is corrected to read "Recording".

(c) In Part 201-6, Protection of Personal privacy, § 201-6.102, paragraph (c) is removed to eliminate redundant information on responsibilities for implementing the Privacy Act. Such information is already adequately covered in § 201-6.000.

(d) Part 201-20, ADP Management Programs, is removed and reserved. The provisions under this part established no regulatory requirements, policies, or procedures but served to cross-reference other provisions within the FIRMR or provide general information on GSA service and procurement programs.

(e) In Part 201-21, Telecommunications Management programs, the following sections providing general guidance or information on GSA programs are removed:

Section 201-21.012 GSA acquisition programs.
Section 201-21.012-1 Agency exclusive use telecommunication contracts.
Section 201-21.013 GSA surveys.
Section 201-21.014 The Federal Telecommunications System (FTS).
Section 201-21.017 GSA advice and assistance.

(f) Also in Part 201-21, the following sections containing redundant provisions or serving to cross-reference other provisions within the FIRMR are removed:

Section 201-21.002 Plans. [Reserved]
Section 201-21.003 Management and control of telephone station equipment and features.
Section 201-21.004 Management of communication networks. [Reserved]
Section 201-21.005 Protection of personal privacy.
Section 201-21.006 Major changes and new installations.
Section 201-21.007 Routine changes and use of the FTS.
Section 201-21.016 GSA reporting programs. [Reserved]

(g) In Part 201-22, Records Management Programs, the following sections providing general information are removed:

Section 201-22.001-3 Responsibility for records management programs.
Section 201-21.001-4 GSA responsibilities.

(h) In Part 201-24, Acquisition Policies, the following sections serving to cross-reference other provisions within the FIRMR are removed:

Section 201-24.105 Major system acquisitions.
Section 201-24.301 Authority to acquire telecommunications resources.

(i) Part 201-26, Reporting Requirements, is revised to update information on reporting for the Automatic Data Processing Equipment Data System (ADPE/DS).

(j) In Part 201-30, Management of ADP Resources, the following sections providing general information on GSA support programs are removed.

Section 201-30.018 GSA support programs.
Section 201-30.018-1 Federal Computer Performance Evaluation and Simulation Center (FEDSIM).
Section 201-30.018-2 Federal Conversion Support Center (FCSC).
Section 201-30.018-3 [Reserved]

(k) Also in Part 201-30, Management of ADP Resources, the following sections containing redundant provisions or serving to cross-reference other provisions within the FIRMR are removed:

Section 201-30.001 General. [Reserved]
Section 201-30.002 Planning.
Section 201-30.003 Controlling and reviewing.
Section 201-30.004 Privacy.
Section 201-30.005 Security.
Section 201-30.006 Standards.
Section 201-30.010 Sharing.
Section 201-30.011 Reuse of ADP equipment.
Section 201-30.014 Competition.
Section 201-30.015 Delegation of procurement authority.
Section 201-30.016 Acquisition policies.
Section 201-30.017 Contracting.
Section 201-30.019 Compiler validation testing.

(l) Part 201-30 is further amended by removing § 202-30.009-3, paragraphs (a), (d), and (e); and removing § 201-30.013-3, paragraphs (a)(1), (b)(1), and (c). These paragraphs contain redundant or general information or serve to cross-reference other provisions within the FIRMR.

(m) In Part 201-31, Sharing of ADP Resources, the following sections providing general guidance or information on GSA programs are removed:

Section 201-31.002 ADP sharing considerations.
Section 201-31.010 Federal Data Processing Centers (FDPCs).
Section 201-31.010-1 General.
Section 201-31.010-2 Services available from FDPCs.
Section 201-31.010-3 Points of contact.
Section 201-31.010-4 Federal Computer Performance Evaluation and Simulation Center (FEDSIM).

(n) Part 201-31 is further amended by removing redundant paragraphs (b) and (d) in § 201-31.004.

(o) In Part 201-32, Contracting for ADP Resources, the following sections serving to cross-reference other provisions of the FIRMR or providing general information on GSA programs are removed:

Section 201-32.101 Implementation of acquisition policies.
Section 201-32.105 Implementation of standards.
Section 201-32.207 Use of GSA requirements contracts.
Section 201-32.208 Use of GSA purchase programs for certain ADP related supplies.

(p) Part 201-32 is further amended by removing § 201-32.302, paragraph (a) which serves to cross-reference FAR contract clauses pertaining to systems of records on individuals.

(q) Part 201-34, Supporting ADP Activities, is removed and reserved. The provisions under this part established no regulatory requirements, policies, or procedures but served to cross-reference other provisions within the FIRMR or

provide general information and guidance.

(r) Part 201-39, Major Changes and New Installations of Telecommunications Resources, is amended by removing provisions in § 201-39.002-7 and § 201-39.006-6, paragraph (b) that provide information on GSA teleconferencing services.

(s) In Part 201-45, Management of Records, the following sections serving to cross-reference other provisions or provide general guidance and information on GSA services are removed:

Section 201-45.104-2 Relationship to other directives.
Section 201-45.104-5 GSA assistance.
Section 201-45.106-4 GSA responsibilities.
Section 201-45.109-3 GSA Responsibilities.
Section 201-45.503 GSA Responsibilities.
Section 201-45.511 Program review.

(t) Part 201-45 is further amended by removing Subpart 201-45.8, Technical Assistance; and by removing redundant or general information provisions contained in §§ 202-45.504-2 and 201-45.506.

(u) The following sections are changed to update references.

(i) Sections 201-6.000, 201-6.103-1, 201-26.204, 201-30.009, 201-31.003, 201-31.004, 201-32.104, 201-32.302, and 201-32.303 are revised to reflect the issuance of OMB Circular No. A-130, superseding OMB Circular Nos. A-71, A-90, A-108, and A-121.

(ii) Sections 201-1.102-2, 201-1.103, 201-1.201, 201-1.402, 201-1.403, 201-1.502, 201-22.003-3, 201-31.006, 201-32.102, 201-45.101-1, and several sections in Subparts 201-45.5 and 201-45.6 are revised to reflect internal GSA and other organizational changes or to make minor corrections.

(iii) Sections 201-30.007, 201-31.001, 201-31.003, and 201-31.005 are revised to eliminate references to sections removed as a result of this amendment.

(3) The General Services Administration has determined that this is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adedquate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. It is therefore certified that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Parts 201-1, 201-2, 201-6, 201-20, 201-21, 201-22, 201-24, 201-26, 201-30, 201-31, 201-32, 201-34, 201-39, and 201-45.

Information resources activities, Government records management, and Competition.

PART 201-1—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM

1. The authority citation for Part 201-1 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

2. The table of contents for Part 201-1 is amended by revising the entry for § 201-1.102-1 to read as follows:

§ 201-1.102-1 [Reserved]

§ 201-1.101-1 [Amended]

3. Section 201-1.101-1 is amended by removing paragraphs (b) through (e) and removing the paragraph designation for paragraph (a).

§ 201-1.101-2 [Amended]

4. In section 201-1.101-2, paragraphs (b) and (c) are revised to read as follows:

§ 201-1.101-2 Additional FIRMR publications.

* * * * *

(b) The FIRMR bulletin series addresses specific information resources areas that benefit from broad dissemination. FIRMR bulletins are published as Appendix B, and an Index of Current Issuances as Appendix C. Both are published in the looseleaf edition only.

(c) FIRMR handbooks and reports address specific program or technical areas where the audience generally will be defined by the subject matter. Procedural implementation of regulatory material uses the handbook format. General distribution of handbooks and reports is not generally made. FIRMR bulletins announce their availability. Appendix C of the looseleaf edition of the FIRMR contains a listing of current handbooks and reports.

§ 201-102-1 [Removed and Reserved]

5. Section 201-102-1 is removed and reserved.

§§ 201-1.102-2, 201-1.201, and 201-1.402 [Amended]

6. In §§ 201-1.102-2, 201-1.201, and 201-1.402 remove the words "Assistant Administrator for Information Resources Management" wherever they appear and add, in their place, the words "Commissioner, Information Resources Management Service".

§ 201-1.102-2 [Amended]

7. In § 201-1.102-2, paragraph (d), remove the words "OMB Circulars, including A-10, A-11, A-40, A-71, A-108, A-121, and A-123" and add, in their place, the words "OMB Circulars, including A-10, A-11, A-40, A-123, and A-130"; and in the last sentence of paragraph (d), remove the words "and A-109".

§ 201-1.103 [Amended]

8. In § 201-1.103, paragraph (d), remove the words "FPMR Subchapter B (41 CFR 101-11)" and add, in their place, the words "36 CFR Chapter XII".

§ 201-1.201 [Amended]

9. In § 201-1.201, paragraph (a), remove the words "Assistant Administrator for Acquisition Policy" and add, in their place, the words "Associate Administrator for Acquisition Policy"; and remove the words "Associate Administrator for Policy and Management Systems" and add, in their place, the words "Associate Administrator for Administration".

§ 201-1.403 [Amended]

10. In § 201-1.403, paragraphs (a) and (c), remove the word "(KMPP)" and add, in its place, the word "(KMPR)".

§ 201-1.502 [Amended]

11. In § 201-1.502, paragraph (b)(2), remove the words "Chief, Policy Branch (KMPP)" and add, in their place, the words "Regulations Branch (KMPR)".

PART 201-2—DEFINITIONS OF WORDS AND TERMS

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

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

§ 201-2.001 [Amended]

2. In § 201-2.001, under the definition for "Commercial ADP services and support services subject to the Privacy Act", remove the words "OMB Circular No. A-108, July 9, 1975, as supplemented;" and add, in their place, the words "OMB Circular No. A-130, December 12, 1985".

3. In § 201-2.001, remove the definitions for "Data processing facility subject to OMB Circular A-121", "Full cost for purposes of OMB Circular A-121", and "General management computer for purposes of OMB Circular A-121".

4. In § 201-2.001, amend paragraph (i) under "Software terms", by removing the word "Recording" and adding, in its place, the word "Recoding".

PART 201-6—PROTECTION OF PERSONAL PRIVACY

1. The authority citation for Part 201-6 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

§ 201-6.000 [Amended]

2. In § 201-6.000, remove the words "OMB Circular No. A-108, July 9, 1975, as supplemented," and add, in their place, the words "OMB Circular No. A-130, December 12, 1985".

§ 201-6.102 [Amended]

3. Section 201-6.102 is amended by removing paragraph (c).

§ 201-6.103-1 [Amended]

4. In § 201-6.103-1, paragraph (a), remove the words "OMB Circular No. A-108 and supplements" and add, in their place, the words "OMB Circular No. A-130".

1. Part 201-20 is removed and the heading is reserved to read as follows:

PART 201-20—ADP MANAGEMENT PROGRAMS [RESERVED]

PART 201-21—TELECOMMUNICATIONS MANAGEMENT PROGRAMS

1. The authority citation for Part 201-21 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

2. The table of contents for Part 201-21 is amended by removing the entries for §§ 201-21.016 and 201-21.017; and revising the entries for §§ 201-21.002 through 201-21.010 and §§ 201-21.012 through 201-21.014 to read as follows:

201-21.002—201-21.010 [Reserved]
201-21.012—201-21.014 [Reserved]

§ 201-21.002 through 201-21.007 [Removed and Reserved]

3. Sections 201-21.002 through 201-21.007 are removed and reserved.

§§ 201-21.012 through 201-21.014 [Removed and Reserved]

4. Sections 201-21.012 through 201-21.014 are removed and reserved.

§§ 201-21.016 and 201-21.017 [Removed]

5. Sections 201-21.016 and 201-21.017 are removed.

PART 201-22—RECORDS MANAGEMENT PROGRAMS

1. The authority citation for part 201-22 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

2. The table of contents for Part 201-22 is amended by removing the entries for §§ 201-22.001-3 and 201-22.001-4.

§§ 201-22.001-3 and 201-22.001-4 [Removed]

3. Sections 201-22.001-3 and 201-22.001-4 are removed.

§ 201.22.003-3 [Amended]

4. In § 201-22.003-3, paragraphs (b) and (c), remove the words "Assistant Administrator for Information Resources Management" and add, in their place, the words "Commissioner, Information Resources Management Service".

PART 201-24—ACQUISITION POLICIES

1. The authority citation for Part 201-24 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

2. The table of contents for Part 201-24 is amended by revising the entries for § 201-24.105 and §§ 201-24.301 through 201-24.304 to read as follows:

201-24.105 [Reserved]
201-24.301—201-24.304 [Reserved]

§ 201-24.105 Removed and Reserved]

3. Section 201-24.105 is removed and reserved.

§ 201-24.301 [Removed and Reserved]

4. Section 201-24.301 is removed and reserved.

PART 201-26—REPORTING REQUIREMENTS

1. The authority citation for Part 201-26 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

§ 201-26.204 [Amended]

2. Section 201-26.204 is amended by revising paragraph (a)(3) to read as follows:

§ 201-26.204 Policies and procedures.

(a) * * *

(3) Assist central management agencies in carrying out their specific Governmentwide responsibilities relating to ADP as delineated in OMB Circular A-130 (Appendix III); and

* * * * *

§ 201-26.206 [Amended]

3. In § 201-26.206 remove paragraph (a), redesignate paragraphs (b) through (e) as paragraphs (a) through (d), and revise newly designated paragraph (a) to read as follows:

§ 201-26.206 Reporting requirements.

(a) *Regular reporting.* Agency updates to the data base shall be submitted at the end of each calendar quarter. Agency data shall be forwarded to General Services Administration (WKHE), Washington, DC 20405.

* * * * *

PART 201-30—MANAGEMENT OF ADP RESOURCES

1. The authority citation for Part 201-30 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

2. The table of contents for Part 201-30 is amended by removing the entries for §§ 201-30.014 through 201-30.019; and revising the entries for §§ 201-30.001 through 201-30.006, 201-30.010, and 201-30.011 to read as follows:

201-30.001—201-30.006 [Reserved]
201-30.010—201-30.011 [Reserved]

§§ 201-30.001 through 201-30.006 [Removed and Reserved]

3. Sections 201-30.001 through 201-30.006 are removed and reserved.

§ 201-30.007 [Amended]

4. In the last sentence of § 201-30.007, paragraph (a), remove the words "and as required by § 201-20.003,".

§ 201-30.009 [Amended]

5. In § 201-30.009, paragraph (a)(2), remove the words "OMB Circular A-121" and add, in their place, the words "OMB Circular A-130."

§ 201-30.009-3 [Amended]

6. In § 201-30.009-3, remove paragraphs (a), (d), and (e) and redesignate paragraphs (b) and (c) as paragraphs (a) and (b).

§§ 201-30.010 and 201-30.011 Removed and Reserved]

7. Sections 201-30.010 and 201-30.011 are removed and reserved.

§ 201-30.013-3 [Amended]

8. Section 201-30.013-3 is amended by removing paragraphs (a)(1) and (b)(1), redesignating paragraph (a)(2) as paragraph (a) and paragraph (b)(2) as paragraph (b), and removing paragraph (c).

§§ 201-30.014 through 201-30.019 [Removed]

9. Sections 201-30.014 through 201-30.019 are removed.

PART 201-31—SHARING OF ADP RESOURCES

1. The authority citation for Part 201-31 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

2. The table of contents for Part 201-31 is amended by revising the entries for § 201-31.002 and §§ 201-31.007 through 201-31.011 to read as follows:

201-31.002 [Reserved]
201-31.007—201-31.011 [Reserved]

§ 201-31.001 [Amended]

3. In § 201-31.001 remove the introductory phrase, "As provided in § 201-20.006,".

§ 201-31.002 [Removed and Reserved]

4. Section 201-31.002 is removed and reserved.

§ 201-31.003 [Amended]

5. In § 201-31.003, paragraph (a), remove the words "OMB Circular A-121; subject: Cost Accounting Cost Recovery and Interagency Sharing, dated September 16, 1980, specifically paragraph 4f, applies" and add, in their place, the words "OMB Circular A-130, subject: Management of Federal Information Resources, dated December 12, 1985, (specifically Appendix II, paragraph 5) applies".

§ 201-31.003 [Amended]

6. In § 201-31.003, paragraph (b), remove the words "(see also OMB Circular A-121, paragraph 4a)" and add, in their place, the words "(see also OMB Circular A-130, Appendix II, paragraph 4)".

7. In § 201-31.003, paragraph (c), remove the words "(see § 201-31.002)".

8. In § 201-31.003, paragraph (f), remove the words "(see § 201-31.010-1)".

§ 201-31.004 [Amended]

9. In § 201-31.004, remove paragraphs (b) and (d); redesignate paragraphs (c) and (e) as paragraphs (b) and (c); and in the newly designated paragraph (c), remove the words "OMB Circular A-121" and add, in their place, the words "OMB Circular A-130".

§ 201-31.005 [Amended]

10. In § 201-31.005, paragraph (a), remove the words "(see § 201-31.002)".

§ 201-31.006 [Amended]

11. In § 201-31.006, paragraphs (a) and (b), remove the parenthetical phrase "(as defined in § 201-2.001)" wherever it appears; and remove "(KHE)" wherever it appears and add in its place "(WKHE)".

12. In § 201-31.006, paragraph (c), remove the parenthetical phrase "(currently assigned expiration date: March 31, 1985)".

§§ 201-31.010 through 201-31.010-4 [Removed and Reserved]

13. Sections 201-31.010 through 201-31.010-4 are removed and reserved.

PART 201-32—CONTRACTING FOR ADP RESOURCES

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

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

2. The table of contents for Part 201-32 is amended by revising the entries for §§ 201-32.101, 201-32.105, 201-32.207, and 201-32.208 to read as follows:

201-32.101 [Reserved]
201-32.105 [Reserved]
201-32.207—201-32.208 [Reserved]

§ 201-32.101 [Removed and Reserved]

3. Section 201-32.101 is removed and reserved.

§ 201-32.102 [Amended]

4. In § 201-32.102, paragraphs (b) and (c), remove the words "ADP Fund" and add, in their place, the words "IT Fund".

§ 201-32.104 [Amended]

5. In § 201-32.104, paragraph (a), remove the words "(See OMB Circular No. A-71, Transmittal Memorandum No. 1, dated July 27, 1978, and implementing policies" and add, in their place, the words "(See OMB Circular No. A-130, dated December 12, 1985, (Appendix II), and implementing policies".

§ 201-32.105 [Removed and Reserved]

6. Section 201-32.105 is removed and reserved.

§ 201-32.206 [Amended]

7. In § 201-32.206, paragraph (a)(2) is amended by removing "§ 201-11.002-2" in the first sentence and adding, in its place, "§ 201-11.002-1".

§§ 201-32.207 and 201-32.208 [Removed and Reserved]

8. Sections 201-32.207 and 201-32.208 are removed and reserved.

§ 201-32.302 [Amended]

9. In § 201-32-302, remove paragraph (a); redesignate paragraphs (b) and (c) as paragraphs (a) and (b); and in the newly designated paragraph (a), remove the words "Paragraph 5c(7) of OMB Circular A-108 (40 FR 28948, July 8, 1975)" and add, in their place, the words "OMB Circular A-130, (Appendix I, paragraph 3c), dated December 12, 1985".

§ 201-32.303 [Amended]

10. In § 201-32.303, paragraph (e)(1), remove the words "OMB Circular A-121" and add, in their place, the words "OMB Circular A-130, Appendix II".

PART 201-34—SUPPORTING ADP ACTIVITIES

1. Part 201-34 is removed and reserved.

PART 201-39—MAJOR CHANGES AND NEW INSTALLATIONS OF TELECOMMUNICATIONS RESOURCES

1. The authority citation for Part 201-39 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

§ 201-39.002-7 [Amended]

2. In § 201-39.002-7, remove the last two sentences.

§ 201-39.006-6 [Amended]

3. In § 201-39.006-6, paragraph (d), remove the words "in comparison with the Federal Telecommunications System (FTS) teleconference services" at the end of the sentence.

PART 201-45—MANAGEMENT OF RECORDS

1. The authority citation for Part 201-45 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

2. The table of contents for Part 201-45 is amended by removing the entries for §§ 201-45.104-5 and 201-45.106-4; removing Subpart 201-45.7 and Subpart 201-45.8, consisting of §§ 201-45.800 through 201-45.804; and revising the entries for §§ 201-45.104-2, 201-45.109-3, 201-45.503, and 201-45.511 to read as follows:

201-45.104-2 [Reserved]
201-45.109-3 [Reserved]
201-45.503 [Reserved]
201-45.511 [Reserved]

§ 201-45.101 [Amended]

3. In § 201-45.101-1, paragraph (b)(2), remove the words "Office of Information

Resources Management" and add, in their place, the words "Information Resources Management Service".

§ 201-45.104-2 [Removed and Reserved]

4. Section 201-45.104-2 is removed and reserved.

§ 201-45.104-5 [Removed]

5. Section 201-45.104-5 is removed.

§ 201-45.106-4 [Removed]

6. Section 201-45.106-4 is removed.

§ 201-45.109-3 [Removed and Reserved]

7. Section 201-45.109-3 is removed and reserved.

§ 201-45.503 [Removed and Reserved]

8. Section 201-45.503 is removed and reserved.

§ 201-45.504-2 [Amended]

9. In § 201-45.504-2, remove the introductory paragraph.

§ 201-45.505-1 [Amended]

10. In § 201-45.505-1, remove "ATRAR" in two places and add in its place "CAIR" and remove "GSA/OIRM" and add in its place "GSA/IRMS".

§ 201-45.506 [Amended]

11. In § 201-45.506, remove the first sentence.

§ 201-45.511 [Amended]

12. Section 201-45.511 is removed and reserved.

Subpart 201-45.5 [Amended]

13. In Subpart 201-45.5 remove "KLSO" wherever it appears in the subpart and add in its place "KMPS".

Subpart 201-45.6 [Amended]

14. In Subpart 201-45.6 remove "KLSO" wherever it appears in the subpart and add in its place "KMAS".

§ 201-45.609-2 [Amended]

15. In § 201-45.609-2 remove "KMPP" and add in its place "KMPR".

Subpart 201-45.8—[Amended]

§§ 201-45.800 through 201-45.804 [Removed]

16. Subpart 201-45.8, consisting of §§ 201-45.800 through 201-45.804 is removed.

Dated: June 16, 1988.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88-14765 Filed 6-29-88; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6793]

Suspension of Community Eligibility; Idaho et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: July 4, 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Idaho	Unincorporated areas	Blaine	165167	July 4, 1988.
Do	Dubois, city of	Clark	160134	Do
Do	Harrison, city of	Kootenai	160080	Do
Do	Whitebird, city of	Idaho	160072	Do
Do	Post Falls, city of	Kootenai	160083	Do
Do	Rathdrum, city of	Kootenai	160187	Do
Do	Rockland, city of	Power	160110	Do
Do	Worley, city of	Kootenai	160085	Do
North Carolina	Enfield, town of	Halifax	370115	Do
Do	Fuquay-Varina, town of	Wake	370239	Do
Do	Gaston, town of	Northampton	370413	Do
Do	Unincorporated areas	Halifax	370327	Do
Do	Rocky Mount, city of	Edgecomb and Nash	370092	Do
Do	Severn, town of	Northampton	370422	Do
Do	Whitakers, town of	Edgecomb and Nash	370095	Do
Do	Woodland, town of	Northampton	370177	Do

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 88-14738 Filed 6-29-88; 8:45 am]

BILLING CODE 6718-03-M

Proposed Rules

Federal Register
Vol. 53, No. 126
Thursday, June 30, 1988

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Conflict of Interest

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: SBA proposes the following changes to its Standards of Conduct Regulations to conform with a government-wide policy regarding exceptions to the prohibition of acceptance of food and refreshments by Executive Branch Employees from prohibited sources.

DATES: Comments must be received on or before August 1, 1988.

ADDRESS: Michael F. Kinkead, Alternate Agency Ethics Official, Small Business Administration, 1441 L Street NW., Room 722, Washington, DC 20416, (202) 653-6381.

FOR FURTHER INFORMATION CONTACT: Michael F. Kinkead, (202) 653-6381.

SUPPLEMENTARY INFORMATION: On October 23, 1987, the Office of Government Ethics issued a memorandum which reiterated that Office's long-standing interpretation of E.O. 11222 and Part 735 of Title 5, CFR, which prohibits the acceptance of free food and refreshment when provided by prohibited sources. The memorandum notes that subsection 201(b) of Executive Order 11222 recognizes that individual agencies may need to provide for certain exceptions to the broad restriction, subject to Office of Government Ethics approval.

Compliance With Executive Order 12291, The Regulatory Flexibility Act and The Paperwork Reduction Act

This proposed rule is solely related to agency personnel and, therefore, is exempted from the coverage of Executive Order 12291. E.O. 12291 section 1(a)(3). In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant economic effect on a substantial number of small entities because it relates solely to agency personnel. Finally, if adopted in final form, this proposed rule will impose no new reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

The following proposed exceptions to this government-wide policy have been approved by the Office of Government Ethics, and are hereby issued as a proposed rule.

List of Subjects in 13 CFR Part 105

Conflict of interests.

Accordingly, SBA proposes to amend Part 105 Title 13, CFR as follows:

PART 105—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Sec. 5, 72 Stat. 385 (15 U.S.C. 634); E.O. 11222; 3 CFR 1964-65 Comp.; 5 CFR 735.104.

§ 105.503 [Amended]

2. Section 105.503(a)(1) is proposed to be revised to read as follows:

(a) * * *

(1) Has, or is seeking to obtain directly or as the representative of another, any contractual or other business or financial relations with SBA or any SBA Assistance.

* * * * *

3. Section 105.503(b)(2) is proposed to be revised to read:

* * * * *

(b)(2) The acceptance of food and refreshments of nominal value when:

(i) On infrequent occasions they are provided in the ordinary course of a luncheon or dinner business meeting or other business meeting or on an inspection tour where an employee may properly be in attendance; or

(ii) it is in SBA's interest that an employee attend an event, such as a reception, seminar, conference, or training session, where food or refreshments are being served, provided that, the event is expected to be widely attended and of mutual interest to the Government and the private sector; the food and refreshments offered is not excessive; and the employee obtains prior approval from his immediate supervisor, or in the case of Agency management officials, prior approval from the appropriate Agency Ethics Official. However, where the sponsor of the event is an individual or entity that is directly involved in a matter or matters presently before SBA or otherwise regulated by SBA, the approving official must also determine that the timing of the event or other circumstances surrounding the event do not create a real or apparent conflict of interest.

* * * * *

Dated: June 1, 1988.

James Abdnor,

Administrator

[FR Doc. 88-14772 Filed 6-29-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Reg. No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Employment—Wages—Self-Employment—Self-Employment Income

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise several rules in Subpart K—Employment, Wages, Self-Employment, and Self-Employment Income—of Part 404 of the Social Security Administration regulations. These revisions are being proposed for the following reasons:

1. To reflect statutory enactments currently in effect;
2. To reflect certain policies regarding pay for work by certain members of religious orders;
3. To delete provisions of rules that were previously, but not currently, in effect; and
4. To clarify certain rules, combine where appropriate the rules contained in two sections into one section, and delete superfluous sections.

DATE: To be sure your comments are considered we must receive them no later than August 29, 1988.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human

Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: C.H. Campbell, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 597-3408.

SUPPLEMENTARY INFORMATION: These amendments would revise several rules relating to coverage under Social Security. Most of the rules are being proposed to reflect legislative enactments for including or excluding certain categories of employer payments as wages under the Social Security Act. Additionally, two of the proposed rules reflect statutory enactments concerning (1) whether work as a church employee is employment or self-employment and (2) the revocation of a minister's exemption from Social Security coverage. The remaining rules are being proposed for such reasons as affording greater clarity, reorganizing the materal under a rule, or the consolidation of sections.

A section-by-section description of the proposed revisions follows:

Section 404.1001 Introduction.

We propose to revise paragraph (d)(3) of this section to provide a more comprehensive overview of the rules on wages for Social Security purposes.

Section 404.1026 Work for a church or qualified church-controlled organization.

We propose to amend paragraph (a) of this section to conform it with the provisions of section 1882 of Pub. L. No. 99-514 (the Tax Reform Act of 1986) designating some church employees' income as self-employment.

Section 404.1041 Wages.

We propose to add paragraphs (e) and (f) to this section to provide a more comprehensive treatment of wages in general. Paragraph (e) describes employment where wages are counted only when paid in cash. Paragraph (f) concerns payment for services by home workers.

We also propose to amend paragraph (d) of this section to make it consistent with the added paragraphs (e) and (f). The present paragraph (d) would infer that wages cannot be restricted to cash payments alone in certain kinds of employment.

Section 404.1042 Wages when paid and received.

We propose to add a paragraph (f) to this section to reflect enactment of section 324(c)(1) of Pub. L. No. 98-21 (the Social Security Amendments of 1983) which amended section 209 of the Social Security Act. This new paragraph (f) will indicate when payments to an employee under a nonqualified deferred compensation plan are creditable as wages.

Section 404.1046 Pay for work by certain members of religious orders.

We propose to add a new provision on crediting as wages the payments received by a member of a religious order who works for a third party.

Section 404.1048 Contribution and benefit base after 1981.

We propose to delete reference to 1981 earnings as a benefit base. This change was made for the purpose of affording greater clarity to the subpart.

Section 404.1049 Payments under an employer plan or system that are excluded from wages.

We propose to amend paragraphs (a) and (b) and add paragraph (c) to this section to reflect amendment of paragraphs (b) and (m)(1)(C) of section 209 of the Social Security Act by paragraphs (c)(1) and (c)(3) of section 324 of Pub. L. No. 98-21 (the Social Security Amendments of 1983). These statutory provisions change the prior exclusions from wages of the payments made on account of retirement under an employer's plan or system.

Section 404.1050 Retirement payments.

We propose to change this section, which describes what retirement payments are excluded from wages, also to reflect paragraphs (b) and (m)(1)(C) of section 209 of the Social Security Act as amended by paragraphs (c)(1) and (c)(3) of section 324 of Pub. L. No. 98-21 (the Social Security Amendments of 1983).

Section 404.1051 Payment on account of sickness and accident disability or related medical or hospitalization expenses.

We propose to combine § 404.1041A with this section. Section 404.1051A describes the sick payments paid an employee in the 6-month period after his or her work stopped and whether these payments are wages. Since we are combining the provisions of these two sections, we propose to delete § 404.1051A.

Section 404.1052 Payments from or to certain tax exempt trusts or payments under or into certain annuity plans.

We propose to combine the current § 404.1053, which states the rule on the exclusion from wages of annuity plan payments, with this section, which states the rule on the exclusion from wages of payments from or to certain tax-exempt trusts.

This proposed revised section and proposed § 404.1053 (discussed below) contain some but not all the wage exclusions listed under section 209(e) of the Act. The few exclusions that are not contained in the proposed regulations are self-executing, nondiscretionary statutory provisions that require no implementing policies or interpretations by the Secretary of Health and Human Services.

Section 404.1053 "Qualified benefits" under a cafeteria plan.

We propose to add a new § 404.1053 to provide for excluding "qualified benefits" under a cafeteria plan from a person's wages and to reflect the amendment of section 209(e) of the Social Security Act by section 1151(d)(2)(C) of Pub. L. No. 99-514 (the Tax Reform Act of 1986).

Section 404.1054 Payments by an employer of an employee's tax or employee's contribution under State law.

We propose to renumber current § 404.1055 as § 404.1054. We also propose to delete from the renumbered section the provisions of the rule that were in force prior to January 1, 1981 for most employment and the special provisions in effect prior to January 1, 1984 for State or local employment.

The current § 404.1054 provisions, which provide for excluding from an employee's wages the employer's payments into a bond purchase plan for the employee, are no longer in effect because of the enactment of section 491 of Pub. L. 98-369 (the Deficit Reduction Act of 1984). This bond purchase plan wage exclusion was no longer in effect beginning January 1, 1984 and, consequently, will be deleted from the regulations.

Section 404.1058 Special situations.

We propose to renumber current § 404.1059 as §404.1058. In addition, we propose to make the following two changes:

1. Clarification of the rule on the $100 standard for determining whether a

home worker's payments are wages. The clarification will describe how this standard would apply to the home worker who is a common-law employee as described in § 404.1007 and to the home worker who meets the requirements described in section 210(j)(3)(C) of the Social Security Act.

2. We propose to delete the provisions in paragraph (g) that are no longer in effect as a result of section 324(c)(3)(B) of Pub. L. 98-21, the Social Security Amendments of 1983.

Section 404.1068 Employees who are considered self-employed.

We propose to amend paragraph (f) to reflect section 1882 of Pub. L. No. 99-514 (the Tax Reform Act of 1986) concerning the special rules for determining the amount of a person's self-employment income if he or she works for a church or church-controlled organization which has elected not to participate in the Social Security program.

Section 404.1070 Christian Science practitioners.

We propose to amend this section to reflect enactment of section 1704 of Pub. L. 99-514 (the Tax Reform Act of 1986), which permits Christian Science practitioners to revoke an exemption from Social Security coverage and payment of the self-employment tax.

Section 404.1071 Ministers and members of religious orders.

We propose to amend this section also to reflect enactment of section 1704 of Pub. L. No. 99-514 (the Tax Reform Act of 1986). These statutory provisions permit ministers and members of religious orders who have not taken a vow of poverty to revoke an exemption from Social Security coverage and payment of the self-employment tax.

Renumbering, Removal, and Reserving of Sections

We propose to make the following renumbering changes:

Current section No.	Renumbered section No.
§ 404.1055	§ 404.1054
§ 404.1056	§ 404.1055
§ 404.1057	§ 404.1056
§ 404.1058	§ 404.1057
§ 404.1059	§ 404.1058
§ 404.1060	§ 404.1059

We propose to remove § 404.1051A but reserve § 404.1060.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order (E.O.) 12291 and the Secretary has determined that this is not a major rule under E.O. 12291. Therefore, a regulatory impact analysis is not required.

The rules involving coverage changes under Social Security which can be expected to involve some program costs are the following:

1. Payments under a nonqualified deferred payment plan;
2. Payment of "qualified benefits" under cafeteria plan;
3. Work for a church or a church-controlled organization;
4. Pay for work by certain members of religious orders who work for third parties; and
5. Revocation by ministers, members of religious orders, and Christian Science practitioners of an exemption from Social Security coverage.

These provisions are not expected to have a cost-impact on the economy of $100 million or more in 1 year.

Additionally, these changes in the rules are not expected to significantly increase the hours and duties of Social Security Administration personnel. Hence, administrative costs and workyear increases are expected to be negligible.

Paperwork Reduction Act

These proposed regulations impose no reporting/recordkeeping requirements requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rules pertaining to certain categories of employer payments being included or excluded as wages can affect the amount of the Social Security tax to be paid by businesses and other small entities. However, these provisions simply state, without much elaboration, very specific statutory provisions. Therefore, these statutory provisions are being implemented with no regulatory discretion. Moreover, enforcement of these statutory provisions for the most part is the responsibility of the Internal Revenue Service which determines and collects the appropriate tax under the Federal Insurance Contributions Act or Self-Employment Contributions Act. It is anticipated these regulations will have a minimal overall economic impact and a regulatory flexibility analysis, as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 13.802 Social Security Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: April 11, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved May 11, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 404 of Chapter III, Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

1. The authority citation for Subpart K is revised to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 429(a), 430, 431, and 1302; Secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99-514; 100 Stat. 2505, 2779, and 2914.

2. Section 404.1001 is amended by revising paragraph (d)(3) to read as follows:

§ 404.1001 Introduction.

* * * * *

(d) * * *

(3) The rules on wages are found in §§ 404.1041 through 404.1059. We describe what is meant by the term "wages," discuss the various types of pay that count as wages, and state when the pay counts for Social Security purposes. We include the explanation of agriculture labor, domestic services, service not in the course of the employer's business, and home worker services under "wages" because special standards apply to these services.

* * * * *

3. Section 404.1026 is amended by revising paragraph (a) to read as follows:

§ 404.1026 Work for a church or qualified church-controlled organization.

(a) *General.* If you work for a church or qualified church-controlled organization, as described in this section, your employer may elect to have your services excluded from employment. You would then be

considered to be self-employed and special conditions apply to you. See § 404.1068(f) for those special conditions. The employer's election of the exclusion must be made with the Internal Revenue Service in accordance with Internal Revenue Service procedures and must state that the church or church-controlled organization is opposed for religious reasons to the payment of Social Security employment taxes. The exclusion applies to current and future employees. If you work in an unrelated trade or business (within the meaning of section 513(a) of the Code) of the church or church-controlled organization, the exclusion does not apply to your services.

* * * * *

4. Section 404.1041 is amended by revising paragraph (d) and adding paragraphs (e) and (f) to read as follows:

§ 404.1041 Wages.

* * * * *

(d) Your wages can be in any form. You can be paid in cash or something other than cash, for example, in goods or clothing. (See paragraphs (e) and (f) of this section for kinds of employment where cash payments alone are considered wages and § 404.1043(b) concerning the value of meals and lodging as wages.) If your employer pays you cash for your meals and lodging on a regular basis as part of your employment, these payments may be considered wages. Payments other than cash may be counted as wages on the basis of the fair value of the items when paid.

(e) In certain kinds of employment, cash payments alone count as wages. These types of employment are: agricultural labor, domestic services, and services not in the course of the employer's trade or business.

(f) To count as wages, payments for services performed by home workers who are employees as described in § 704.1008(d) must be in cash and must amount to $100 or more in a calendar year. Once this cash pay test is met, all remuneration paid, whether in cash or kind, is also wages.

5. Section 404.1042 is amended by adding paragraph (f) to read as follows:

§ 404.1042 Wages when paid and received.

* * * * *

(f) *Payments under nonqualified deferred compensation plans.* Amounts that an employee is entitled to receive under nonqualified deferred compensation plans (plans that do not qualify for special tax treatment under the Code) are creditable as wages for Social Security purposes at the later of the following times:

(1) When the services are performed; or

(2) When there is no longer a substantial risk of forfeiture (as defined in section 83 of the Code) of the employee's rights to the deferred compensation.

Any amounts taken into account as wages by this paragraph (and the income attributable thereto) will not thereafter be treated as wages for Social Security purposes.

6. Section 404.1046 is revised to read as follows:

§ 404.1046 Pay for work by certain members of religious orders.

(a) If you are a member of a religious order who has taken a vow of poverty (§ 404.1023), and the order has elected Social Security coverage under section 3121(r) of the Code, your wages are figured in a special way. Your wages, for Social Security purposes, are the fair market value of any board, lodging, clothing, and other items of value furnished to you by the order, or furnished to the order on your behalf by another organization or person under an agreement with the order. (However, see paragraph (b) of this section.) The order must report at least $100 a month for each active member. If the fair market value of items furnished to all members of a religious order does not vary significantly, the order may consider all members to have a uniform wage.

(b) If you perform services for a third party, the following rules apply:

(1) If you perform services for another agency of the supervising church or an associated institution, any amounts paid based on such services, whether paid directly to you or to the order, do not count as wages. Only wages figured under (a) of this section, are counted.

(2) If you perform services in a secular setting as an employee of a third party not affiliated or associated with the supervising church or an associated institution, any amounts paid based on such services, whether paid directly to you or to the order, count as wages paid to you by the third party. These wages are in addition to any wages counted under paragraph (a) of this section.

7. Section 404.1048 is amended by revising paragraph (a) to read as follows:

§ 404.1048 Contribution and benefit base after 1981.

(a) *General.* The contribution and benefit base after 1981 is figured under the formula described in paragraph (b) of this section in any calendar year in which there is an automatic cost-of-living increase in old-age, survivors, and disability insurance benefits. For purposes of this section, the calendar year in which the contribution and benefit base is figured is called the determination year. The base figured in the determination year applies to wages paid after (and taxable years beginning after) the determination year.

* * * * *

8. Section 404.1049 is amended by redesignating the present paragraphs (c) through (e) as paragraphs (d) through (f), revising paragraphs (a) and (b), and adding a new paragraph (c) to read as follows:

§ 404.1049 Payments under an employer plan or system.

(a) Payments to, or on behalf of, you or any of your dependents under your employer's plan or system are excluded from wages if made because of you or your dependents—

(1) Medical or hospitalization expenses connected with sickness or accident disability; or

(2) Death.

(b) Payments to you or your dependents under your employer's plan at or after the termination of your employment relationship because of your death or retirement for disability are excluded from wages.

(c) Payments made after 1983 to you or your dependents under your employer's plan at or after the termination of your employment relationship because of retirement after reaching an age specified in the plan or in a pension plan of the employer are not excluded from wages unless—

(1) The payments are to or from a trust or annuity plan of your employer as described in § 404.1052; or

(2) An agreement to retire was in effect on March 24, 1983 between you and your employer and the payments made after 1983 under a nonqualified deferred compensation plan (see § 404.1042(f)) are based on services performed for your employer before 1984.

* * * * *

9. Section 404.1050 is revised to read as follows:

§ 404.1050 Retirement payments.

Payments made after 1983 to you (including any amount paid by an employer for insurance or annuities) on account of your retirement for age are not excluded from wages unless—

(a) The payments are to or from a trust or annuity plan of your employer as described in § 404.1052; or

(b) The payments satisfy the requirements described in § 404.1049(c)(2).

10. Section 404.1051 is revised to read as follows:

§ 404.1051 Payments on account of sickness or accident disability, or related medical or hospitalization expenses.

(a) We do not include as wages any payment that an employer makes to you, or on your behalf, on account of your sickness or accident disability, or related medical or hospitalization expenses, if the payment is made more than 6 consecutive calendar months following the last calendar month in which you worked for that employer. Payments made during the 6 consecutive months are included as wages.

(b) The exclusion in paragraph (a) of this section also applies to any such payment made by a third party (such as an insurance company). However, if you contributed to your employer's sick pay plan, that portion of the third party payments attributable to your contribution is not wages.

(c) Payments of medical or hospitalization expenses connected with sickness or accident disability are excluded from wages beginning with the first payment only if made under a plan or system of your employer as explained in § 404.1049(a)(1).

(d) Payments under a worker's compensation law are not wages.

§ 404.1051A [Removed]

11. Section 404.1051A is removed.

12. Section 404.1052 is revised to read as follows:

§ 404.1052 Payments from or to certain tax exempt trusts or payments under or into certain annuity plans.

(a) We do not include as wages any payment made—

(1) Into a tax-exempt trust or annuity plan by your employer on behalf of you or your beneficiary; or

(2) From a tax-exempt trust or under an annuity plan to, or on behalf of, you or your beneficiary.

(b) The trust must be exempt from tax under sections 401 and 501(a) of the Code, and the annuity plan must be a plan described in section 403(a) of the Code when payment is made.

(c) The exclusion does not apply to payments to an employee of the trust for work done as an employee of the trust.

13. Section 404.1053 is revised to read as follows:

§ 404.1053 "Qualified benefits" under a cafeteria plan.

We do not include as wages any "qualified benefits" under a cafeteria plan as described in section 125 of the Code. This include any "qualified benefit" made to you, or on your behalf, pursuant to a salary reduction agreement between you and your employer. The Internal Revenue Service decides whether any plan is a cafeteria plan under section 125 of the Code and whether any benefit under the plan is a "qualified benefit."

§ 404.1054 [Removed]

14. Section 404.1054 is removed.

§§ 404.1055, 404.1056, 404.1057, 404.1058, 404.1059, and 404.1060 [Redesignated as §§ 404.1054, 404.1055, 404.1056, 404.1057, 404.1058 and 404.1059]

§ 404.1060 [Reserved]

15. Sections 404.1055, 404.1056, 404.1057, 404.1058, 404.1059, and 404.1060 are redesignated §§ 404.1054, 404.1055, 404.1056, 404.1057, 404.1058, and 404.1059 respectively and § 404.1060 is reserved.

16. Newly redesignated § 404.1054 is revised to read as follows:

§ 404.1054 Payments by an employer of employee's tax or employee's contribution under State law.

(a) We excluded as wages any payment by an employer (described in paragraph (b) of this section) that is not deducted from the employee's salary (or for which reimbursement is not made by the employee) of either—

(1) The tax imposed by section 3101 of the Code (employee's share of "social security tax"); or

(2) Any payment required from an employee under a State unemployment compensation law.

(b) The payments described in paragraph (a) of this section are not included as wages only if they are made by an employer on behalf of an employee employed in—

(1) Domestic service in the private home of the employer; or

(2) Agricultural labor.

17. In newly redesignated § 404.1058, paragraphs (a)(1) and (a)(2)(iii) are revised, paragraphs (a)(2)(iv) and (a)(2)(v) are added, and paragraph (g) is revised to read as follows:

§ 404.1058 Special situations.

(a) * * *

(1) *The $100 standard.* We do not include as wages cash pay of less than $100 paid to you in a calendar year by an employer for services not in the course of the employer's trade or business (nonbusiness work) and for services as a home worker as described in § 404.1008(d).

(2) * * *

(iii) The noncash payments an employer pays you for services not in the course of the employer's trade or business are not wages even if the employer has paid you cash wages of $100 or more in the calendar year for services of that type.

(iv) Amounts paid to you as a home worker as described in § 404.1008(d) are not wages unless you are paid $100 or more in cash in a calendar year. If you meet this test, any noncash payments you receive for your services also count as wages.

(v) Amounts paid to you as a home worker in a common-law employment relationship (see § 404.1007) count as wages regardless of amount or whether paid in cash or kind.

* * * * *

(g) *Payments to an employee who is entitled to disability insurance benefits.* We do not include as wages any payments made by an employer to an employee if at the time such payment is made—

(1) The employee is entitled to disability insurance benefits under the Act;

(2) The employee's entitlement to such benefits began before the calendar year in which the employer's payment is made; and

(3) The employee performed no work for the employer in the period in which the payments were paid by such employer (regardless of whether the employee worked in the period the payments were earned.)

* * * * *

18. Section 404.1068 is amended by revising paragraph (f) to read as follows:

§ 404.1068 Employees who are considered self-employed.

* * * * *

(f) *Employees of a church or church-controlled organization that has elected to exclude employees from coverage as employment.* If you perform services that are excluded from employment as described in § 404.1026, you are engaged in a trade or business. Special rules apply to your earnings, which are known as church employee income. If you are paid $100 or more in a taxable year by an employer who has elected to have its employees excluded, those earnings are self-employment income (see § 404.1096(c)(1)). In figuring your church employee income you may not reduce that income by any deductions attributable to your work. Your church employee income and deductions may not be taken into account in determining the amount of other net earnings from self-employment. Your church employee income is not exempt from self-employment tax under the exemption otherwise available to members of certain religious groups (see § 404.1075).

19. Section 404.1070 is revised to read as follows:

§ 404.1070 Christian Science practitioners.

If you are a Christian Science practitioner, the services you perform in the exercise of your profession are a trade or business unless you were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with section 1704(b) of the Tax Reform Act of 1986. An exemption cannot be granted if you filed a valid waiver certificate under the provisions that apply to taxable years ending before 1968.

20. Section 404.1071 is amended by revising paragraph (a) to read as follows:

§ 404.1071 Ministers and members of religious orders.

(a) If you are a duly ordained, commissioned, or licensed minister of a church, or a member of a religious order who has not taken a vow of poverty, the services you perform in the exercise of your ministry or in the exercise of duties required by the order (§ 404.1023(c) and (e)) are a trade or business unless you filed for and were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with section 1704(b) of the Tax Reform Act of 1986. An exemption cannot be granted if you filed a valid waiver certificate under the provisions that apply to taxable years ending before 1968.

* * * * *

[FR Doc. 88-14766 Filed 6-29-88; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 122

Management of Osage Judgment Funds for Education and Socioeconomic Programs

February 3, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: At the request of the Osage Tribe of Indians on October 30, 1984, Pub. L. 98-605 was enacted to eliminate the socioeconomic provision under Part 122 of 25 CFR, Management of Osage Judgment Funds for Education and Socioeconomic Programs. This amendment of Pub. L. 92-586, by Pub. L. 98-605, will eliminate the requests for an interpretation of the socioeconomic provision along with ensuring additional financial assistance for postsecondary education for Osage Indian college students. Part 122 is also proposed to be retitled "Management of Osage Judgment Funds for Education."

DATES: Comments must be received on or before August 29, 1988.

ADDRESSES: Mail or hand carry written comments to: Mr. Wilson E. Babby, Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs), Main Interior Building Room 3512, Code 500, 18th & C Streets NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Virgil Akins, Bureau of Indian Affairs, Office of Indian Education Programs, Main Interior Building, Mail Stop Room 3512, 18th & C Streets NW., Washington, DC 20240, (202) 343-4871.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

On October 30, 1984, Pub. L. 98-605 was enacted to clarify to make technical amendments to the various acts pertaining to the Osage Indians. The amendment strikes out all references to the "socioeconomic" provisions.

Because of the time expended by the Osage Tribal Education Committee (OTEC) to resolve the numerous complaints and requests for interpretation of the "socioeconomic" provision, along with the limited availability of funds for both the "socioeconomic" programs and the educational demands of tribal members, the "socioeconomic" provision in § 122.7 of 25 CFR Part 122 Management of Osage Judgment Funds for Education and Socioeconomic Programs, is proposed to be removed. This proposed removal will provide the Osage Tribal Education Committee the opportunity to direct its energies and monies for educational considerations which the Osage Tribal members have established as their principle priority. Further, be advised that for the regulations of this Part to more readily serve the everchanging societal needs of the Osage Tribe, other deletions were incorporated; however, the Osage Tribal Education Committee is minimally obligated to obtain approval from the Assistant Secretary of the Interior for Indian Affairs for proposed budget expenditures and for the overall program plan of operation.

The policy of the Department of the Interior is to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rules to the location identified in the Addresses section of this preamble.

The Department of the Interior has determined that this document is not a major rule and does not require regulatory analysis under Executive Order 12291. This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. The proposed regulation does not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed regulations will not have an impact on small entities as defined in the Act.

The primary author of this document is Dr. Virgil Akins, Education Specialist, Postsecondary Education, Office of Indian Education Programs, Bureau of Indian Affairs, (202) 343-4871.

Information Collection Statement

The information collection requirement(s) contained in §§ 122.6 and 122.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1078-0098 and 1076-0106, respectively.

List of Subjects in 25 CFR Part 122:

Indian—claims, Indian-education, and Indian-judgment funds.

For the reasons set out in the preamble, Title 25, Chapter I, Part 122 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 122—MANAGEMENT OF OSAGE JUDGMENT FUNDS FOR EDUCATION

Sec.
122.1 Purpose and scope.
122.2 Definitions.
122.3 Information collection.
122.4 Establishment of the Osage Tribal Education Committee.
122.5 Selection/nomination process for committee members.
122.6 Duties of the Osage Tribal Education Committee.
122.7 Budget.
122.8 Administrative costs for management of the fund.
122.9 Annual report.
122.10 Appeal.
122.11 Applicability.

Authority: 86 Stat. 1295, 98 Stat. 3163 (25 U.S.C. 331 note)

§ 122.1 Purpose and scope.

(a) The purpose of the regulation in this part is to set forth procedures and

guidelines to govern the use of authorized funds in education programs for the benefit of Osage Tribal members along with application requirements and procedures used by those eligible persons.

(b) The Osage Tribe by act of Congress, October 27, 1972 (25 U.S.C. 883, Stat. 1295), as amended by Pub. L. 98–605 on October 30, 1984, provides that $1 million, together with other funds which revert to the Osage Tribe, may be advanced, expended, invested, or reinvested for the purpose of financing an education program of benefit to the Osage Tribe of Indians of Oklahoma, with said program to be administered as authorized by the Secretary of the Interior.

§ 122.2 Definitions.

(a) "Act" means Osage Tribe by Act of Congress; October 27, 1972 (25 U.S.C. 883, 86 Stat. 1295), as amended by Pub. L. 98–605.

(b) "Allottee" means a person whose name appears on the roll of Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908, pursuant to the Act of June 28, 1906 (34 Stat. 539).

(c) "Assistant Secretary" means the Assistant Secretary—Indian Affairs.

(d) "Osage Tribal Education Committee" means the committee selected to administer the provisions of this part as specified by § 122.6.

(e) "Point system" means a set of specific conditions appropriate to application for educational assistance for which a specified number of points is awarded for rating and for ranking all applications for use of funds under this part.

(f) "Ranking application" means the process by which all applications, after having been rated, are placed in a descending order according to the total number of points awarded.

(g) "Rating application" means the method, or procedure, by which all applications are individually evaluated with the point system to determine conditions met and consequently points earned by each applicant.

(h) "Reverted funds" means the unpaid portions of the per capita distribution fund, as provided by the Act, which were not distributed because the funds were:

(1) Unclaimed within the period specified by the Act; or

(2) For an amount totaling less than $20 due an individual from one or more shares of one or more Osage allotees.

The Act provides that such unpaid funds revert to the Osage Tribe to be used along with the earned interest from the $1 million fund for an education program of benefit to the Osage Tribe.

(i) "Secretary" means the Secretary of the Department of the Interior or his/her authorized representative.

§ 122.3 Information collection.

The information collection requirements contained in §§ 122.6 and 122.9 have been approved by the Office of Management and Budget under U.S.C. 3501 *et seq.* and assigned clearance numbers 1076–0098 and 1076–0106, respectively. The information collected in § 122.6 determines the eligibility of Osage Indian student grant applicants for the awarding of educational assistance grants to eligible Osage Indian students. The information collected in § 122.9 provides summative review for program evaluation and program planning. Response to the information collections is required to obtain a benefit.

§ 122.4 Establishment of the Osage Tribal Education Committee.

(a) The Osage Tribe to maintain its right of Tribal autonomy shall, at the direction of the Interior for Indian Affairs, establish the Osage Tribal Education Committee to perform the responsibilities and provisions of this part or as set out in § 122.6 of this part.

(b) This committee shall be composed of seven (7) members. Five (5) of the members shall be of Osage blood or descendent of Osage, and two (2) from the education staff of the Bureau of Indian Affairs.

(1) Of the five Osage members, at least three shall be legal residents and/or live within a 20-mile radius of one of the three Osage Indian villages. Of these, at least one member shall reside within the specified radius of the Pawhuska Indian village; at least one member shall reside within the specified radius of the Hominy Indian village; and at least one member shall reside within the specified radius of the Greyhorse Indian village.

(2) The two remaining Osage committee members will be members at large.

§ 122.5 Selection/nomination process for committee members.

(a) Selection of the five (5) OTEC members shall be made by the Assistant Secretary in accordance with the following:

(1) Any adult person of Osage Indian Blood who is an allottee, or a descendant of an allottee is eligible to serve on the Osage Tribal Education committee.

(2) Nominees for committee membership shall include a brief statement of interest for serving on the committee and qualifications.

(3) Nominations may be made by any Osage organization including the Osage village communities of Greyhorse, Hominy, and Pawhuska by requesting its candidates to follow procedures outlined in paragraph (a)(2) of this section.

(b) Nominations shall be delivered by registered mail to the following address: Osage Tribal Education Committee, c/o Area Education Programs Administrator, Bureau of Indian Affairs, Muskogee Area Office–Room 152, 5th & W. Okmulgee, Muskogee, Oklahoma 74401, Telephone: (918) 687–2306.

(c) The Nominee Selection Committee composed of OTEC members so designated by the Assistant Secretary will review all nominations. Upon completion of this process the Nominee Selection Committee will nominate those successful candidates along with the committee recommendation for final consideration to the Assistant Secretary.

(d) The Assistant Secretary may, until a vacancy is filled, appoint an individual to serve a temporary period of time not to exceed 120 days.

(e) Each member shall be sworn in for a four year term. At the discretion of the Assistant Secretary, members may succeed themselves with a recommendation for reappointment from the Nominee Selection Committee.

§ 122.6 Duties of the Osage Tribal Education Committee.

(a) For the purpose of providing financial assistance to eligible Osage applicants for educational expenditures, the Osage Tribal Education Committee shall maintain an office and retain all official record at the Bureau of Indian Affairs offices located at the Federal Building, Muskogee, Oklahoma.

(b) The Osage Tribal Education Committee shall be responsible for implementing an overall plan of operation consistent with the policy of Indian self-determination and which incorporates a systematic sequental process whereby all student applications for financial aid are rated and ranked simultaneously to enable a fair distribution of available funds.

(1) All applicants shall be rated by a point system. After all applications are rated, the Osage Tribal Education Committee will rank the applications in a descending order for award purposes. No awards shall be made until all applications are rated against the point system.

(2) Monetary awards shall be for fixed amounts as determined by the Osage Tribal Education Committee. The fixed amounts shall be itemized in the committee's annual budgetary request,

and the monetary award amounts shall be consistent with the fixed amounts itemized in the approved budget.

(3) Payment of the monetary awards shall be made directly to the student with half of the amount payable on or before September 15 and the second half payable on or before February 15, provided the student is successfully enrolled in an accredited institution of higher education (learning) and meeting the institution's requirement for passing work.

(4) No student will be funded beyond 10 semesters or five academic years, not to include summer sessions, nor shall any student with a baccalaureate degree be funded for an additional undergraduate degree.

§ 122.7 Budget.

(a) Each year by August 1, the Osage Tribal Education Committee will submit a proposed budget to the Assistant Secretary or to his/her designated representative for formal approval. Unless the Assistant Secretary or his/her designated representative informs the committee in writing of budget restriction(s) by September 1, the proposed budget is considered to be accepted.

(b) The investment principal, composed of the one million dollars and reverted funds, must be invested in a federally insured banking or savings institution or invested in obligations of the federal government. There are no provisions in this part which shall limit the right of the Osage Tribal Education Committee to withdraw interest earned from the investment principal; however, expenditures shall be made against only the interest generated from investment principal and reverted funds.

(c) All funds deposited will accumulate interest at a rate not less than that generally available for similar funds deposited at the same banking or savings institution or invested in the same obligations of the United States Government for the same period of time.

§ 122.8 Administrative costs for management of the fund.

Funds available for expenditures may be used by the Osage Tribal Education Committee in the performance of its duties and responsibilities. Record keeping is required and proposed expenditures are to be attached with the August 1 proposed annual budget to the Assistant Secretary or his/her designated representative.

§ 122.9 Annual report.

The Osage Tribal Education Committee will be required to submit an annual report to the Assistant Secretary or his/her designated representative on or before November 1, for each preceding year. Reporting requirements shall be in accordance with OMB approved Form 1076-0106, Higher Education Annual Report.

§ 122.10 Appeal.

The procedure for appealing any decision regarding the awarding of funds under this part shall be made in accordance with 25 CFR Part 2, Appeals from Administrative Action.

§ 122.11 Applicability.

These regulations shall cease upon determination of the legal and appropriate body to administer the fund and upon the establishment of succeeding regulations.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88-14249 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3405-3; TN-020]

Approval and Promulgation of Implementation Plans for Tennessee; Chattanooga-Hamilton County Resonably Available Control Technology for Coke Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: On December 23, 1985 (50 FR 52336), EPA proposed approval of a revision to the Chattanooga-Hamilton County portion of the Tennessee State Implementation Plan (SIP) for Total Suspended Particulates (TSP). Only one source in the Chattanooga-Hamilton County area was affected by the revision, which consisted of amendments to the section for Reasonably Available Control Technology (RACT) for underfire (combustion) stacks in coke plants and visible emission limits for charging coke batteries. That source, Southern Coke Corporation, has since permanently closed. Based on this information about this source, the Agency is withdrawing the proposed appoval of the RACT regulations and visible emission limits.

DATE: This action is effective June 30, 1988.

ADDRESSESS: Copies of materials submitted by Tennessee may be examined during normal business hours at the following locations:

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407.

Tennessee Department of Health and Environment, Division of Air Pollution Control, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 37219-5409.

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

SUPPLEMENTARY INFORMATION: On October 9, 1981, in the consent decree, *United States of America, et al.* v. *Chattanooga Coke and Chemical Company, Inc.*, Civil Action No. 1-81-323 in the United States District Court for the Eastern District of Tennessee, Southern Division, Chattanooga Coke and Chemicals Company, Inc. (Chattanooga Coke) agree to undertake a series of remedial actions designed to bring emissions from the facility into compliance with the Tennessee SIP for TSP. This was to be done by repairing and refurbishing production equipment and the construction and operation of emission control systems. The decree required final compliance for emission points by June 1, 1982. To determine compliance of Chattanooga Coke, EPA and the Chattanooga-Hamilton County Air Pollution Control Bureau (CHCAPCB) conducted six inspections from April 26, 1982 to March 21, 1983. Each inspection indicated that Chattanooga Coke had failed to achieve compliance with the emission limits of the consent decree. Civil action was taken against the source and a penalty was levied.

During this time, the Chattanooga area was still designated nonattainmnent for the primary and secondary TSP standard. In 1984 the area was redesignated to primary attainment based on monitoring data. The TSP primary standard had not been exceeded since before 1981.

In January of 1985 the State of Tennessee submitted a SIP revision for the Chattanooga-Hamilton County portion of the SIP for TSP. The SIP revision consisted of RACT regulations for coke plants and visible emission limits for charging coke batteries, which were the same limits agreed to by Chattanooga Coke in the 1981 consent decree. As mentioned earlier, Chattanooga Coke had not achieved and demonstrated compliance with the consent decree limits, but EPA proposed approval of the SIP revision on December 23, 1985 (FR 52336), based on the 1984 TSP redesignation. Since Chattanooga Coke was not meeting the

proposed emission limit, the revision, which is a relaxation of current regulations, would not allow an actual increase in emissions. In fact, the source was prepared to install additional equipment to meet the proposed limit after it was approved, thereby reducing actual emissions significantly.

In 1986 Southern Coke Corporation purchased all assets of Chattanooga Coke, which had filed for Chapter 11 bankruptcy, and installed additional air pollution control equipment. The 1981 consent decree was also amended to reflect a new final compliance date, December 3, 1986.

After December 3, 1966, EPA conducted three more inspections of Southern Coke and each time the company failed to achieve and demonstrate compliance. On August 24, 1987, Southern Coke Corporation notified EPA that the plant would cease all operations as of August 31, 1987. As of now, portions of the plant have been dismantled and sold. Based on this information, EPA determined that there was no need to continue to process the RACT regulations and the visible emission limits for coke batteries. Therefore, EPA is hereby withdrawing the proposed approval of those revisions published December 23, 1985 (50 FR 52336).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Intergovernmental relations, Incorporation by reference.

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

Dated: June 16, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88-14385 Filed 6-29-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3407-3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this document, EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP). The purpose of this revision is to reduce emissions of volatile organic compounds (VOC) into the air in the Kansas City ozone nonattainment area. VOCs react in the atmosphere to form ozone, and reducing VOC emissions is expected to result in the Kansas City area meeting the National Ambient Air Quality Standards (NAAQS) for ozone. Emissions will be reduced by sources of VOCs coming into compliance with two new emission limits which have been adopted by the state of Missouri as part of this plan. EPA's approval of these rules means that they will be enforceable against individual sources of air pollution by the federal government as well as by the state. The purpose of this document is to advise the public of EPA's preliminary finding and to invite comments on EPA's proposed approval.

DATE: Comments must be received by August 1, 1988.

ADDRESSES: Comments should be sent to Larry A Hacker, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state-submitted information and the EPA-prepared technical support document are available at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker, (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (CAA), as amended in 1970, required states to submit, for all areas of the country, plans to implement the NAAQS which are set by EPA to protect health and welfare by limiting the amount of air pollution allowed in the air to which people are exposed. These plans were to show how the NAAQS would be attained by 1975. When Congress changed the CAA in 1977, it recognized that many areas of the country had not yet attained the NAAQS and required revised plans that would be adequate, in most cases, to attain the standards by 1982. Upon request, areas with severe problems were given until the end of 1987 to demonstrate attainment.

The SIP approved by EPA in 1972 did not result in attaining the ozone standard, and the Kansas City Metropolitan Area (KCMA) was officially listed as nonattainment with respect to the ozone standard on March 3, 1978 (43 FR 9009). The state of Missouri submitted a strengthened SIP on July 2, 1979. The SIP was approved by EPA on April 9, 1980 (45 FR 24140), with certain conditions, all of which were subsequently satisfied. This approved plan contained measures to reduce the emissions of the VOCs that react in the atmosphere to form ozone. These reductions were thought at the time to be adequate to reduce ambient ozone concentrations to the standard by December 31, 1982.

While there were no exceedances of the NAAQS for ozone in 1982, there were three exceedances during 1983. Additional monitored ozone exceedances in 1984 confirmed that the ozone standard had not been attained and on February 20, 1985, EPA notified the state that the SIP was inadequate and called for revisions adequate to attain the standard (see 50 FR 26198, June 25, 1985). On May 21, 1986, the state submitted a revised plan containing additional control measures which the state believes will attain the ozone NAAQS. Pursuant to this plan, the state submitted revised VOC control regulations on December 18, 1987.

Evaluation Criteria

EPA has evaluated these submissions to determine if they meet the requirements of Part D of the CAA using the *EPA Guidance Document for the Correction of Part D State Implementation Plans for Nonattainment Areas*, dated January 27, 1984, and the *Policy for Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension*, published January 22, 1981 (46 FR 7182). The discussion below follows the outline of Part D requirements as given in Section 172 of the CAA.

Attainment Demonstration

The basic requirement of section 172(a) is to demonstrate that the NAAQS will be attained. Section 172(a)(1) required a demonstration of attainment by 1982 for most areas of the country. Section 172(a)(2) requires attainment as expeditiously as practicable but not later than December 31, 1987, for areas that demonstrated in 1979 that they could not attain the ozone or carbon monoxide standard by 1982. For areas which did not make such demonstrations but did not attain, the guideline document presumes that such areas should be able to attain by December 31, 1987.

The Kansas City ozone SIP demonstrates attainment by December 31, 1987. The demonstration includes a new inventory of VOC emissions for the year 1984, including mobile source emission estimates based on the EPA motor vehicle calculation program, MOBILE3. The inventory was used as

input into the Empirical Kinetic Modeling Approach, which estimated that VOC emissions need to be reduced 16.8 percent in order to meet the ozone standard. A large portion of this reduction will occur due to the effect of older motor vehicles being replaced with new vehicles which are better controlled under the Federal Motor Vehicle Control Program (FMVCP). The state has adopted four new rules requiring controls on: (1) Gasoline loading from tank trucks into gasoline stations (Stage I); (2) paint manufacturing; (3) pesticide and herbicide manufacturing; and (4) application of automotive underbody deadeners. Also, the state has revised its existing VOC control rules to delete inappropriate source applicability cutoffs and to improve clarity and enforceability. The emission reductions from the new and revised existing VOC control rules and from the FMVCP together are sufficient for the SIP to demonstrate attainment.

The NAAQS for ozone is attained when the number of expected exceedances is less than or equal to one per year when averaged over the three most recent years of record (see 40 CFR 50.9). EPA's review of the air quality data from January 1, 1985, through December 31, 1987, shows that the KCMA has attained the NAAQS for ozone.

Public Hearing

Section 172(b)(1) requires that the plan be adopted by the state after reasonable notice and public hearing. The May 21 submittal, including the Stage I requirement, was adopted by the Missouri Air Conservation Commission (MACC) on April 10, 1986, after the public hearing of March 20, 1986, which had been advertised in several newspapers and in the MISSOURI REGISTER at least 30 days in advance. Similarly, the paint manufacturing rule was heard at a properly advertised hearing May 29, 1986, and was adopted by the MACC on August 21, 1936.

The December 18 submittal contained 11 rule actions. Four of these were adopted, after proper notice and public hearing, on October 15, 1987. The remaining seven rule actions were adopted by the MACC on November 18, 1987, again, after proper notice and public hearing. Reasonably Available Control Measures (RACM)

Section 172(b)(2) requires implementation of all RACM as expeditiously as practicable. EPA's policy for ozone nonattainment areas having a significant ozone generating potential requires reasonably available control technology (RACT) for all VOC sources covered by a control techniques guideline (CTG) document. Controls representing RACT are also required for all major non-CTG VOC sources.

The December 18 submittal contained additional RACT rules and rule amendments necessary to complete the section 172(b)(2) requirements. Additional VOC emission reductions will result from the implementation of these requirements; however, no quantification of the emission reductions expected from these control measures is assumed in the attainment demonstration. Seven existing state rules were revised to delete inappropriate source applicability cutoffs, improve clarity and enforceability, and to otherwise make them more consistent with the applicable CTGs.

In Rule 10 C.S.R. 10–2.230, Control of Emissions from Industrial Surface Coating, the Ford Motor Company's truck and passenger topcoat operations underwent emission limit and compliance date changes. The existing emission limit for both operations is 3.6 lb. VOC/gallon of coating minus water. As of December 31, 1988, the emission limit for the passenger topcoat operation is 15.1 lb. VOC/gallon of solids applied. The emission limit change is not a relaxation; only the units by which compliance is determined are being changed, i.e., lb. VOC /gallon of coating (excluding water) to lb. VOC/gallon of solids applied. Since the new emission limit is written in terms of solids applied, the extended schedule provides Ford time to make technological improvements to its paint application process at the plant and to demonstrate compliance. In order to demonstrate compliance on a solids applied basis, Ford will have to improve its application process which will reduce the amount of paint used per project, thereby reducing the amount of VOCs emitted into the atmosphere.

Also on December 31, 1988, the emission limit for the truck topcoat operation will change to 15.1 lb. VOC/gallon of solids applied unless, prior to that date, Ford submits to the state a formal commitment to modify its truck topcoat operation to meet the state or Federal New Source Performance Standards (NSPS-Subpart MM), whichever is more stringent, by no later than December 31, 1990. (See footnote (2) to Section (4) of this rule.) The other provisions of Subpart MM would not be applicable, for example, the 30-day averaging time for compliance determinations and the tabled transfer efficiency values. The compliance determination provisions of rule 10 C.S.R. 10–2.230 would continue to apply.

On March 23 and May 11, 1988, the state submitted letters which clarified the footnotes to section (4) of this rule. EPA proposes approval of these rule amendments with the understanding that the NSPS commitment in footnote (2) does not supersede a more stringent emission limit which might be required in accord with the state's new source review rule, 10 C.S.R. 10–6.060.

Also, with respect to rule 10 C.S.R. 10–2.230, the compliance method for determining the volatile and solids content of the coatings is 40 CFR Part 60, Appendix A, Reference Method 24 (RM 24). Formulation data may be used for air dried coating if the data have been verified for the volatile content to be equal to or greater than the results from RM 24. If there is a question as to which value to use, the RM 24 results will be the final values to determine compliance.

In rule 10 C.S.R. 10–6.020, definitions, numerous terms were added or revised. These terms are necessary for the state to be able to require compliance with its VOC regulations without question as to what sources are subject or what is required of them. The state exempts perchloroethylene from its definition of VOC. On October 24, 1983, EPA proposed that perchloroethylene be listed as negligibly photochemically reactive (48 FR 49097). This action has never been finalized, primarily from concern over perchloroethylene as an air toxics emission. During the state's public comment period, EPA recommended that the state not exempt perchloroethylene from its VOC definition. Given that EPA has proposed the listing of perchloroethylene as negligibly photochemically reactive, and has not rescinded that proposal, the state chose to retain the perchloroethylene exemption in its VOC definition.

New rules were adopted to address two non-CTG source categories: application of automotive underbody deadeners, and pesticide and herbicide manufacturing. Two existing rules, which addressed VOC emissions from petroleum refineries, were rescinded. There are no longer any petroleum refineries in the Kansas City area; any such facilities in the future would be subject to stringent new source review requirements. For a more complete discussion of the December 18 rule action submittal, the reader is referred to the EPA-prepared technical support document.

The state has submitted an evaluation of other nonstationary source control measures that might have been adopted, for example, a vehicle inspection/

maintenance program, State II vapor controls, and transportation control measures. The evaluation shows that such additional measures are either not reasonable, would have an insignificant benefit, or would be implemented too late to be of value. The state has, however, committed to adopting rules to implement any CTGs that EPA may publish in the future.

Rules 10 CSR 10-2.230 and 10 CSR 10-2.290 provide for alternative compliance plans whereby compliance can be determined by a daily weighted average of emissions from a combination of source operations. EPA proposes approval of these rules with the understanding that any such alternative compliance plans must be submitted and approved by EPA as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the emission limits or reduction requirements stated in the rules. Reasonable Further Progress (RFP)

Section 172(b)(3) requires a demonstration that RFP will be made in the interim period prior to attainment. The SIP contains an RFP demonstration showing that progress will be made with the major reductions occurring at the attainment date. This back-end weighted schedule is an inevitable result of submitting a plan in 1986 showing attainment in 1987.

Emission Inventory

Section 172(b)(4) requires a current, comprehensive, and accurate inventory of actual emissions as well as updating of the inventory as often as necessary to track RFP. The SIP contains an inventory based on 1984 stationary source emission reports, a contractor report of area source emissions, and a mobile source inventory based on the most recent traffic counts, registration data, and other data needed to run the MOBILE3 calculations. The SIP also commits to annual updates for purposes of tracking RFP.

Emission Growth

Section 172(b)(5) requires identification of the emissions, if any, which would be allowed due to new sources. This revision notes a previously approved portion of the state's permitting rules which requires offsets or a demonstration that emission increases will be within a growth margin provided in the plan, prior to construction of any major source or major modification. The attainment demonstration allows for production variations from existing sources; however, there is no provision for new sources without offsets.

Permitting Program

Section 172(b)(6) requires a permitting program meeting the requirements of Section 173. That is, new or modified major sources must control emissions to the lowest achievable emission rate, the source must have emission offsets or growth must be built into the SIP, and all other sources in the state owned or operated by the same owner or operators must be in compliance. In this submission, the state again references its already approved permit rules which contain the required provisions.

Financial and Manpower Resources

Section 172(b)(7) requires identification and commitment of the necessary resources. The SIP identifies the resources needed to implement the ozone plan in Kansas City and commits to provide those resources to fully implement the plan.

Emission Limits and Compliance Schedules

Section 172(b)(8) requires emission limits, compliance schedules, and other measures as may be necessary. The new and amended rules contain limits and schedules for the affected sources. The final compliance dates for the SIP control measures vary from December 31, 1987, to December 31, 1988. These dates are consistent with the concept of demonstrating attainment by a near-term fixed date as discussed in EPA's General Preamble of July 14, 1987 (52 FR 26404).

Consultation and Involvement

Section 172(b)(9) requires evidence of public, local government, and state legislative involvement and consultation in accordance with Section 174. Also required are an identification of effects of the plan and a summary of the comments on the analysis. The SIP presents ample evidence of participation by state and local officials, primarily through their attendance at functions sponsored by the Mid-America Regional Council, the local planning agency certified by the state under Section 174. The SIP contains an analysis of the various effects of the provisions of the plan. This analysis was included in the draft plan and comments were invited on it. However, none of the comments received addressed this analysis.

Evidence of Legal Enforceability

Section 172(b)(10) requires evidence that the responsible governments have adopted the necessary requirements and are committed to implement and enforce the plan. The responsible agency is the Missouri Department of Natural Resources, which prepared the plan and which is legally obligated to enforce the rules adopted by the MACC. The plan contains the adopted rules as published in the MISSOURI REGISTER, the official publication of state regulations. There will be some local cooperation in this plan but the local agencies will be acting as agents of the state.

Other Section 172 Provisions

Sections 172(b)(11) and 172(c) refer to areas which made 1979 demonstrations that they could not attain by 1982. They do not apply to Kansas City.

Other Provisions

In addition to the specific statutory requirements of Part D, there are other provisions against which the plan must be evaluated. These are discussed below.

Transportation Control Measures (TCM)

The state analyzed 20 measures, but found that all would be either ineffective or unreasonable. Therefore, none are included in the SIP. The state did review basic transportation needs and determined that the Kansas City Area Transportation Authority would continue to operate an areawide bus system for the life of the SIP. There will be no adverse impacts due to TCMs because there will be no additional TCMs due to this SIP.

The state is required to consider inspection of motor vehicles if it will result in more expeditious attainment of if attainment before December 31, 1987, cannot be domonstrated. Because of the timing of the call for revisions and the attainment date, there is not enough time for an I/M program to be implemented and become effective before the attainment date. Therefore, there would be no value in attempting to begin I/M in Kansas City at this time.

Conformity of Federal Actions

Section 176(c) requires all federal projects and other activities to conform to the SIP. The state is to identify, to the extent possible, the emissions associated with major federal actions. The state was unable to identify any major federal actions that would have an appreciable effect on air quality in the near future. It did commit to review any that might be proposed.

Contingency Plan

Each SIP is to specify additional controls which will be implemented and what projects would be delayed during development of a new SIP if shortfalls in emissions reductions occur. The state's review found no projects that would

need to be delayed due to failure to attain the ozone standard. An appendix to the SIP presents information on what source categories would be regulated should the current plan fail to attain the standard and additional controls be needed.

Enforcement of Existing SIP

It is required that the existing SIP be enforced until the new SIP is in place. This submisssion is a revision to an existing plan. No existing limits are removed. Enforcement of the existing requirements is discussed once in the plan and is implicit throughout.

Summary

The Missouri submission of May 21, 1986, is based on a current emission inventory, has an emission reduction requirement developed using current guidance, will reduce actual emissions through implementation of new emission limits, and shows attainment of the ozone NAAQS by December 31, 1987. The submission of December 18, 1987, contained the additional state regulations necessary to meet the RACM requirements of section 172(b)(2) of the CAA. These basic requirements, along with the other elements described above, are necessary for a revision to be approved as part of a SIP.

Proposed Action

EPA proposes to approve the May 21, 1986, submittal of revisions to the Missouri ozone SIP for Kansas City. Also, EPA proposes to approve the December 18, 1987, submittal of revised VOC control regulations. These two submittals, together, constitute a complete ozone plan for the Missouri portion of the Kansas City metropolitan area.

The Administrator's decision to approve or disapprove this proposed SIP revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of sections 110 and 172 of the CAA; or 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans; and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

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 entitities.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: March 30, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88–14745 Filed 6–29–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

48 CFR Parts 1452 and 1480

Acquisition Regulations; Buy Indian Act; Procedures for Contracting Pursuant to the Act of June 25, 1910

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing proposed rules to govern the implementation of section 23 of the Act of June 25, 1910, 25 U.S.C. 47 (often referred to as the "Buy Indian Act"). These rules support the policy and describe the procedures of the Bureau of Indian Affairs in its commercial acquisition relationships with self-certified eligible Indian economic enterprises.

DATE: Written comments must be received no later than August 1, 1988.

ADDRESSES: Written comments may be directed to U.S Department of the Interior, Bureau of Indian Affairs, Chief, Division of Contracting and Grants Administration, Code 660—MS 334A-SIB, 1951 Constitution Avenue, NW., Washington, DC 20245. The envelope front should bear the legend, "Buy Indian Act Comments," in the lower left corner.

FOR FURTHER INFORMATION CONTACT: Dr. Peter A. Campanelli, U.S. Department of the Interior, Bureau of Indian Affairs, Division of Contracting and Grants Administration, 1951 Constitution Avenue NW., Washington, DC 20245, telephone number (202) 343-3498; or by mail, at the address listed above.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual, Chapter 8. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301. The authorizing statute is section 23 of the Act of June 25, 1910 (25 U.S.C. 47).

The Bureau of Indian Affairs has published proposed rules in the Federal Register on two prior occasions in 1982 and 1984: 47 FR 44678 and 49 FR 45187, respectively. Public comments received by the Bureau of Indian Affairs were reviewed, addressed in the latter edition, and incorporated herein where applicable.

The Assistant Secretary—Indian Affairs has encouraged major initiatives for economic development and employment of Indian persons. In support of these initiatives, the previously proposed rules were rewritten and are published for public comment.

The policy of the Department of the Interior is to afford the pulic an opportunity, whenever practical, of participating in the rulemaking process. Accordingly, interested persons may submit written comments and suggestions regarding the proposed regulations to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before the cited DATES section of this preamble. PRIMARY AUTHORS: The authors of this document are Dr. Peter A. Campanelli and Ms. Kimberly Armstrong, Division of Contracting and Grants Administration, Bureau of Indian Affairs, and Mr. William Opdyke, Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20245, telephone numbers (202) 343-3498, 343-3499, and 343-3433 respectively.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act.

The Department of the Interior had determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act.

These proposed rules formalize an administrative procedure for all Bureau acquisition activities/locations to be applied uniformly for self-certified eligible Indian economic enterprises which respond in an offer to specific solicitations set-aside under the Act and this part.

The information collection requirements of the clauses referenced in Section 1480.501 regarding compliance with Section 7(b) of Pub. L. 93-638 (25 U.S.C. 452) have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and has been assigned clearance number 1084-0019. In addition, the contract office requires use of the

requirements in SF-129, Solicitation Mailing List Application; and, may require use of the SF-254, the Architect—Engineer and Related Services Questionnaire, and SF-255, the Architect-Engineer and Related Services Questionnaire for Specific Project. These referenced items have been assigned the OMB clearance numbers 3090-0009, 3090-0028, and 3090-0029 respectively, under the Federal Acquisition Regulation.

List of Subjects in 48 CFR 1452 and 1480

Indian economic enterprises, Government procurement.

For the reasons set out in the preamble, amendment to Part 1452 and a new Part 1480 are proposed to be added to Title 48 of the Code of Federal Regulations to read, as set forth below.

Date: May 3, 1988.

Ralph R. Reeser,

Acting Assistant Secretary, Indian Affairs.

1. The authority citation for 48 CFR Part 1452 continues to read as follows:

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 252(c)(2), AND 5 U.S.C. 301.

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Subpart 1452.2 is amended by adding new sections 1452.280-70, 1452.280-71, 1452.280-72, and 1452.280-73, as follows:

1452.280-70 Notice of Indian small business economic enterprise—small purchase set-aside.

As prescribed in 1480.402(b)(1), and in lieu of the requirements of FAR 19.508(a), insert the following provision in each written solicitation of quotations or offers to provide supplies or services when the acquisition is subject to small purchase procedures in FAR Part 13.

Notice of Indian Small Business Economic Enterprise—Small Purchase Set-Aside ( )

Pursuant to the Buy Indian Act, 25 U.S.C. 47, quotations under this solicitation are solicited only from eligible Indian economic enterprises (48 CFR 1480.7) which must also be small business concerns. Any acquisition resulting from this solicitation will be from such a concern. Quotations received from enterprises that are not eligible Indian economic enterprises shall not be considered and shall be rejected.

1452.280-71 Notice of Indian economic enterprise set-aside.

As prescribed in 1480.403-1(b)(2), insert the following provision in solicitations and contracts involving Indian economic enterprise set-asides:

Notice of Indian Economic Enterprise Set-Aside ( )

(a) Definitions.

"Eligible" means that the majority owner of an Indian economic enterprise meets both the definitions of "Indian" and of "Indian economic enterprise" as set forth below.

"Indian" means a person who is a member of an Indian Tribe, as defined herein, or an Alaska Native who is ¼ degree or more Alaska Native blood and either on or descended from someone on the roll of Alaska Natives prepared pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et. seq.).

"Indian Economic Enterprise" means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); and (2) one or more of these owners must be involved in daily business management of the economic enterprise; and (3) the majority of the earnings of which accrue to such Indian person(s) (if for profit). The requirements cited herein must exist when an offer is made to a solicitation, at the time of award, and during the term of the contract.

"Indian tribe" means any Indian tribe, band, nation, rancheria, pueblo, colony, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

"Self-certified" means the positive statement of eligibility as an Indian economic enterprise for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in 48 CFR 1480.7.

(b) General.

(1) Pursuant to the Buy Indian Act, offers are solicited only from eligible Indian economic enterprises. Therefore, the offeror must represent by written declaration at the time of submission of its offer to a specific solicitation that its economic enterprise is eligible to be considered for award. (If selected for award, the offeror shall comply with: the minimum 51 percent ownership and daily business management requirement criterion; and, the preference requirements contained in subparagraphs (c)(3) and (c)(4) below during performance of the contract if award is made to the economic enterprise; and, shall provide the required percentage of the work/costs with its own resources, exclusive of manufactured or leased items and/or supplies or materials produced off-site, as required in 48 CFR 1480.501).

(2) Offers received from non-Indian business enterprises or non-eligible Indian economic enterprises shall be considered non-responsive and shall be rejected.

(3) Any award resulting from this solicitation will be made to an eligible Indian economic enterprise, defined in paragraph (a) above.

(c) In response to this solicitation, the eligible Indian economic enterprise shall also provide the following:

(1) As required by the "Subcontracting Limitation" clause, a description of the required percentage of the work/costs to be provided by the contractor over the contract term.

(2) Description of the source of human resources for the work to be performed by the contractor;

(3) Description of the method(s) of recruiting and training Indian employees; indicating the extent of soliciting employment of Indian persons, as required by the "Indian Preference—Department of the Interior" and/or, "Indian Preference Program—Department of the Interior" clause(s);

(4) Description of how subcontractors (if any) will be selected in compliance with the "Indian Preference—Department of the Interior" and/or, "Indian Preference Program—Department of the Interior" clause(s). The offeror shall furnish the names of Indian persons or economic enterprises being considered for subcontracts (if any); indicate what percentage of the work/costs they would be performing; and provide qualifications of the key personnel (if any) that will be assigned to the contract.

(5) Description of method(s) for compliance with any supplemental Tribal employment preference requirements, if contained in this solicitation.

(6) A completed Representation Declaration provision (48 CFR 1452.280-73).

(d) Prior to Bureau award of an Act contract, as well as upon successful and timely completion of the contract but prior to acceptance of the work or product by the Bureau contracting officer, the contractor shall provide written assurance to the Bureau that it will or has complied fully with the requirements of this clause.

(e) Failure to provide the information required by paragraphs (c) and (d) of this section may cause the offer to be determined non-responsive and rejected, or result in cause for suspension and debarment, or result in default, respectively.

1452.280-72 Subcontracting limitation.

As prescribed in 1480.501, insert the following provision in each written solicitation of quotations or offers to provide supplies or services:

Subcontracting Limitation ( )

(a) Definitions.

(1) "Subcontract," as used in this clause, means any contract (as defined by FAR Subpart 2.1) entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders and changes and modifications to purchase orders.

(2) "Subcontractor", as used in this clause, means an individual, partnership, firm, corporation or any acceptable combination thereof, or joint venture, to which a contractor subcontracts part of the work under the contract. The term shall include subcontractors in any tier who perform work on the project site.

(b) In performance of the contract for—

(i) Services contracts (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern;

(ii) Supplies contracts (other than procurement from a regular dealer in such supplies), the concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(iii) General construction, the concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees; and

(iv) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees. (FAR 52.219-14).

(c) Regardless of the contract type (for services or supplies), the contractor agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of subcontracts under this contract in accordance with the "Indian Preference—Department of the Interior" clause.

(d) The contractor agrees to carry out the requirements of this clause to the fullest extent and to cooperate in any study or survey conducted by the contracting officer or agents of the Bureau of Indian Affairs as may be necessary to determine the extent of the contractor's compliance with this clause.

(e) The contractor agrees to incorporate the substance of this clause, including this paragraph (e), in all subcontracts for services awarded under this contract.

1452.280-73 Representation Declaration for eligible Indian economic enterprises.

As prescribed in 1480.700, insert the following provision in each written solicitation of quotations or offers to supply supplies or services:

Representation Declaration Buy Indian Act (25 U.S.C. 47) and 48 CFR Part 1480

( )

I. A. *Instructions.* Offerors requesting participation under the Buy Indian Act (25 U.S.C. 47) shall prepare their Representation Declaration as prescribed therein. The declaration shall be submitted to the cognizant Contracting Officer by the offeror in responding to a specific Bureau solicitation under the Act and 48 CFR Part 1480.

B. *Procedure.* 1. The Buy Indian Act and its regulation authorize the Secretary of the Interior and the Bureau of Indian Affairs to contract with eligible Indian economic enterprises for the procurement of supplies and services. Before submitting this declaration, you are encouraged to read the regulations (48 CFR Part 1480). A copy is available upon request from Bureau of Indian Affairs' Contract Offices.

2. The information requested below is to be submitted only in an offer in response to a specific solicitation under the Act. The completed and signed Representative Declaration is to be returned with your offer to the Bureau Contract Office issuing the solicitation.

3. To be eligible for awards by the Bureau of Indian Affairs under the Buy Indian Act and 48 CFR Part 1480, economic enterprises must meet the eligibility and self-certification requirements as defined in the Act regulations. Offerors applying for awards under the Act authority must do so only in an offer responding to a specific Bureau solicitation under the Act.

II. The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not (check one) an eligible Indian economic enterprise. As used in this provision, the offeror meets the following definitions:

(A) "Eligible" means that the majority owner of an Indian economic enterprise (as defined herein) meets both the definitions of "Indian" and of "Indian economic enterprise" in this Declaration.

(B) "Indian" means a person who is a member of an Indian Tribe, as defined herein, or an Alaska Native who is ¼ degree or more Alaska Native blood and either on or descended from someone on the roll of Alaska Natives prepared pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et. seq.).

(C) "Indian Economic Enterprise" means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); and (2) one or more of these owners must be involved in daily business management of the economic enterprise; and (3) the majority of the earnings of which accrue to such Indian person(s) (if for profit). The requirements cited herein must exist when an offer is made to a solicitation, at the time of award, and during the term of the contract.

(D) "Indian tribe" means any Indian tribe, band, nation, rancheria, pueblo, colony, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

III. This Representation Declaration is to be completed and submitted *only* in your offer in response to a specific Bureau of Indian Affairs solicitation issued under the Buy Indian Act. Mail or deliver your offer by the required deadline to the Bureau of Indian Affairs Contract Office which issued the solicitation. If you have any questions, please contact that Bureau Contract Office.

A. I understand that any intentional false statement in this Representation Declaration, or willful misrepresentation relative thereto, is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both (18 U.S.C. 1001).

B. Also, I understand that the provisions of the civil False Claims Act (31 U.S.C. 3729-3731) establishes civil liability for false claims and provides for a civil penalty of $2,000 per false claim and double the damages suffered by the Government.

C. I have read and understand the above statement. I certify that the information provided in this Declaration is true, accurate and complete to the best of my knowledge and belief. I am sure of the regulations for this Act as they appear in 48 CFR Part 1480.

D. *Economic Enterprise*

Firm Name: _____

Address of Firm, include zip code: _____

Signature

By: _____

(Typed name of majority owner)

By: _____

(Signature of majority owner)

Telephone number of firm, include area code:

Date: _____

3. A new Part 1480 is proposed to be added as follows:

PART 1480—ACQUISITIONS UNDER THE BUY INDIAN ACT

Subpart 1480.0—General

Sec.

1480.000 Scope of part.

1480.001 Buy Indian Act acquisition regulations.

Subpart 1480.1—Definitions

1480.100 Definitions.

Subpart 1480.2—Applicability

1480.200 Applicability.

1480.201 Restrictions on use of the Buy Indian Act.

Subpart 1480.3—Policy

1480.300 General.

1480.301 Deviations.

Subpart 1480.4—Procedures

1480.400 General.

1480.401 Order of precedence for use of Government supply sources.

1480.402 Small purchases.

1480.403 Other than full and open competition.

1480.403-1 Set-asides for eligible economic enterprises.

1480.403-2 Other circumstances for use of other than full and open competition.

1480.404 Debarment and suspension.

Subpart 1480.5—Contract Requirements

1480.500 Indian preference.

1480.501 Subcontracting limitations.

1480.502 Performance and payment bonds.

Subpart 1480.6—Contract Administration

1480.600 Contract administration requirements.

Subpart 1480.7—Representation by an Indian Economic Enterprise Offeror

1480.700 General.

1480.701 Representation Declaration provision.

1480.702 Declaration process.

Subpart 1480.8—Protests of Representation Declaration

1480.800 General.

1480.801 Receipt of protest.

1480.802 Award of protested contract.

1480.803 Protest not timely.

Appendix A—Set-Aside Program Order of Precedence

Appendix B—Class Justification for Use of Other than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 252(c)(2), and 5 U.S.C. 301.

Subpart 1480.0—General

1480.000 Scope of part.

This part prescribes policies and procedures for the commercial acquisition of supplies and services from self-certified eligible Indian economic enterprises pursuant to the Buy Indian Act, 25 U.S.C. 47.

1480.001 Buy Indian Act acquisition regulations.

(a) Acquisition regulations under this part are under the Department of the Interior Acquisition Regulations (DIAR) System and are issued in order to supplement Federal Acquisition Regulation (FAR) and DIAR requirements to satisfy the specific and unique needs of the Bureau of Indian Affairs in the implementation of the Buy Indian Act.

(b) Except for solicitation provisions and contract clauses codified in 48 CFR 1452, regulations issued under this part shall be codified in 48 CFR 1480 in accordance with DIAR 1401.303(c) and shall conform to the requirements of FAR 1.3 and DIAR 1401.3.

(c) Regulations under this part are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C. 301. This authority has been redelegated to the Assistant Secretary—Indian Affairs under part 209, Chapter 8, of the Departmental Manual (209 DM 8).

(d) Regulations issued under this part are under the direct oversight and control of the Director, Office of Administration, Bureau of Indian Affairs, Department of the Interior, Washington, DC 20245, which is responsible for their review, preparation for issuance, implementation, and oversight.

(e) Acquisitions conducted under this part shall be subject to all applicable requirements of the FAR and DIAR, as well as internal policies, procedures or instructions issued by the Bureau of Indian Affairs. The provisions of the FAR shall govern in all instances where there may be a conflict or discrepancy.

Subpart 1480.1—Definitions

1480.100 Definitions.

As used throughout this part, the following words and terms are used as defined in this unless the context in which they are used clearly requires a different meaning; or, a different definition is prescribed for a particular subpart or portion of a subpart.

"Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior, or designee.

"Bureau" means the Bureau of Indian Affairs, Department of the Interior.

"Bureau Central Office" means the Headquarters component located in Washington, DC, that serves as staff resource to the Assistant Secretary—Indian Affairs. For purposes of this section, the term refers specifically to the Office of Administration.

"Buy Indian Act" means section 23 of the Act of June 25, 1910 (25 U.S.C. 47), which is also referred to in this part as the Act.

"Buy Indian Contract" means any Bureau acquisition action (by contract, purchase order, delivery order, or modification) for the products of Indian industry or labor from a self-certified eligible economic enterprise pursuant to the authority of the Act and this part, except for the construction limitations stated in 1480.300(b).

"Chief of the Contracting Office" means the senior 1102 classification series contract specialist at a Bureau Area or Central Office.

"Contracting Officer" means an official designated in accordance with FAR 1.6 and DIAR 1401.6 of this title, having the authority to enter into, administer and/or terminate contracts, and make related determinations and findings or justifications and approvals.

"Day" means work day.

"Dealer (regular)" or "Manufacturer" means an Indian person who owns, operates or maintains a store, warehouse, factory or other establishment which meets the conditions in FAR 22.601.

"Eligible" means that the majority owner of an Indian economic enterprise (as defined herein) meets both the definitions of "Indian" and of "Indian economic enterprise" in this subpart.

"Fair market price" means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost.

"Indian" means a person who is a member of an Indian Tribe, as defined herein, or an Alaska Native who is ¼ degree or more Alaska Native blood and either on or descended from someone on the roll of Alaska Natives prepared pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.).

"Indian Economic Enterprise" means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); and (2) one or more of these owners must be involved in daily business management of the economic enterprise; and (3) the majority of the earnings of which accrue to such Indian person(s) (if for profit). The requirements cited herein must exist when an offer is made to a solicitation, at the time of award, and during the term of the contract.

"Indian land" means land over which an Indian tribe is recognized by the United States as having governmental jurisdiction and land owned by a Native corporation established under the Alaska Native Claims Settlement Act of 1971, so long as the corporation qualifies as an Indian economic enterprise. In the State of Oklahoma, or where there has been a final judicial determination that a reservation has been disestablished or diminished, the term means that area of land constituting the former reservation of the tribe as defined by the Secretary.

"Indian tribe" means any Indian tribe, band, nation, rancheria, pueblo, colony, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

"Interested party" means an Indian economic enterprise which is an actual or prospective offeror whose direct economic interest would be affected by the proposed or actual Bureau award of a particular contract set-aside under the Act.

"Products of Indian industry or labor" means any products, goods, supplies or services that can be provided by an eligible economic enterprise that either produces them with its own labor force, skills, or efforts, or is a regular dealer in such goods or services.

"Protest of representation" means an accurate, complete and timely written objection by an interested party to a proposed or actual Bureau award to an eligible Indian economic enterprise of a contract set-aside under the Act.

"Secretary" means the Secretary of the Interior.

"Self-Certified" means the positive statement of eligibility as an economic enterprise for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, 25 U.S.C. 47, in accordance with the provisions in 48 CFR 1480.7.

"Small Purchase" means an acquisition of supplies or services pursuant to procedures in FAR Part 13.

"Tribal Governing Body" means the Federally recognized entity empowered to exercise the governmental authority of a Tribe, as the latter is defined herein.

Subpart 1480.2—Applicability

1480.200 Applicability.

Except as provided in 1480.300(b), this part is applicable to acquisitions (including small purchases) made by the Bureau of Indian Affairs, pursuant to 25

U.S.C. 47; and, those made by any other Bureau or Office of the Department of the Interior which is delegated the authority to make such acquisitions pursuant to 25 U.S.C. 47 and 1480.300(d).

1480.201 Restrictions on use of the Buy Indian Act.

(a) The authority of the Act and the procedures contained in this part are not to be used to award intergovernmental contracts to tribal organizations to plan, operate or administer authorized Bureau programs (or parts thereof) that are within the legislative and regulatory scope and intent of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638. The Buy Indian Act is used by the Bureau solely to award commercial contracts to eligible Indian economic enterprises in meeting Bureau program needs and acquisition requirements for its own operations.

(b) The authority of this Act may not be used to acquire construction, as defined in FAR, except as set forth in 1480.300(b).

Subpart 1480.3—Policy

1480.300 General.

(a) Except as provided in paragraph (b) of this section, it is the policy of the Department of the Interior to use the Act as authority to give preference to eligible Indian economic enterprises through the use of set-asides when acquiring supplies and services of Indian industry and labor in meeting Bureau needs and requirements.

(b) Construction, as defined in FAR 36.102, shall be acquired using full and open competition, except that construction of Indian reservation roads (other than those located in the State of Oklahoma) may be acquired under the authority of the Act and this part pursuant to 23 U.S.C. 204(e), as amended, and 41 U.S.C. 252(c)(2), as amended. Indian reservation road construction located in the State of Oklahoma acquired pursuant to the Act is prohibited by court injunction and shall be acquired only by using full and open competition or small business set-aside if required by 1419.503-70 of this title. [*Glover v. Andrus*, 446 U.S. 608 (1980)].

(c) The authority of the Secretary under the Act has been delegated to the Assistant Secretary and is exercised by the Bureau in support of its mission and program activities and as a means of fostering Indian employment and economic development.

(d) The authority of the Secretary under the Act may be delegated to a bureau or office within the Department of the Interior other than the Bureau of Indian Affairs only by Secretarial Order pursuant to Part 012 Chapter 1 of the Departmental Manual (012 DM 1).

(e) The Deputy to the Assistant Secretary—Indian Affairs (Operations), as the head of the contracting activity, is responsible for ensuring that all acquisitions made by the Bureau pursuant to the Act are in compliance with the requirements of this part.

1480.301 Deviations.

(a) Except as provided in paragraphs (b) and (c) of this section, the Assistant Secretary—Indian Affairs is authorized to approve deviations from the requirements of this part. This authority has been redelegated to the Deputy to the Assistant Secretary—Indian Affairs (Operations) who may also authorize an exception to the requirement for use of the Act in fulfilling an acquisition requirement of the Bureau when it is determined that such action is in the best interests of the Government. Requests for deviations or exceptions shall be submitted in writing from the contracting officer before the fact by the appropriate Area Office Director to the Bureau Central Office for review. After this review, the request shall be submitted to the Deputy to the Assistant Secretary—Indian Affairs (Operations) for approval/disapproval.

(b) The contracting officer may also authorize an exception for use of the Act for an acquisition of the Bureau, when it is determined that:

(1) In accordance with 1480.402(b)(2), there is no reasonable expectation of obtaining quotations from two or more responsible, eligible Indian economic enterprises; or

(2) In accordance with 1480.402(b)(3), only one quotation is received from a responsible, eligible small business economic enterprise and the quotation is unreasonable; or

(3) In accordance with 1480.403-1(c), there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises at reasonable prices; or

(4) In accordance with a tribal resolution from the governing body or bodies of the cognizant Indian tribe or tribes that requests a waiver of the Act authority with justification.

(c) Other exceptions to use of the Act may be made by the officials specified in, and under the conditions prescribed by, 1480.403-1(f) or 1480.403-2(c).

Subpart 1480.4—Procedures

1480.400 General.

All acquisitions made under this part, including small purchases, shall conform to all applicable requirements of the FAR and DIAR.

1480.401 Order of precedence for use of Government supply sources.

Except as required by FAR 8.002, acquisitions made under this part shall be from the sources of supplies and services listed in order of precedence in Appendix A of this part, providing the Indian economic enterprise can meet the Bureau specifications and delivery requirements, and the anticipated cost is determined to be reasonable and at a fair market place.

1480.402 Small purchases.

(a) Subject to the limitations in 1480.300(b), each acquisition of supplies and services that is subject to small purchases procedures under FAR 13 and DIAR 1413, shall be set-aside exclusively for eligible Indian economic enterprises which are also small business concerns under the criteria and size standards of 13 CFR Part 121. This preference action shall be accomplished by use of Indian small business economic enterprise—small purchase set-asides.

(b)(1) Each written solicitation under an Indian small business economic enterprise—small purchase set-aside shall contain the provision at DIAR 1452.280-70, Notice of Indian Small Business Economic Enterprise—Small Purchase Set-Aside. However, if the solicitation is oral, information substantially identical to that which is in the provision shall be given to potential offerors.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible, eligible Indian economic enterprises which are small business concerns (or at least from one such enterprise, if the purchase amount does not exceed the dollar threshold prescribed in FAR 13.106(a) for obtaining competition) that will be competitive in terms of market price, quality, and delivery, the contracting officer shall proceed with an unrestricted small business—small purchase set-aside as prescribed in FAR 13.105.

(3) If the contracting officer proceeds with an Indian small business economic enterprise—small purchase set-aside and receives a quotation from only one such responsible economic enterprise at a reasonable price (see FAR Subpart 13.1069c)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from such an economic enterprise, the

contracting officer shall cancel the set-aside and complete the purchase by using an unrestricted small business—small purchase set-aside as prescribed in FAR Subpart 13.105.

(4) When proceeding under the circumstances in 1480.402(b)(2) or (b)(3), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means.

(5) If the purchase is to proceed in accordance with 1480.402(b)(2) or (b)(3), the contracting officer shall document the reason(s) in the file for such purchase.

(c) The clause at DIAR 1452.204–71, Indian Preference—Department of the Interior, and the clause at DIAR 1452.280–72, Subcontracting Limitation, shall be included in each solicitation of quotations and resulting purchase orders.

(d) Small purchases under this section shall conform to the competition and price reasonableness documentation requirements of FAR Subpart 13.106 and DIAR 1413.106.

1480.403 Other than full and open competition.

1480.403–1 Set-asides for eligible economic enterprises.

(a) Each proposed commercial acquisition for supplies or services that has an anticipated dollar value in excess of the small purchase threshold amount in FAR 13 shall be set-aside exclusively for eligible Indian economic enterprises (and referred to as an "Indian Economic Enterprise Set-Aside") when there is a reasonable expectation that offers will be received from two or more responsible enterprises and award will be made at a reasonable price except when:

(1) The acquisition is for construction, other than construction permitted by 1480.300;

(2) An exception from use of the Act has been obtained in accordance with 1480.301; or

(3) Use of other than full and open competition has been justified and approved in accordance with 1480.403–2.

(b) When using an Indian economic enterprise set-aside under this section, the contracting officer shall:

(1) Synopsize the acquisition in the Commerce Business Daily (CBD) as required by FAR Subpart 5.2 and identify it as the Indian Economic Enterprise Set-Aside;

(2) Insert the provision at DIAR 1452.280–71, Notice of Indian Economic Enterprise Set-Aside, in each solicitation of quotations or offers and resulting contracts;

(3) Insert the provision at DIAR 1452.280–72, Subcontracting Limitation, and the provision at DIAR 1452.204–71, Indian Preference—Department of the Interior, in each solicitation of offers and resulting contracts.

(4) Insert the provision at DIAR 1452.204–72, Indian Preference Program—Department of the Interior, in each solicitation of quotations or offers and resulting contracts where it is determined by the contracting officer, prior to solicition, that the work will be performed in whole or in part on or near Indian land. Tribal employment preference requirements may be added to the requirements of the provision in accordance with DIAR 1404.7005;

(5) Insert the provision at DIAR 1452.280–73. Representation Declaration, in each solicitation of quotations or offers in order that offerors to a specific solicitation can provide a declaration of eligibility to participate under the Act and this part.

(6) Use the Class Justification for Use of Other Than Full and Open Comeptition in Acquisition of Supplies and Services from Indian Industry (contained in Appendix B to this part) to meet the requirements of FAR 6.302–5(c)(2);

(7) By separate memorandum, certify that the supplies or services to be acquired are available from two or more responsible and eligible Indian economic enterprises; the anticipated cost to the Bureau of the required supplies or services is determined to be reasonable; and, the information in the Class Justification for Use of Other Than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry in Appendix B to this part is accurate and complete as it pertains to the proposed acquisition;

(8) Solicit bids using sealed bidding in accordance with FAR Part 14 whenever the conditions in FAR 6.401(a) are met. If sealed bids are not appropriate, competitive proposals shall be solicited in accordance with FAR Part 15;

(9) Reject as nonresponsive all bids which are received from concerns that do not have a positive statement as eligible Indian economic enterprises. The contracting officer may also request (as part of a normal pre-award audit) the Office of the Inspector General (OIG) to: (i) assist in determining the bona fide status of the low responsive and responsible offeror on Act contracts; and, (ii) determine whether the work will be performed by the labor force required under 1480.501. Such requests to the OIG should be made on the standard audit request form, DI–1902, as required by DIAR 1415.805–5.

(10) When using sealed bidding, determine that the price offered by the prospective contractor is considered to be reasonable and at a fair market price as required by FAR 14.407–2 before awarding a contract;

(11) When using competitive proposals, solicit proposals in accordance with FAR Subpart 15.4 and select sources in accordance with FAR Subpart 15.6 and DIAR 1415.6;

(12) When using competitive proposals, or when negotiating modifications which impact the cost of a contract awarded by sealed bidding, conduct proposal analysis including cost or price analysis in accordance with FAR Subpart 15.8; negotiate profit or fee in accordance with the procedures in DIAR Subpart 1415.8, and prepare a negotiation memoradum in accordance with DIAR 1415.808.

(13) When acquiring architect-engineer services, solicit proposals and evaluate potential contractors in accordance with FAR Part 36 and DIAR Subpart1436.6; and

(14) When acquiring services to be performed in whole or in part on Indian land, give written notice to the governing body or bodies of the cognizant Indian tribe or tribes. The notice shall be provided simultaneously with publication of the synopsis required by subparagraph (b)(1) of this section with information to the Tribe(s) of the Bureau's intent to contract if there are Indian economic enterprises which are eligible, interested, responsive and responsible, and the award can be made at a reasonable price. A tribal resolution or response to this notice shall be advisory only for the Bureau.

(c) When the contracting officer determines that there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises and award cannot be made at a reasonable and fair market price, the basis for such a determination shall be documented in writing by the contracting officer and placed in the contract file. The contracting officer shall proceed with the acquisition using the sources identified in Appendix A to this part as listed in order of precedence.

(d) In the event an interested eligible Indian economic enterprise in identified after a market survey has been performed and a solicitation has been issued (which is not restricted to participation of eligible Indian economic enterprises) but prior to the date established for receipt of offers, the contracting officer shall provide a copy of the solicitation to this enterprise. In such cases, preference under the Act

will not be given to the eligible Indian economic enterprise. Under these conditions, the contracting officer may extend the date for receipt of offers when such action is determined to be practicable.

(e) When only one offer is received from a responsible, eligible Indian economic enterprise at a reasonable price in response to an acquisition set-aside under paragraph (a), the contracting officer shall make an award to that enterprise. However, the contracting officer shall initiate action to increase competition in future solicitations as required by FAR14.407-1(b).

(f) In response to an acquisition set-aside under 1480.403-1(a), when using sealed bid procedures, and when all otherwise acceptable bids received from responsible, eligible Indian economic enterprises are at unreasonable prices; or, when only one bid is received from such an enterprise and the contracting officer cannot determine the reasonableness of the bid price; or, when no responsive bids have been received from such enterprises, the chief of the contracting officer shall cancel the solicitation and reject all bids pursuant to a written determination in accordance with FAR 14.404-1(c). After notice of rejection to all bidders has been made pursuant to FAR 14.404-3, completion of the acquisition shall be made:

(1) Using negotiation (see FAR 14.404-1(e)(1) and 15.103), provided the contracting officer has determined that completion through use of negotiation is authorized in the written determination required by FAR 14.404-1(e) and approval has been obtained as required by DIAR 1414.404-1; or

(2) Using a new solicitation and the sources identified in Appendix A to this part, as listed in order of precedence if the use of negotiation is not authorized in the written determination required by FAR 14.404-1(c) and DIAR 1414.404-1.

(g) In response to a set-aside acquisition, when using competitive proposals, proposals may be rejected pursuant to a written determination by the chief of the contracting office under the conditions set forth in FAR 15.608(b) and DIAR 1415.608.

§ 1480.403-2 Other circumstances for use of other than full and open competition.

(a) Other circumstances may exist with regard to fulfilling an acquisition requirement of the Bureau where the use of an Indian economic enterprise set-aside under 1480.403-1(a) and FAR 6.302-5 is not feasible. In such situations, the requirements of FAR Subparts 6.3 and 6.4 and DIAR Subparts 1406.2 and 1406.3 shall be applicable in justifying the use of the appropriate authority for other than full and open competition.

(b) Except as provided in FAR 5.202, all proposed acquisition actions under this section and FAR Subpart 6.3 shall first be synopsized in the Commerce Business Daily (CBD) in accordance with the requirements of FAR 5.207 and DIAR 1405.207.

(c) Justifications for use of other than full and open competition (other than the Class Justification in Appendix B to this part) under this section shall be approved for a proposed contract, or for a modification increasing the scope of the work of an existing contract, by:

(1) A supervisory contract specialist (Level IV Warrant holder) when the anticipated dollar value of the action is not over $25,000; and

(2) The Chief, Division of Contracting and Grants Administration (Central Office) when the anticipated dollar value of the action is over $25,000 and less than $100,000; and

(3) The Bureau Competition Advocate (Central Office) when the anticipated dollar value of the action is over $100,000 but does not exceed $1,000,000; and

(4) The Deputy to the Assistant Secretary—Indian Affiars (Operations) when the anticipated dollar value of the action is over $1,000,000 but does not exceed $10,000,000; and

(5) The Director, Office of Acquisition and Property Management, Office of the Secretary, when the dollar value of the action is over $10,000,000.

1480.404 Debarment and suspension.

Violation of the regulations in this part by an offeror or an awardee may be cause for debarment or suspension in accordance with FAR 9.406-2(b)(1) and 9.407.2(a)(3). Recommendations for possible debarment or suspension shall be referred to the Director, Office of Acquisition and Property Management, Department of the Interior, pursuant to DIAR 1409.406-3 and 1409.407-3 through the Division of Contracting and Grants Administration (Central Office) and concurred in by the Deputy to the Assistant Secretary—Indian Affairs (Operations).

Subpart 1480.5—Contract Requirements

1480.500 Indian preference.

(a) As prescribed in DIAR 1404.7003(a), solicitations of quotations or offers and resulting contracts awarded pursuant to the Act shall include the provision at DIAR 1452.204-71, Indian Preference—Department of the Interior (see 1480.402(c) and 1480.403-1(b)(3)).

(b) As prescribed in DIAR 1404.7003(b), solicitations of offers and resulting contracts, which may exceed $50,000 and where it is determined by the contracting officer (in advance of the solicitation) that the work under the contract will be performed in whole or in part on or near Indian land shall include the provision at DIAR 1452.204-72, Indian Preference Program—Department of the Interior (see 1480.403-1(b)(4)).

1480.501 Subcontracting limitation.

(a) In contracts awarded pursuant to the Act and this part, the eligible Indian economic enterprise must agree to the following in performance of the contract for—

(1) Services contracts (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern;

(2) Supplies contracts (other than procurement from a regular dealer in such supplies), the concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) General construction, the concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees; and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees. (FAR 52.219-14)

(b) The contracting officer shall insert the provision at 1452.280-72, Subcontracting Limitation, in all purchase orders and contracts for services or supplies awarded to eligible Indian economic enterprises pursuant to this part.

1480.502 Performance and payment bonds.

Pursuant to section 11 of Pub. L. 98-449, the contracting officer may accept alternative forms of security in lieu of performance and payment bonds required by FAR 28.102, if such forms of security provide the Government with adequate security for performance and payment. Each solicitation requiring performance and payment bonds shall contain the information required by FAR 28.102-3 and 28.103-2(b) and authorize use of any of the types of security acceptable under FAR Subpart 28.2.

Subpart 1480.6—Contract Administration

1480.600 Contract administration requirements.

The contracting officer and the contracting officer's representative (see DIAR 1401.670) shall monitor performance and progress to ensure contractor compliance with FAR Part 42 regarding all contract requirements. Attention shall be directed also to ensure contractor compliance with the following provisions of this part:

(a) Maintenance of the minimum 51% ownership and daily management criterion requirement of subparagraph (b)(1) of the provision at 1452.280–71; and

(b) Maintenance of the limitations required by the provision at 1452.280–72 when acquiring services and supplies; and

(c) Implementation and enforcement of Indian preference requirements contained in DIAR 1404.7003, as prescribed by 1480.500.

Subpart 1480.7—Representation by an Indian Economic Enterprise Offeror

1480.700 General.

(a) The coantracting officer shall insert the provision at 1452.280–73. Representation Declaration, in all solicitations set aside for Indian economic enterprises under this part.

(b) To be considered for an award under an acquisition set-aside under 1480.402 or 1480.403–1, an offeror must provide a positive statement that it is an eligible Indian economic enterprise by submitting the Representation Declaration provision at 1452.280–73. An offeror must represent that it meets both the definitions of "Indian" and "Indian economic enterprise" (as defined in 1480.100) and only in response to a specific solicitation set-aside under the Act and this part.

(c) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is an eligible Indian economic enterprise unless (i) another interested party challenges the economic enterprise representation; or (ii) the contracting officer has reason to question the representation. Challenges of and questions concerning a specific Representation Declaration shall be referred to the chief of the contracting office in accordance with Subpart 1480.8.

(d) The contracting officer shall maintain files complied from submissions by eligible Indian economic enterprises of the Solicitation Mailing List Application (SF–129); the SF–254 and SF–255, as applicable; and, the Representation Declaration provision in 1452.280–73.

1480.701 Representation Declaration provision.

(a) The Representation Declaration provision shall be available from all Bureau contracting offices.

(b) The submission of a Solicitation Mailing List Application (or SF–254 and SF–255 for Architect-Engineer services, when applicable) by such an economic enterprise does not remove the requirement for it to submit the completed Representation Declaration provision also required by this part if it wishes to be considered as an offeror for a specific solicitation. Contracting officers are responsible for determining the validity of the contents of the applicant's declaration.

(c) Any false or misleading information submitted by an economic enterprise when submitting an offer in consideration for an award set aside under the Act is a violation of the law punishable under 18 U.S.C. 1001. False claims submitted as part of contract performance under the Act authority are subject to the penalties of 31 U.S.C. 3729–3731.

1480.702 Declaration process.

(a) It is the policy of the Bureau that only eligible Indian economic enterprises are to participate in acquisitions set-aside under the Act and this part.

(b) Eligibility is based on information furnished by the economic enterprise to a Bureau contracting officer on the Representation Declaration provision at 1452.280–73 in response to a specific solicitation under the Act. Offerors must submit their completed Declaration provisions to the Bureau contracting office issuing the specific solicitation.

(c) The eligibility declaration remains in effect until:

(1) Voluntarily surrendered;

(2) Revoked for cause if the offeror or contractor information was falsified;

(3) The circumstances of the economic enterprise change so that it is no longer an eligible entity;

(4) Department and suspension proceedings have been instituted for a contractor; or

(5) A contractor has been debarred or suspended.

(d) The Bureau procedure supports responsible Indian economic enterprises and seeks to prevent circumvention or abuse of the Act. These negative aspects are considered detrimental to the legitimate, eligible Indian economic enterprises and contrary to the intent of the Congress.

(e) Declarations from economic enterprises may be reviewed by the appropriate Regional Solicitor when the contracting officer believes such reviev is necessary.

(f) Representation declaration of an Indian economic enterprise does not relieve the contracting officer of the obligation for determining contractor responsibility and its capability to perform, as required by FAR Subpart 9.1.

Subpart 1480.8—Protest of Representation Declaration

1480.800 General.

(a) The contracting officer shall accept an offeror's written representation declaration of being an eligible Indian economic enterprise (as defined in section 1480.100 of this part) only with an offer in response to a specific solicitation under the Act. Another interested party may challenge the representation declaration status of an offeror (or, awardee in a specific offer) by filing a written protest to the cognizant contracting officer in accordance with the procedures in 1480.801.

(b) After offers are opened, the contracting officer may question the eligibility declaration of any offeror in a specific offer by filing a formal objection with the chief of the contracting office.

1480.801 Receipt of protest.

(a) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to object to the representation declaration of an offeror, shall promptly forward the protest to the chief of the contracting office for the location.

(b) The protest shall be in writing and shall contain the basis for the protest with accurate, complete, specific and detailed evidence to support the allegation that the offeror is neither eligible nor does not meet both the definitions of "Indian" and of "Indian economic enterprise" cited in section 1480.100 of this part. The chief of the contracting office will dismiss any protest that is deemed frivolous or that does not meet the conditions in this section.

(c) In order to affect a specific solicitation, a protest must be timely. That is, the protest must be received by the contracting officer (see paragraphs (c) (1) and (2) of this section below) by the close of business (local time) of the fifth day after bid opening (in sealed bid acquisition) or receipt of the special notification required by FAR 15.1001(b)(2) from the contracting officer

that identifies the apparently successful offeror (in negotiated acquisitions).

(1) A protest may be made orally if it is confirmed in writing within the five-day period after bid opening (or receipt of notification) or by letter postmarked no later than one day after receipt of the special notification in paragraph (b) above of this section.

(2) A protest may be made in writing if it is delivered by hand, telegram, or letter postmarked within the five-day period after bid opening (or receipt of notification).

(3) A contracting officer's objection is always considered timely, whether filed before or after award.

(d) Upon receiving a timely protest, the chief of the contracting office will—

(1) Notify the protestor of the date it was received, and that the representation declaration of the economic enterprise being challenged is under consideration by the Bureau; and

(2) Furnish to the economic enterprise (whose representation declaration is being challenged) a request to provide detailed information on its eiligibility by certified mail, return receipt requested.

(e) Within three days after receiving a copy of the protest and the Bureau's request for detailed information, the challenged offeror must file with the chief of the contracting office a completed statement answering the allegations in the protest, and furnish evidence to support its position on representation. If the offeror does not submit the required material within the three days, or another period of time granted by the chief of the contracting office, the Bureau may assume that the offeror does not intend to challenge the protest and the Bureau shall not award to the challenged offeror.

(f) Within ten days after receiving a protest, the challenged offeror's response and other pertinent information, the chief of the contracting office will determine the representation declaration status of the challenged business concern and notify the protestor and the challenged offeror of the decision by certified mail, return receipt requested.

(g) If the declaration accompanying an offer is challenged and subsequently upheld by the chief of the contracting office, the written notification of this Bureau action shall state the reason(s) and also make known the option to appeal the determination to the Director, Office of Administration (Central Office). A copy of this written notification shall be provided within five days to the chief of the contracting office (Central Office) for review for possible suspension and debarment proceedings.

§ 1480.802 Award of protested contract.

(a) Award of a protested contract may be made on the basis of the determination by the chief of the contracting office. This determination is final for the Bureau unless it is appealed to the Director, Office of Administration, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of appeal, the contract shall be presumed to be valid.

(b) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until (i) the chief of the contracting office has determined the validity of the representation, or (ii) ten days have expired since the chief of the contracting office received the protest, whichever occurs first. However, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest, or the mateials and services are urgently required, or a prompt award will otherwise be advantageous to the Government.

(c) If a protest on representation declaration is filed with the contracting officer and received before award in response to a specific offer and solicitation, the contracting officer shall provide notice to eligible offerors within one day that the award will be withheld and time extension for acceptance requested.

(d) If a protest on representation declaration is filed with the contracting officer and received after award in response to a specific offer and solicitation, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay would not prejudice the Government's interest. However, if contract performance is to be suspended, a mutual no-cost agreement will be sought.

1480.803 Protest not timely.

In the event of a protest of representation declaration which is not timely, the contracting officer shall notify the protestor that the protest cannot be considered on the instant acquisition but has been referred for consideration in any future actions. However, the contracting officer may quetion at any time the representation declaration status of a self-declared Indian economic enterprise.

APPENDIX A—SET-ASIDE PROGRAM ORDER OF PRECEDENCE

Source preference	Reference (48 CFR)
Supplies:	
1. Bureau of Indian Affairs inventories or excess from Federal agencies.	Subpart 8.1
2. Federal Prison Industries, Inc	Subpart 8.6.
3. Purchase from the Blind and Other Severely Handicapped.	Subpart 8.7
4. Indian economic enterprise set-aside under the Buy Indian Act.	Section 8.001(a) and 1480.402 and 403.
5. Wholesale Supply Sources (Stock Programs and Inventory Control Points such as GSA, VA and DOD depots).	41 CFR 101-26.3, 26.6 and 26.704.
6. Mandatory Federal Supply Schedules.	Subpart 8.4.
7 Optional Use Federal Supply Schedules.	Subpart 8.4.
8. Contracts under Section 8(a) of the Small Business Act.	Subpart 19.8.
9. Small Business—Small Purchase Set-Aside.	Sections 13.105 and DIAR 1413.103.
10. Total Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
11. Total Set-aside for Small Business concerns.	Section 19.504.
12. Partial Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
13. Partial Set-aside for Small Business concerns.	Section 19.504.
14. Total Labor Surplus Area Set-aside for concerns that are not Small Businesses.	Section 19.504.
15. Other Commercial Sources (including educational and non-profit institutions).	Subpart 6.1
Services:	
1. Purchase from the Blind and Other Severely Handicapped.	Subpart 8.7
2. Indian economic enterprise set-aside under the Buy Indian Act, including Indian roads and bridges.	Sections 8.001(a) and 1480.402 and 403; 23 U.S.C. 204(e), and 41 U.S.C. 252(c)(2), as amended.
3. Mandatory Federal Supply Schedules.	Subpart 8.4.
4. Optional Use Federal Supply Schedules.	Subpart 8.4.
5. Federal Prison Industries, Inc	Subpart 8.6.
6. Contracts under Section 8(a) of the Small Business Act.	Subpart 19.8.
7 Small Business—Small Purchase Set-Aside.	Sections 13.105 and 1413.103.
8. Total Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
9. Total Set-aside for Small Business concerns.	Section 19.504.
10. Partial Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.

APPENDIX A—SET-ASIDE PROGRAM ORDER OF PRECEDENCE—Continued

Source preference	Reference (48 CFR)
11. Partial Set-aside for Small Business concerns.	Section 19.504.
12. Total Labor Surplus Area Set-aside for concerns that are not Small Businesses.	Section 19.504.
13. Other Commercial Sources (including educational and non-profit institutions).	Subpart 6.1.

Appendix B—Class Justification for use of Other Than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry

(1) Section 23 of the Act of June 25, 1910 (referred to as the "Buy Indian Act" and codified as 25 U.S.C. 47) provides discretionary authority to the Secretary of the Interior to acquire products and services of Indian Industry. This authority has been delegated to the Assistant Secretary—Indian Affairs. It is exercised by the Bureau of Indian Affairs (BIA) in support of its mission and program activities and as a means of fostering economic development and employment for Indian persons.

(2) Pursuant to 25 U.S.C. 47 and the implementing regulations of 48 CFR Part 1480, the BIA may solicit offers and award contracts to eligible Indian economic enterprises to the exclusion of non-eligible offerors for supplies or services that the eligible enterprises either produce through their own labor, skills, or efforts, or provide as regular dealers in such supplies or services. The authority permitting use of other than full and open competition for acquisitions made pursuant to the Buy Indian Act is 41 U.S.C. 253(c)(5). Such acquisitions shall be referred to as "Indian Economic Enterprise Set-Asides."

(3) Offers may not be solicited from non-eligible enterprises except as may be specifically authorized by the Deputy to the Assistant Secretary—Indian Affairs (Operations) or the Contracting Officer.

(4) The authority of the Buy Indian Act and this Class Justification shall not be used to acquire construction of any type or form except as permitted for Indian reservation roads (but not roads in the state of Oklahoma).

(5) By separate memorandum, the Contracting Officer shall certify that:

(a) The supplies or services to be acquired are available from two or more responsible and eligible Indian economic enterprises;

(b) The anticipated cost to the BIA of the required supplies or services is determined to be reasonable and at a fair market price; and

(c) The information in this Class Justification is accurate and complete as it pertains to the proposed acquisition.

(6) This Class Justification is made in accordance with Federal Acquisition Regulation 6.3 and is approved pursuant to section 303(f)(1)(B) of the Federal Property and Administrative Services Act of 1949, as amended and 41 U.S.C. 253(f). The expiration date of this justification is _____.

Date: May 3, 1988.

Ralph R. Reeser,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88-14583 Filed 6-29-88; 8:45 a.m.]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS-101; Notice 1]

RIN 2137-AB46

Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program

AGENCY: Office of Pipeline Safety (OPS), RSPA, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to require operators of buried onshore hazardous liquid pipelines to conduct excavation damage prevention programs in accordance with criteria adopted previously for gas pipeline damage prevention programs. In addition, this notice proposes to extend the existing rule governing gas pipeline damage prevention programs to cover all buried onshore gas pipelines, with a few exceptions. Also, operators of buried gas transmission lines and mains would no longer be exempt from installing permanent line markers in populated areas of operation where a damage prevention program is in effect. The proposed rule changes are in response to statistics that show excavation damage to be the largest single cause of gas pipeline incidents and hazardous liquid pipeline accidents. There is widespread agreement that damage prevention programs are the most effective method to reduce excavation damage to pipelines. The intended effect of this proposed action is a reduction of the deaths, personal injuries, property and environmental damage and commodity loss in areas currently not protected by pipeline damage prevention programs that meet DOT criteria.

DATE: Interested persons are invited to submit written comments in duplicate by August 29, 1988. Late filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made.

ADDRESS: Send comments to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed materials will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each working day. Non-Federal employee visitors are admitted to DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: A.C. Garnett, (202) 366-2036, regarding the subject matter of this notice, or Dockets Unit (202) 366-5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

The Problem

This rulemaking proposal addresses the recurring damage to gas and hazardous liquid pipelines caused by excavators other than the pipeline operators. Sources of excavation damage include equipment rupturing lines, blasting, demolition, boring, tunneling, backfilling, and removal of above and below ground structures. Reducing excavation damage and the accidents that result should substantially improve the overall safety record of gas and hazardous liquid pipelines.

A summary of hazardous liquid pipeline accidents caused by excavation damage by others and reported to DOT on DOT Form 7000-1 for the years 1983 through 1987 is presented in the following table. Prior to October 21, 1985, these excavation damage accidents were reported on the previous Form 7000-1 under Item D, Equipment Rupturing Line, and those reports may have included some damage caused by the operator of its contractor. On the revised form, for accidents occurring on or after October 21, 1985, these accidents were reported under Part J, Damage by others.

HAZARDOUS LIQUID PIPELINE ACCIDENTS

	1983	1984	1985	1986	1987	Total
Accidents caused by excavation damage by others	52	49	50	56	52	259
Deaths	6	0	1	1	0	8
Injuries	4	16	3	0	2	25
Property damage ($000)	459	689	772	3,832	8,866	14,618
Barrels spilled (000)	72	47	50	89	73	331
Accidents from all causes	162	186	183	210	228	969

During this 5 year period, excavation damage by others accounted for 26.7 percent of all reported accidents, including 8 deaths, 25 personal injuries, and $14,618,000 property damage with some 331,000 barrels of product spilled.

The regulations for reporting accidents on hazardous liquid pipelines are set forth in Part 195, Subpart B—Accident Reporting. It should be noted that for the years 1983, 1984, and until October 21, 1985, accidents on intrastate pipelines were not required to be reported. Also, Subpart B does not require reports of accidents that involve the loss of less than 50 barrels (2,100 gallons) or escape to the atmosphere of 5 barrels (210 gallons) a day or less of highly volatile liquids; or only $5,000 or less in property damage. Therefore, the table does not purport to show all the accidents or all the property damage or the total volume of liquids spilled due to excavation damage by others during the 5 year period.

The accident reports for hazardous liquid pipelines do not indicate the population density in the vicinity of the accidents. However, an analysis of the incident statistics for gas pipelines (presented below) shows that 35.3 percent of the excavation damage by other incidents occurred in rural or less populated areas of operation. Therefore, it is reasonable to assume that excavation damage accidents reported for hazardous liquid pipelines have occurred in rural as well as nonrural areas of operation. Accordingly, the largest reduction in excavation damage to hazardous liquid pipelines would result from a damage prevention program that is applicable over the entire length of hazardous liquid pipelines.

Gas pipeline incidents must be reported to DOT on Form RSPA F-7100.1 (Gas Distribution Systems) and on Form RSPA F 7100.2 (Gas Transmission and Gathering Systems). These report forms were revised effective July 1, 1984, to identify incidents by class locations, to increase the reporting threshold of property damage from $5,000 to $50,000, and to eliminate other minor reporting events.

A summary of the gas pipeline incidents reported to DOT on the forms described above as caused by excavation damage by others is presented in the following table. Incidents on pipelines in Class 1 and 2 locations, the less populated areas (see below), are stated separately, because DOT's current gas pipeline damage prevention program requirements under § 192.614 do not apply to these pipelines.

GAS PIPELINE INCIDENTS CAUSED BY EXCAVATION DAMAGE BY OTHERS

[7/1/84 thru 12/31/87]

	Distribution		Transmission & Gathering		Total	
	Class 1 & 2 locations	All locations	Class 1 & 2 locations	All locations	Class 1 & 2 locations	All locations
Incidents	72	318	80	112	152	430
Deaths	6	25	3	3	9	28
Injuries	31	140	1	8	32	148
Property damage ($000)	$707	$13,560	$2,946	$5,208	$3,653	$18,768

During the 3½ year period, the number of reported incidents due to excavation damage by others in Class 1 and 2 locations amounted to 35.3 percent of all such reported incidents, including 32.1 percent of all the deaths, 21.6 percent of all the injuries, and 19.5 percent of all the property damage.

For this same 3½ years, there were 686 distribution incidents and 353 transmission/gathering incidents reported from all causes, totaling 1,039 gas pipeline incidents. Therefore, the incidents of excavation damage by others for Class 1 and 2 locations amounted to 10.5 percent of incidents reported for distribution pipelines, 22.7 percent of incidents reported for transmission/gathering pipelines, or 14.6 percent of the total incidents reported.

The regulations for reporting gas pipeline incidents are set out in Part 191. It should be noted that an incident involving only property damage to the operator or others is not required to be reported if it amounts to less than $50,000. Therefore, the table does not purport to show all the incidents or the value of all the property damage caused by excavation damage by others during the 3½ year period.

Background

The most widely accepted approach to reducing excavation damage to buried pipelines is a damage prevention program employing a one-call system. A conventional one-call system is a communication system established by two or more utilities (or pipeline companies), governmental agencies, or other operators of underground facilities to provide one telephone number for excavation contractors and the general public to call for notification and recording of their intent to engage in excavation activities. This information is then relayed to appropriate members of the one-call system, giving them an opportunity to communicate with excavators, to identify their facilities by temporary markings, and to follow-up the excavation with inspections of their facilities. These latter features of the program are usually handled separately by each member, but may be handled

jointly by the one-call system or by a separate contractor.

At present, there are some 112 one-call systems in the U.S., operating in 46 States and the District of Columbia. Approximately 37 States have statewide one-call coverage, served mostly by 1 or a maximum of 2 centers. About 9 States have incomplete coverage. The one-call systems in Minnesota, North Dakota, and South Dakota have been suspended, but are expected to become active in the near future. Only Hawaii and Puerto Rico have never had one-call coverage available. In addition to the extensive voluntary use of one-call systems, there is an increasing trend for the States to enact legislation requiring the use of one-call systems by utilities and excavators, usually with penalties for non-compliance. OPS believes this type of supporting legislation developed at the State level is a very effective means of increasing the benefits of one-call systems.

In the Pipeline Safety Act of 1979 (Pub. L. 96–129), Congress amended section 3 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1672) to direct DOT to issue new safety standards requiring gas pipeline operators to conduct or participate in damage prevention programs. At the same time Congress gave DOT specific authority under section 203 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2002) to set similar standards for operation of hazardous liquid pipelines.

In response to the Congressional mandate for gas pipelines, on March 25, 1982, DOT issued a final rule (Amendment No. 192–40; 47 FR 13818, April 1, 1982) establishing § 192.614, "Damage prevention program," effective April 1, 1983. This rule required (with minor exceptions) each operator of a buried gas pipeline in Class 3 and 4 locations (the more populated areas) to establish and carry out, or otherwise participate in, a damage prevention program.

Section 192.614 currently requires that operators: (1) Identify excavators operating in the area; (2) notify the public and excavators of the details of the program; (3) provide a means for receiving and recording notification of planned excavations; (4) if an operator has buried pipelines in the area of planned excavation, notify the excavator of that fact and the type of temporary markings to be provided; (5) provide temporary marking of buried pipelines; and (6) provide inspection of pipelines that could be damaged by the excavation.

An excavation damage prevention program established under DOT criteria may differ from a program employing a conventional one-call system in one princpal way. A one-call system, as the definition given earlier indicates, is a multiple underground utility program. Since DOT lacks jurisdiction over utilities other than natural gas and hazardous liquid pipelines, the damage prevention program rule under § 192.614 allows gas pipeline operators to run their own programs rather than participate in a one-call system, even if one is available. OPS believes that if such participation were mandatory for pipeline operators alone, they might be unable to control the management of the system as freely as the voluntary participants who are not subject to DOT regulation. In addition, they might have to bear a disproportionate share of program costs.

Nevertheless, participation in a one-call system can be used by an operator to meet, to the extent possible, the requirements of DOT's excavation damage prevention program criteria. When a one-call system is used in this way, the operator is still responsible for compliance with any criteria that are not satisfied by participation in the one-call system. For example, all operators participating in one-call systems must follow-up with marking and needed inspection activities in a timely manner.

Support for One-Call Systems

The efficacy of damage prevention programs for buried pipelines is well established. The draft economic evaluation of the impact of this rulemaking action examined the effect of extending DOT's gas pipeline damage prevention program regulation to cover hazardous liquid pipelines. Based on data from selected pipeline operators, the evaluation found that there was a reduction of 21 percent in the aggregate excavation damage accident rates per mile for pipelines participating in one-call system programs over those that did not participate. In a notice of proposed rulemaking preceding the adoption of § 192.614 (44 FR 65792, November 15, 1979), the considerable safety benefits achieved in 6 States during the initial years following the adoption of excavation damage prevention programs were cited. For example, the Connecticut Underground Utility Protection Plan was reported to have "reduced damages to facilities of the participating utilities by 38 percent during its first two years of operation." In addition, pipeline safety recommendations which are published after investigation of pipeline accidents by the National Transportation Safety Board (NTSB) have continued to urge the adoption and adherence to excavation damage prevention programs that have one-call systems.

In an advance notice of proposed rulemaking (ANPRM), "Proposals for Pipeline Safety; Request for Comment," (52 FR 4361, February 11, 1987), OPS solicited public comments on 18 safety proposals for gas and hazardous liquid pipelines. Proposal No. 17, in the ANPRM "Require operators to create or participate in one-call systems," received strong support by a broad segment of the commenters, but not to the exclusion of other damage prevention programs, particularly those run by a single company, and some objections were raised regarding their value in sparsely populated areas. Several commenters pointed out that one-call systems are most effective when all underground facility operators are members, and also asserted that their effectiveness can be improved by holding excavators responsible for utilizing the one-call systems.

Proposal No. 17 was in response to H.R. 262, "Pipeline Safety Act of 1987," which has been introduced in the 100th Congress, 1st Session by Congressman Vento. Section 10 of H.R. 262, would require DOT to develop regulations to require pipeline operators to participate in one-call systems in the States where these systems currently exist or otherwise to participate in the creation of one-call systems. In addition, Seciton 11 of H.R. 262 would require persons to contact the appropriate one-call system prior to commencement of excavation to ascertain the exact location of any underground pipelines or utilities. Persons who failed to contact the appropriate one-call system, where such systems exists, would assume liability for damage to underground pipelines or utilities from that person's excavation.

At a meeting on September 24, 1987, in Washington, DC, the Technical Hazardous Liquid Pipeline Safety Standards Committee (comprised of representatives form public, government and industry having expertise in buried pipelines) considered Proposal No. 17. The Committee discussed the proposal including the problem of the lack of comprehensive legislation requiring all excavators to utilize the one-call system with appropriate penalties for noncompliance. Furthermore, since OPS lacks jurisdiction over persons other than pipeline operators, statutes to require broader compliance with one-call systems would have to be enacted at the State level. Nevertheless, the Committee approved a motion that the concept of the damage prevention programs contained in § 192.614 for gas

pipelines shoud also apply under Part 195 to hazardous liquid pipelines.

Other statements supporting the broader application of one-call systems have been made by prominent pipeline industry representatives. On October 6, 1987, when appearing before the Senate Committee on Commerce, Science, and Transportation, Surface Transportation Subcommittee, Mr. John Allen, representing the American Gas Association, testified that "A.G.A. supports the concept of one-call systems where such systems are the best means of preventing third-party damage." Additionally, Mr. Allen urged the participation in one-call systems by all owners of subsurface facilities.

Also appearing before the same Senate Subcommittee was Mr. Bob McMahan, representing the Association of Oil Pipe Lines and the American Petroleum Institute. Mr. McMahan testified that—

> One-call systems have become a proven method of alerting the excavator to the existence and location of underground facilities and have contributed to the reduction of pipeline accidents where they have been used effectively. It is our position that one-call systems should be encouraged and supported, and participation by pipeline companies, utilities, and public works agencies and excavator alike should be mandatory.

Additionally, Mr. McMahan stated that—

> Community awareness of pipelines is another area in which greater attention and uniformity are warranted. We believe that closer communication between pipeline companies and the local and State public safety organizations would improve the coordination which must take place in the event of a pipeline emergency. Also, a greater awareness of pipelines on the part of the general public and particularly people who live adjacent to pipeline rights-of-way possibly could contribute to the prevention and effective reaction to pipeline incidents.

Extending the Existing Rules

Most gas and hazardous liquid pipeline operators currently conduct or participate in some form of a damage prevention program like that mandated by § 192.614 for gas pipelines in Class 3 and 4 locations. For example, most hazardous liquid pipeline operators have a procedure for handling notices of impending excavations and marking the locations of their facilities. However, at present, DOT does not require operators of hazardous liquid pipelines or operators of gas pipelines in less populated areas to conduct damage prevention programs, and DOT does not regulate the programs that are being conducted voluntarily. In view of the continuing high incidence of excavation damage to both gas and liquid pipelines and the apparent success of damage prevention programs that adhere to criteria like that prescribed by § 192.614, OPS believes further rulemaking is appropriate. By this notice, OPS is proposing to extend the current DOT damage prevention program rule, as discussed below. It appears that an extension of the damage prevention program rule may reduce the incidents and accidents caused by excavation damage by others.

For gas pipelines, the proposal would expand the current § 192.614 damage prevention regulations to cover all buried onshore gas pipelines in Class 1 and 2 locations, with a few exceptions. This rule change would be effected by removing the exception for Class 1 and 2 locations for onshore pipelines from § 192.614(c)(1). The Class 1 and 2 location pipelines not covered by the proposal are identified by the existing § 192.614(c) (3) and (4) as those to which access is physically controlled by the operator and those that are part of certain petroleum gas or master meter systems. A class location unit is described in § 192.5 as an area extending 220 yards on either side of any continuous 1-mile length of pipeline. A Class 1 location has 10 or less buildings intended for human occupancy. A Class 2 location has more than 10 but less than 46 buildings intended for human occupancy.

In addition, § 192.614(c)(2), which excludes from damage prevention program coverage certain Class 3 pockets in otherwise Class 1 and 2 locations, would be removed. This exception was established to alleviate the burden or running a program in Class 1 and 2 areas just for these isolated pockets. Under this proposal, this exception would no longer be needed.

For hazardous liquid pipelines, OPS is proposing adoption of a new § 192.442, which would use the existing rule for gas pipelines as the basis for applying damage prevention requirements to all onshore pipelines subject to Part 195, except pipelines to which access is physically controlled by the operator.

Because there is growing support for mandatory participation in one-call systems, OPS is interested in receiving responses to two questions: (1) Should DOT make pipeline participation in one-call systems mandatory even though other utilities are not subject to such a requirement? (2) Should DOT make pipeline participation mandatory in cases where State or local laws make such participation mandatory for the other utilities? Because State laws may only apply to interstate pipelines, the second question is primarily relevant with regard to participation by interstate pipelines. Any action OPS might propose to make participation mandatory as a result of comments would be part of a future rulemaking.

Line Markers

As further protective measure against excavation damage, permanent line makers must be placed and maintained over gas mains and transmission lines at locations required by § 192.707. There is a similar requirement for hazardous liquid pipelines in § 195.410. However, § 192.707(b)(2) excludes from this line marking requirement pipelines in Class 3 and 4 locations "where a damage prevention program is in effect under § 192.614." This exclusion was adopted in the belief that a damage prevention program alone would be a sufficient safeguard against damage, and that operators need not meet both §§ 192.614 and 192.707. Now, however, in view of recurring incidents, OPS believes that gas mains and transmission lines may be better protected from excavation damage by others if operators were required to install line markers in addition to conducting damage prevention programs. In fact, many gas operators voluntarily maintain line markers in Class 3 and 4 locations when it is practical to do so. Accordingly, OPS proposes to revise § 192.707(b)(2) to require operators to install line markers in Class 3 and 4 locations even though a damage prevention program is in effect in those locations under § 192.614. Thus, line markers would be required (with some exceptions) along the complete length of gas mains and transmission lines in the same manner as they are now required for hazardous liquid pipelines (with some exceptions) under § 195.410.

Paperwork Reduction Act

This proposed rulemaking contains collection of information requirements in §§ 192.614 and 192.707, and 195.442. These requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35) and 5 CFR Part 1320. Persons desiring to comment on this information collection requirements should submit their comments to:

Desk Officer, Research and Special Programs Administration, Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503

Persons submitting comments to OMB are also requested to submit a copy of

their comments to OPS, as indicated above under "**ADDRESS.**"

Impact

The proposed rules are expected to be nonmajor under Executive Order 12291. That order defines a major rule as one which has an annual effect on the economy of $100 million, a major increase in costs, or a significant adverse effect on the economy. As shown by the draft evaluation of the costs and benefits of this proposal, these proposed rules will have no such impact. The proposal is also not significant as defined by the Department of Transportation Policies and Procedures (44 FR 11034, February 26, 1979). Also, based on the facts available about the impact of this rule making action, I certify purusant to section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

OPS has analyzed this action in accordance with the principles and criteria contained in E.O. 12612 (52 FR 41685) and has determined that it does not have sufficient federalism implications to warrant preparing a Federalism Assessment.

List of Subjects

49 CFR Part 192

Pipeline safety, Damage prevention program, Line markers.

49 CFR Part 195

Pipeline safety, Damage prevention program, Excavation.

In consideration of the foregoing, OPS proposes to amend 49 CFR Part 192 and 195, as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. In 192.614, paragraph (c)(1) would be revised to read as follows, paragraph (c)(2) would be removed, and paragraphs (c)(3) and (c)(4) would be redesignated (c)(2) and (c)(3), respectively:

§ 192.614 Damage prevention program.

* * * * *

(c) * * *

(1) Pipelines located offshore.

* * * * *

3. Section 192.707(b)(2) would be revised to read as follows:

§ 192.707 Line markers for mains and transmission lines.

* * * * *

(B) * * *

(2) In Class 3 or Class 4 locations where placement of a marker is impractical.

* * * * *

PART 195—[AMENDED]

4. The authority citation for Part 195 is revised to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

5. A new § 195.442 would be added to read as follows:

§ 195.442 Damage prevention program.

(a) Except for offshore pipelines and pipelines to which access is physically controlled by the operator, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, "excavation activities" include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations. An operator may comply with any of the requirements of paragraph (b) of this section through participation in a public service program, such as a "one-call" system.

(b) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of this section of the following as often as needed to make them aware of the damage prevention program: (i) The program's existence and purpose; and (ii) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

(ii) In the case of blasting, any inspection must utilize leakage surveys applicable to the liquid transported.

Issued in Washington, DC, on June 27, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88-14759 Filed 6-29-88; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 53, No. 126
Thursday, June 30, 1988

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Regulation of the Administrative Conference of the United States. The committee will meet to discuss the draft recommendation dealing with "Federal Agency Valuations of Human Life."

DATE: Thursday, July 7 at 10:00 a.m.

LOCATION: Steptoe and Johnson, 1330 Connecticut Avenue, NW., Washington, DC.

PUBLIC PARTICIPATION: Attendance at the committee meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available upon request.

FOR FURTHER INFORMATION CONTACT: Sara Gordon, Staff Attorney, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254-7020.

Michael W. Bowers,
Deputy Research Director.
June 28, 1988.

[FR Doc. 88-14880 Filed 6-29-88; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Jamestown (ND) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Grain Inspection, Inc. (Jamestown) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: August 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Jamestown's designation terminates on July 31, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the February 2, 1988, **Federal Register** (53 FR 2862). Applications were to be postmarked by March 3, 1988. Jamestown was the only applicant for designation and it applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant name in the March 31, 1988, **Federal Register** (53 FR 10412) and requested comments on the applicant's designation. Comments were to be postmarked by May 16, 1988; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Jamestown is able to provide official services in the geographic area for which the Service is renewing its designation. Effective August 1, 1988, and terminating July 31, 1991, Jamestown will provide official inspection services in its specified geographic area, previously described in the February 2 **Federal Register.**

Interested persons may obtain official services by contacting the agency at the following telephone number: (701) 252-1290.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 23, 1988.

Henry L. Joyce,
Acting Director, Compliance Division.

[FR Doc. 88-14711 Filed 6-29-88; 8:45 am]
BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Los Angeles (CA) and Peoria (IL) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Los Angeles Grain Inspection Service, Inc. (Los Angeles) and Peoria Grain Inspection Service, Inc. (Peoria).

DATE: Comments to be postmarked on or before August 15, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:

To: Lewis Lebakken, TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and

Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within the specified geographic areas in the May 3, 1988, **Federal Register** (53 FR 15721). Applications were to be postmarked by June 6, 1988. Los Angeles and Peoria were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to the agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants' designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 23, 1988.

Henry L. Joyce,

Acting Director, Compliance Division.

[FR Doc. 88–14712 Filed 6–29–88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the States of Minnesota (MN) and Mississippi (MS)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Minnesota Department of Agriculture (Minnesota) and Mississippi Department of Agriculture and Commerce (Mississippi).

DATE: Applications to be postmarked on or before August 1, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Mississippi, located at 550 High Street, Jackson, MS 39205; and Minnesota, located at 316 Grain Exchange Building, Minneapolis, MN 55415; were each designated under the Act as an official agency to provide inspection and weighing functions on January 1, 1986.

Each official agency's designation terminates on December 31, 1988. Section 7(g)(1) of the Act, states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Minnesota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Minnesota, except those export port locations within the State.

The geographic area presently assigned to Mississippi, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Mississippi, except those export port locations within the State.

Interested parties, including Minnesota and Mississippi, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning January 1, 1989, and ending December 31, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 23, 1988.

Henry L. Joyce,

Acting Director, Compliance Division.

[FR Doc. 88–14713 Filed 6–29–88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Little Rock, AR, Geographic Area

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the Little Rock, Arkansas, geographic area.

DATE: Comments to be postmarked on or before August 15, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628, South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:

To: Lewis Lebakken, TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that the designation of the Little Rock Grain Exchange Trust would not be renewed

on June 1, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the May 3, 1988, **Federal Register** (53 FR 15721). Applications were to be postmarked by June 6, 1988. There were four applicants for designation in the available geographic area: Aaron Anthony, Oran, Missouri, proposing to do business as Little Rock Grain Inspection; Bryant J. Cochran, Sr., Little Rock, Arkansas, proposing to do business as Little Rock Grain Inspection Service; Little Rock Grain Exchange, North Little Rock, Arkansas, proposing to do business as Little Rock Grain Exchange Trust; and Memphis Grain and Hay Association, Memphis, Tennessee, a designated official agency. All applicants plan to establish a specified service point to provide official services within the Little Rock area.

This notice provides interested persons the opportunity to present their comments concerning the applicants' designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Persons or firms located in Little Rock Grain Exchange Trust's geographic area requiring official inspection service should contact the FGIS Stuttgart Field Office at (501) 673-2508 to obtain such service beginning June 1, 1988, until such time as an applicant is designated to perform official services.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-14714 Filed 6-29-88; 8:45 am]

BILLING CODE 3410-EN-M

Tischer (IA) Agency; Designation of Agency for an Interim Period and Request for Comments

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces that a designation has been granted for a 3-month interim period to A.V. Tischer and Son, Inc. (Tischer) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act). This notice also requests comments from interested parties on Tischer's application for designation.

DATE: Comments to be postmarked on or before August 1, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:

To: Lewis Lebakken, TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Tischer's designation terminates on June 30, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the December 31, 1987, **Federal Register** (52 FR 49460). Applications were to be postmarked by January 29, 1988. Tischer was the only applicant for designation and it applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant name in the March 1, 1988, **Federal Register** (53 FR 6167) and requested comments on the applicant's designation. Comments were to be postmarked by April 15, 1988. A total of seven comments were received regarding Tischer's designation renewal.

Six of these comments were from applicants for service within Tischer's area. Five of the six indicated that they believe Tischer overstates the results of grading factors on grain Tischer inspected for them; two of these same commenters also believe Tischer's fees are too high and that lower fees are charged by an adjacent official agency; and one of these commenters also complained about Tischer's stowage examination procedures and timeliness of service. The remaining applicant stated that Tischer's fees are higher than an adjacent official agency, resulting in higher costs for their inspection services.

The Service has monitored Tischer over the past 3-year designation period. Based upon information available to the Service at this time, it appears that Tischer's performance is satisfactory with grading accuracy to be within prescribed tolerances. While Tischer's fees may be higher than some adjacent agencies, the fees were reviewed previously by the Service and determined to be reasonable and nondiscriminatory.

The final comment was from an adjacent official agency and involved the geographic boundary between Tischer's agency and that agency. The agency indicated that it would like to be assigned a portion of Tischer's geographic area. Since the adjacent official agency did not apply for such designation during the application period, the Service did not consider reassignment of geographic area.

As noted above, the Service's initial review of Tischer's grading accuracy indicates that Tischer meets the designation criteria; however, comments received indicate a contradictory viewpoint. Based upon comments received, it appears that a significant portion of Tischer's applicants perceive Tischer's grading level as inaccurate. In an effort to look more closely at the status of Tischer's grading accuracy and the basis for the applicants' comments, we are granting Tischer a designation for a 3-month interim period to allow FGIS additional time to evaluate Tischer and review the applicants' concerns. Effective July 1, 1988, and terminating September 30, 1988, Tischer is designated under the Act to perform official inspection and Class X or Class Y weighing services in its specified geographic area, previously described in the December 31 **Federal Register**. Interested persons may obtain official services by contacting Tischer at the following telephone number: (515) 955-7012.

In view of the above, this notice provides interested persons the additional opportunity to present their comments concerning the applicant's designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All

comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-14715 Filed 6-29-88; 8:45 am]

BILLING CODE 3410-EN-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Louisiana

The Statewide central filing system of Louisiana has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Bob Odom, Commissioner of Agriculture, for specified farm products produced in that State (51 FR 47036, December 30, 1986, and 53 FR 15722, May 3, 1988).

The same system is hereby certified on the basis of information submitted by the Louisiana Department of Agriculture & Forestry for an additional farm product produced in that State as follows:

Timber

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: June 27, 1988.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 88-14796 Filed 6-29-88; 8:45 am]

BILLING CODE 3410-KD-M

Soil Conservation Service

Availability of Interagency Review Draft Plan—EIS; Soap Creek Watershed, IA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of the interagency review draft plan—EIS.

SUMMARY: J. Michael Nethery, responsible Federal official for projects administered under the provision of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Iowa, is hereby providing notification that the draft interagency review plan-EIS is available for review and comment at this time. Single copies of the draft plan-EIS may be obtained from J. Michael Nethery at the address shown below.

FOR FURTHER INFORMATION CONTACT: J. Michael Nethery, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, telephone (515) 284-4260.

J. Michael Nethery,

State Conservationist.

June 20, 1988.

[FR Doc. 88-14795 Filed 6-29-88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, purusant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Adivisory Committee to the Commission will convene at 1:00 p.m. and ajdourn at 3:00 p.m., on July 21, 1988, at the North Little Rock Hilton Hotel, No. 2 Riverfront Place, in North Little Rock. The purpose of the meeting is to receive a briefing on civil rights issues related to the provision of services for elderly persons in Arkansas so that the SAC can adequately plan a community forum concerning this subject matter.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Alan Patteson, or Melvin Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, June 22, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-14774 Filed 6-29-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-307-701]

Final Determination of Sales at Less Than Fair Value; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain electrical conductor aluminum redraw rod (redraw rod) from Venezuela is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of redraw rod from Venezuela as described in the "Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the date of publication of this notice, whether these imports materially injure, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: June 30, 1988.

FOR FUTHER INFORMATION: Contact Mary Martin, Jessica Wasserman, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-2830 (Martin), 377-1442 (Wasserman) or 377-2438 (Tillman).

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that redraw rod from Venezuela is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. section 1673d(a)) (the Act). The weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our preliminary determination [*Preliminary Determination of Sales at Less than Fair Value; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela* (53 FR 3614, February 8, 1988)], the following events have occurred. At the request of the respondent, we postponed our final antidumping and countervailing duty determinations, and postponed the public hearing requested

in this investigation (53 FR 9675, March 24, 1988). We conducted verification of the exporter's sales price (ESP) questionnaire response in the United States from March 23 through March 25, 1988, and of all of the responses in Venezuela from April 25 through May 6, 1988. In addition to the deficiency questionnaires sent out before the preliminary determination on October 29, 1987, December 9, 1987, January 4, 1988, and January 29, 1988, we sent out a final deficiency questionnaire on March 17, 1988. In addition to the original responses on September 30 and October 15, 1987, we received new and/or amended responses on November 18, 1987, December 23, 1987, January 29, 1988, February 9, 1988, March 9, 1988, March 15, 1988, April 21, 1988, April 25, 1988, May 2, 1988, and May 26, 1988.

A public hearing was held on May 31, 1988. Pre-hearing briefs were submitted by the parties on May 27, 1988. Post-hearing briefs were filed by petitioner on June 8, 1988, and by respondent on June 9, 1988. Comments on the Addendum to the Verification Report of the respondent, Suramericana de Aleaciones Laminadas, C.A. (SURAL), were filed by petitioner on June 10, 1988, and by respondent on June 13, 1988.

Standing

On August 31, 1987, the Department received a letter from Reynolds Aluminum stating that the company takes no position with respect to the petition filed by Southwire. On September 7, 1987, we received a letter from the respondents challenging Southwire's standing to file the petition and requesting dismissal of the petition on the grounds that the petition was not filed "on behalf of" the United States industry, as required by section 732(b)(1) of the Act.

On September 24, 1987, we received a letter from Alcoa Conductor Products Company (ACPC), a division of the Aluminum Company of America (ALCOA), stating that ACPC does not support the position taken by Southwire in its petition and that the petitioner did not speak on behalf of or represent that firm in the proceeding. On October 8, 1987, we sent a letter and a questionnaire to ALCOA requesting information as to the nature and extent of the firm's activities, including its production of redraw rod in the United States and its percentage share of the United States market. In an October 22, 1987 letter, ALCOA responded to the Department's request for information. In its response ALCOA included an estimate of its share of the U.S. redraw rod market in 1986.

In a November 2, 1987 letter, respondent asserted that on the basis of the ACPC letter, the Department was now required to "canvass the views of all industry members to determine whether they in fact support Southwire." On November 12, 1987, the Department received a letter from the Aluminum Trades Council opposing Southwire's petition because jobs may be jeopardized as a result of a lack of availability of aluminum rod. On June 6, 1988, the Department received a letter from the Aluminum, Brick and Glass Workers International Union expressing its opposition to the petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigaiton "whenever an interested party * * * files a petition * * * on behalf of an industry" (section 732(b)(1) of the Act). As we have stated in prior cases (*see e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 26, 1987); *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985)), as well as in the preliminary determination in this case, the Department relies upon the petitioner's representation that it has filed "on behalf of" the domestic industry until it is affirmatively shown that a majority of the domestic industry opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

As we have noted in other cases, to require a petitioner to establish affirmatively that it has the support of a majority of the industry on whose behalf it has filed the petition would, in many cases, "be so onerous as to preclude access to import relief under the antidumping and countervailing duty laws." *Frozen Concentrated Orange Juice from Brazil; Final Determination of Sales at Less than Fair Value* (52 FR 8324, 8325, March 17, 1987).

When a member or members of the domestic industry challenge the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the Department will examine the challenge. When evaluating the challenge, the Department does not consider the following circumstances as evidence of opposition to a petition: a statement by a member of the domestic industry that it does not take any position with respect to the petition, *e.g.*, the Reynolds letter; a statement by an entity that is not a member of the domestic industry, *e.g.*, the letter from the Aluminum Trades Council; opposition to a petition expresed by the respondents or the government that is subject to the investigation.

Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a majority of the domestic industry. Commerce tailors its examination of opposition to the particular facts of the case. Typically, the Department does not canvass the entire domestic industry. Instead, it generally requests the opponent to supply information on the nature and extent of its involvement in the domestic industry. By cumulating the proportion of the domestic industry that is represented by each of the parties in opposition, the Department is able to determine the degree of opposition overall. This was the course followed by the Department in this case.

After ACPC registered its opposition to the petition, the Department sent a questionnaire to ACPC to determine the nature and extent of its involvement in the redraw rod industry. From the response, Commerce determined that ALCOA did not represent a majority of the domestic industry. After the Department received the letter from the Aluminum, Brick and Glass Workers International Union, it sent a questionnaire on June 15, 1988, to the Union to determine the proportion of the domestic industry represented by the Union. As of the date of the final determination, the Union had not responded to the questionnaire. No other industry members have expressed opposition to the petition.

Absent evidence of opposition to the petition by other members of the domestic industry, the Department had no basis to conclude that a majority of the industry opposed the petition.

Therefore, the Department reaffirms its preliminary determination in this case that the petition was filed on behalf of the domestic industry, and that the petitioner has standing to bring this petition.

Scope of Investigation

The product covered by this investigation is certain electrical

conductor aluminum redraw rod, which is wrought rod of aluminum, electrically conductive and containing not less than 99 percent of aluminum by weight. Redraw rod is currently classified under item numbers 618.1520 and 618.1540 of the *Tariff Schedules of the United States, Annotated* and under item numbers 7604.10.30 and 7604.29.30 of the Harmonized System.

Such or Similar Comparisons/Market Viability

We are treating all redraw rod sold as "such" merchandise, within the meaning of section 771(16)(A) of the Act. We, therefore, did not establish separate categories of "similar" merchandise, pursuant to section 771(16) of the Act, because regardless of the diameter, redraw rod is sold uniformly on the basis of weight, and we verified that there are no differences in the cost of producing the two different diameters of redraw rod sold in the United States and the third country.

Because there were no sales of redraw rod in the home market during the period of investigation, we examined third country sales in accordance with section 773(a)(1)(B) of the Act. We compared the volume of third country sales to the volume of sales to the United States to determine whether there were sufficient sales of redraw rod in a third country to serve as the basis for calculating foreign market value. We determined that there was a sufficient quantity sold to the United Kingdom to form an adequate basis for comparison to redraw rod imported into the United States.

Fair Value Comparisons

To determine whether sales of redraw rod from Venezuela to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We investigated sales of redraw rod for the period February 1, 1987 through July 31, 1987.

For the reasons stated below, we have determined, in accordance with section 776(b) of the Act, that use of best information available is appropriate for the exporter's sales price (ESP) transactions of SURAL. This statutory provision requires the Department to use best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

One week prior to the scheduled date of verification of ALNOR Inc. (ALNOR), the related sales agent of SURAL in the United States, SURAL submitted a new sales data base which changed approximately 50 percent of the reported sales. The previously reported sales had been submitted five months earlier and had been used by the Department for the preliminary determination. In our December 9, 1987 deficiency questionnaire, we requested clarification of the sales data, but not until March 15, 1988, one week before verification, did respondent submit a data base that accurately reflected sales in the period of investigation. The continuing deficiencies of the responses, combined with the pattern of amending the responses to correct previously submitted data on the eve of or during verification, undermined the credibility of the submissions.

During the course of the ESP verification of ALNOR, the Department was not able to verify substantial portions of ALNOR's revised response including total sales, indirect selling expenses, brokerage and handling, marine insurance, ocean freight, customs duties, inventory carrying costs and U.S. inland freight. On April 21, 1988, immediately prior to the verification in Venezuela, respondent submitted an additional response changing certain elements of the ESP data which had been examined at ALNOR, including certain shipping dates, payment dates, brokerage and handling, ocean freight, marine insurance, customs duty, and inland freight. The submission also reported a river toll charge and miscellaneous Venezuelan handling and transportation charges for the first time.

The Department sent a letter to respondent on April 27, 1988, requesting an explanation of the changes. On May 2, 1988, during the second week of verification in Venezuela, the Department received a 32-page submission which attempted to explain the changes in the ESP data. The Department attempted to reexamine ESP sales in Venezuela, but was unable to verify pertinent data including indirect selling expenses in the United States and Venezuela, the data necessary for the allocation of these expenses, and the short-term borrowing rates during the period of investigation in Venezuela and the United States. The deficiencies found during verification are outlined in the public versions of our verification reports. For these reasons we have assigned the ESP sales the simple average of the dumping margins alleged in the petition (*i.e.*, 24.26 percent) as best information available pursuant to section 776(a) of the Act.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. As set forth above, for ESP sales, *i.e.*, where the sale to the first unrelated purchaser took place after importation into the United States, we used best information available for purposes of calculating the dumping margins.

We calculated purchase price based on the packed, c.&f., or c.&f. duty paid, or c.i.f. duty paid United States port of entry prices to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for dock usage fees, material usage fees, customs brokerage, customs inspection fees, surveying fees, forklift rentals, Venezuelan inland freight by related and unrelated freight companies, securing fees, Venezuelan river toll fees, ocean freight, marine insurance, U.S. handling charges and U.S. import duties, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

Because SURAL had no home market sales during the period of investigation, we used a sale to an unrelated United Kingdom trading company for the purpose of determining foreign market value in accordance with section 773(a)(1)(B) of the Act. Petitioner alleged that the third country sale was made at less than the cost of production, and that constructed value should be used to compute foreign market value.

We calculated the cost of production based on the respondent's information with the following adjustments. Such adjustments were made to the cost data when the value reported did not fully reflect the costs incurred by the company.

We adjusted the cost of manufacturing to reflect an increase in the price of aluminum resulting from the recent final settlement of such price between the respondent and its aluminum supplier. The price adjustment per ton calculated by the Department was based on the tons of aluminum purchased during the relevant period instead of total export tonnage which was used by the respondent in its submission.

We adjusted the general expenses reported by SURAL to exclude credit expense for the third country sale and the value of the export bond which was deducted by the respondent from general expenses. We adjusted the general expenses reported by SURAL to include an appropriate portion of financial expenses and the corporate general and administrative expense instead of the amount in the submission.

The submission improperly allocated Caracas office expenses to affiliated companies and understated the imputed depreciation expense of the building by two months.

Respondent originally allocated selling and administrative expenses between redraw rod and other products based on the number of orders processed. In our January 4, 1988 deficiency questionnaire, we asked respondent to allocate on the basis of the cost of goods sold. Because respondent failed to do this, for our preliminary determination, we used the general and administrative, selling and financial expenses as contained in the financial statements and allocated them based on the cost of goods sold. For the final determination, respondent did not argue for an allocation based on the number of orders processed. The allocation was made on the basis of cost of goods sold using SURAL's most recent audited financial statements.

We were unable to verify the short-term interest rate incurred by SURAL in Venezuela during the period of investigation. Therefore, as the best information available, we are assuming SURAL incurred no credit expense during the period of investigation. Accordingly, we did not adjust the selling, general and administrative expenses to include credit expense on the third country sale. Instead we used a zero percent interest rate as best information available to calculate credit. Although the use of a zero percent interest rate results in no upward adjustment to the cost of production, a zero percent interest rate has an adverse effect on price-to-price comparisons because the number of credit days between shipment and payment was significantly greater on the third country sale than on the U.S. sales. Consequently, we are not making a circumstances of sale adjustment for credit on the third country sale. We note that even if the maximum short-term interest charged in Venezuela during the period of investigation has been used to calculate credit, the cost test would have yielded the same result.

For purposes of the cost test, we deducted from the third country price dock usage fees, material usage fees, customs brokerage, customs inspection fees, surveying fees, Venezuelan inland freight to a related company, and Venezuelan river toll fees. We increased the third country price by the amount of the export bond received on the third country sale.

We compared the third country price, including the export bond revenue obtained by SURAL from the Venezuelan government, to the cost of production. We found that the sale to the United Kingdom by SURAL was above cost. Therefore, we are using the third country sale for purposes of calculating the foreign market value.

We calculated foreign market value comparisons based on the f.o.b. stowed/lashed/secured/dunnaged packed Puerto Ordaz price to an unrelated United Kingdom trading company. We deducted dock usage fees, material usage fees, customs brokerage, customs inspection fees, surveying fees, Venezuelan inland freight to a related company, and Venezuelan river toll fees. We adjusted the third country price for the difference between the value of the export bonds received on the third country sale and the value received on each U.S. sale. We did not adjust the third country price for differences in circumstances of sale for credit expenses because, as discussed above, we used a zero percent interest rate as best information available to calculate credit. In addition, we did not make any adjustment for the slight additional cost in packing on the third country sale, because respondent declined to provide this information.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). Normally, all currency conversions are made at the rates certified by the Federal Reserve Bank. For the price-to-price comparisons, we converted the third country price at the rates certified by the Federal Reserve Bank. For conversions involving bolivares, however, no certified rates are available for Venezuela. Therefore, in place of the official certified rates, we used the exchange rate provided by the International Monetary Fund as the best information available.

Interested Party Comments

Comment 1: Respondent challenges the standing of petitioner to bring the petition "on behalf of" the domestic industry. For the proposition that a petitioner must establish that majority of the domestic industry supports the petition, respondent relies upon *Gilmore Steel Corp. v. United States*, 7 CIT 219, 585 F. Supp. 670 (CIT 1984). In particular, respondent points to a statement by the Court that a petitioner "must also show that a majority of that industry backs its petitions." *Gilmore*, 585 F. Supp. at 676. Respondent argues that because Southwire has not demonstrated that its petition has the support of a majority of the domestic industry, Southwire lacks standing to bring the petition.

DOC Position: A close examination of the *Gilmore* case reveals that the particular statement relied upon by respondent is *dicta;* it was not part of the holding or even the reasoning for the decision. It was part of the Court's recognition that there are two standing requirements in the statue: the "interested party" requirement and the "on behalf of an industry" requirement. The Court determined that the plain meaning of the words "on behalf of" is "as the representative of," "as the proxy for," or "as the surrogate." 585 F. Supp. at 675. Accordingly, the Court concluded that a petitioner may file in a representative capacity, on behalf of an industry. Id. at 676.

The Court did not consider the question as to who bears the burden of establishing whether a petitioner is in fact representative of the industry. Indeed, there was no issue in the *Gilmore* case as to who bore the burden of establishing the petitioner's representation of the industry because the record in that case established that Gilmore's petition was opposed nearly unanimously by the entire industry. (*See, Carbon Steel Plate from Belgium and the Federal Republic of Germany; Rescission of Notice Announcing Initiation of Antidumping Investigation and Dismissal of Petition*, (49 FR 3504, January 27, 1984).) The issue before the Court in *Gilmore* was whether the Department had the authority to terminate an investigation where a majority of the domestic industry affirmatively opposed the petition.

There is nothing in the statute, its legislative history, or our regulations which requires that petitioners establish affirmatively that they have the support of a majority of their industry. (*See* "Standing" section above.)

Comment 2: Petitioner contends that the Department must reject the aluminum cost data supplied by SURAL and instead use the London Metals Exchange prices for aluminum as the best information available. The petitioner claims that the April 1988 price adjustment for the aluminum purchases between SURAL and its supplier does not reflect the fair market value, and did not include the actual aluminum cost for July 1987.

DOC Position: The Department verified actual aluminum prices paid from February 1987 to June 1987, including the retroactive price adjustment for these months recently agreed upon between SURAL and its unrelated supplier. The aluminum cost for July was not used by the Department because the cost of production was based on the five months (February to

June 1987) preceding the shipment in June for the third country sale.

Comment 3: Petitioner contends that the final determination should reflect the same general expenses which the Department used for its peliminary determination and should not rely on the 1986–87 financial statements because: (1) SURAL submitted them over five weeks after the preliminary determination, and (2) many of the proposed modifications which SURAL made to the 1986–87 general and administrative expenses were erroneous.

DOC Position: General expenses were calculated based on the audited 1986–87 financial statements because these statements are more representative of the cost of production during the period of investigation. However, the Department did not agree with all of the modifications which SURAL made. (*See* the *DOC Position* on *Comments 7, 8,* and *9.)*

Comment 4: Petitioner argues that SURAL's proposed modifications to its audited 1986–87 financial statement should not be accepted by the Department. In regard to selling expenses for cost of production and constructed value, petitioner argues that ocean freight, marine insurance, duty costs, and shipping expenses should not be deducted.

Respondent contends that the expenses noted by petitioner were either not incurred on the third country sale or were reported as adjustments to third country price. Therefore, in order to compare the ex-factory costs of production to an ex-factory price, these expenses should not be included in the cost of production or constructed value.

DOC Position: Respondent reported and the Department verified that the third country sale terms were f.o.b. stowed/lashed/secured/dunnaged Puerto Ordaz, Venezuela. SURAL did not incur expenses for ocean freight, marine insurance or customs duties on the export sale to the United Kingdom. Respondent also reported and the Department verified that expenses for Venezuelan freight costs were incurred in transporting merchandise from the plant to the dock. In addition expenses for customs inspection performed in Venezuela were reported and verified. All of the expenses cited by petitioner were either not incurred on the third country sale or were reported and deducted from the third country price. In order to compare the ex-factory price to the cost of production, it is necessary to deduct the expenses cited by petitioner from the sale price, and to calculate the cost of production on an ex-factory basis.

Comment 5: In regard to selling expenses for cost of production and constructed value, petitioner argues that the amount listed in the 1986–87 financial statements was not verified because the adjustment necessary to calulate the amount was not verified.

DOC Position: The amount listed in the 1986–87 financial statement includes both selling and distributions expenses such as ocean freight, marine insurance and Venezuelan river tolls. Because, for purposes of the cost test, we compared the ex-factory price on the third country sale to the cost of production, it was appropriate to factor out from the selling, general and adminstrative expenses in the cost of production, those distribution expenses unrelated to the third country sale as well as movement charges associated with the third country sale.

However, as petitioner notes, there was a significant downward adjustment made in SURAL's books to the total amount of selling and distribution expenses reported in the 1986–87 financial statements. Therefore, when we calculated selling expenses, we added back that adjustment to the total selling and distribution expense, and then subtracted only those items verified as actual distribution expenses. Although the adjustment itself was not verifiable, the totel amount listed in the audited financial statements for selling and distribution expenses must be considered the best information available for purposes of calculating selling expenses to be used in the cost of production. Furthermore, for purposes of our calculation, the adjustment only serves to increase the amount of the selling expense included in the cost after the distribution expenses have been factored out.

Comment 6: Petitioner argues that the discrepancies noted in the verification report between the amount of selling expenses reported in the April 21, 1988, submission and that reported in the 1986–87 financial statements bring the credibility of the financial statement into question.

Respondent states that, in preparing an English translation of SURAL's official financial statement, a typographical error was made. Due to an oversight this error was not immediately brought to the Department's attention. Respondent argues that the minor typographical error does not impugn the accuracy of the financial statements.

DOC Position: We examined the original Spanish financial statement and the English translation and determined that a typographical error had been in translation. One typographical error made in translation is not adequate to challenge the validity of the financial statements.

Comment 7: Petitioner contends that the general and adminstrative expense in the financial statements of SURAL should not be reduced by the amount of reimbursement paid by SURAL to ALNOR (SURAL's U.S. subsidary) because the records of ALNOR were not verified.

DOC Position: Although we are using best information available for the ESP sales because we were not able to verify completely the entire ESP data base, we did verify during the cost of production verification that SURAL did reimburse ALNOR for certain expenses incurred by ALNOR. Therefore, this amount is appropriately deducted from the general and administrative expenses in the cost of production.

Comment 8: Petitioner contends that the Department should not reduce general and administrative expenses by expenses which SURAL allocated to eight other companies which it claimed were sharing Caracas office space because all expenses were recorded in SURAL's books and the number of employees at other affiliates were not verifiable.

Respondent contends that SURAL's allocation of the Caracas office expenses to other affiliated companies which share office space should be accepted because the administrative personnel spend most of their time on administrative matters for the other companies or on start-up projects involving the other companies.

DOC Position: Since Caracas office expenses were recorded in SURAL's books and SURAL bore all expenses incurred at the office, these expenses cannot be allocated to other affiliated companies. General and administrative expenses were incurred for the overall operations of SURAL and were not attributable to any affiliated company. Moreover, the independent auditors also considered them to be SURAL's expenses.

Comment 9: Respondent contends that the depreciation for the Puerto Ordaz office should be used instead of the nominal rent because the rent was an intra-company transfer and did not represent the fair market rental value.

DOC Position: The Department viewed the rent payment in comparison with the purchase price for the property which SURAL was renting from its parent to determine whether the rent payment reflected a "fair market value". One year's rent exceeded the purchase price of the property. Therefore, the Department concluded that the rent did not represent the "fair market value".

The Department used the depreciation expense based on the purchase price for the seven months that SURAL actually occupied the building in fiscal year 1987, instead of the five months depreciation expense as reported by the company.

Comment 10: Petitioner contends that the Department should not use the total accounts receivable to offset the interest expenses. Only accounts receivable for trade should be considered for this offset, since only an imputed credit expense related to this one type of receivable would be included in the cost of production.

DOC Position: The Department did not make any offset for interest expense because there was no imputed credit expense for the third country sale included in the cost of production.

Comment 11: Petitioner contends that the Department should not deduct the amount of interest expense which the respondent claims as an accounting "error" on its financial statements because the "error" was unsupported and its validity was not confirmed.

DOC Position: The Department verified the amount of this "error" and we agree that it is an error. Accordingly, we deducted it from the amount of interest expense reported by respondent in its submission.

Comment 12: Respondent contends that export bonds received by respondent must be deducted from cost of production or added to price because revenues from the government are deducted from cost of production if they are directly related to either sales or production of the merchandise.

Petitioner contends that SURAL's argument that the Department should reduce the cost of production by deducting the value of the export bond or adding the value to revenue is without merit because the export bond is based on the value of the export sales rather than production. Petitioner also argues that the Department should not increase the price of the third country sale by the amount of the export bond proceeds because the respondent is unable to take the bond into account when setting a third country selling price.

DOC Position: We agree, in part, with respondent. Section 773(b) of the Act provides that the Department must disregard sales to a third country as the basis for foreign market value when substantial quantities of such sales occur at prices which do not permit the recovery of all costs within a reasonable period of time in the normal course of trade. If the seller's total return on its sales is greater than its cost, the prices clearly do permit the recovery of all costs.

In the present case, the Government of Venezuela provides "export bond" payments on the basis of a company's export sales rather than on any particular input or other component of production. In other words, we verified that the receipt of these payments is in no way dependent upon the use of any particular input or other component of production. To be entitled to payments, a producer need only establish that it has, in fact, exported redraw rod. Further, SURAL received export payments on all of its sales to the United States and the United Kingdom, and it recorded these payments as "sales revenue" in its financial records.

Insofar as the export bond proceeds were essentially part of SURAL's net return on its sale to the United Kingdom, the Department concluded that such proceeds must be taken into account in determining whether SURAL's sale prices to the United Kingdom was below its cost of production within the meaning of section 733(b). While the export bond proceeds might also have been treated as a reduction in the cost of production, it was more appropriate to consider them in the context of the third-country sales price. *See e.g., Certain Fuel Ethanol From Brazil: Final Determination of Sales at Less Than Fair Value,* (51 FR 5572, Feb. 14, 1986) (addition to selling price for export payments "because these payments were directly related to the exportation of the ethanol and because they effectively enhanced the net return . . ."). Despite the fact that the ostensible use of the export bond is to reduce the receipient's tax liability, which would seem to suggest that it has the effect of lowering costs, the bond is normally redeemed for cash to other firms or to banks at a slight discount from its face value. Thus, its *de facto* purpose is to enhance the revenue which a firm receives on each export sale, the effect of which is no different than if SURAL had charged a higher price. Consequently, the Department decided to treat the export bond proceeds as sales revenue and adjust the sales price upward rather than adjust the cost of production downward. A comparison of SURAL's third-country price, as "adjusted," revealed that this third country sale was above cost. Therefore, we are using SURAL's sale to the United Kingdom as the basis for foreign market value.

In connection with the Department's less than fair value comparison between foreign market value and United States price, it is our consistent practice to adjust foreign market value for export payments that are directly related to the production and/or sale of the products under investigation, and which are recorded in the financial records of the exporter. *See e.g., Certain Welded Carbon Steel Standard Pipe and Tube from India; Final Determination* (51 FR 9089, March 17, 1986) (circumstances of sales adjustment to foreign market value for export payment); *Certain Iron Construction Castings From India; Final Determination of Sales of Less Than Fair Value* (51 FR 9486, March 19, 1986) (export payment treated as direct offset to material costs); *Red Raspberries From Canada; Final Determination of Sales of Less Than Fair Value,* (50 FR 1976, May 10, 1985) (export payment unconnected with cost of inputs treated as general revenue and offset to general expenses). Since the proceeds from the export payment were added to third-country price for purposes of our analysis under section 773(b) of the Act, it was appropriate, and consistent with a reasonable interpretation of the statute, to also commence our less than fair value analysis under section 731 of the Act with a foreign market value based upon upwardly adjusted third-country prices. As a result, we achieved a fair comparison of foreign market value with United States price by making a circumstances of sale adjustment to SURAL's foreign market value pursuant to section 353.15 of our regulations in the amount of the difference between the value of the export bonds received on U.S. sales and the value of the export bond received on the third-country sale, as adjusted. We believe a circumstances of sale adjustment is more appropriate than a direct offset to production costs (including general expenses) because, as we explained above, receipt of the payments is not tied to the use of any particular input or other component of production, and SURAL recorded the payments in its financial records as "sales revenues."

Comment 13: Respondent argues that the level of export subsidies as determined in the concurrent final countervailing duty determination must be subtracted from the dumping margins for duty deposit purposes.

DOC Position: We disagree. Article VI(5) of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization." Consequently, it is our practice to adjust antidumping duty deposit requirements in the amount of any estimated countervailing duties that have been imposed to offset unfair export subsidies, but only to the extent the final

margin of price discrimination is due to export subsidies. In this case, the foreign market value is based on a sale to a third country, which as an export sale benefits from the same export subsidies as the U.S. sales. Since both the foreign market value and the U.S. sales benefit from the same export subsidy programs, we determine that the dumping margin is not attributable to the export subsidies. Therefore, we will not subtract the level of export subsidies found in the corresponding final countervailing duty determination from the final dumping margin.

Comment 14: Respondent contends that the same exchange rate must be used to convert the London Metals Exchange (LME) price to calculate the cost of production and to convert the sales price, because the average LME price in each month was converted into bolivares using the exchange rate in effect in that month. Therefore, the effect of exchange rate fluctuations on the price of aluminum can be eliminated by recalculating the LME price in bolivares using a single exchange rate.

DOC Position: The Department used the weighted-average price paid by SURAL for its aluminum purchases for the five months preceding its shipment of aluminum redraw rod to the United Kingdom. It is the Department's practice to use the actual costs incurred by the company to manufacture the product under investigation. Although the aluminum price may have been linked to the LME price, the price paid by SURAL to an unrelated supplier was charged and paid in bolivares. There is no basis for revising the actual costs incurred by the company for its aluminum. (*See, also DOC Position* to *Comment 20.*)

Comment 15: Petitioner contends that net foreign exchange gains claimed by the respondent should not be used to reduce the interest expenses because these gains were not incurred on funds held for operations.

Respondent contends that the Department should offset foreign exchange gains against financial expenses because SURAL incurred net foreign exchange gains on funds held for general business purposes in accounts denominated in foreign currencies.

DOC Position: Net foreign exchange gains were not considered as an offset against financial expenses because the gains were not identified with the production of aluminum redraw rod. For example, the aluminum, which constitutes a major portion of the cost of production, is purchased in Venezuela and all facilities used for the production of redraw rod are located in Venezuela.

Comment 16: Respondent contends that the Department should include certain "Other Income" items in calculating "costs of manufacture" because each of these items is directly related to the cost of production.

DOC Position: The Department included certain "Other Income" items in calculating "cost of manufacture" when these items (scrap revenue, prompt payment discount, any incidental income earnings, etc.) were directly related to the normal business operations.

Comment 17: Petitioner argues that the Department should continue to use the method it employed in the preliminary determination for allocating selling expenses in calculating cost of production and constructed value, *i.e.*, on the basis of cost of goods sold.

DOC Position: In our preliminary determination, we allocated general, selling and administrative expenses from SURAL's 1985–1986 audited financial statement over the cost of goods sold from SURAL's 1985–1986 financial statement. In the original questionnaire response, respondent allocated selling expenses were over orders processed, but later adopted the Department's allocation method both at verification and in its April 25, 1988 submission. For the final determination, the Department allocated selling expenses over cost of goods sold from SURAL's 1986–87 audited financial statement which was received March 9, 1988.

Comment 18: Petitioner argues that credit costs on purchase price transactions should be calculated on the basis of best information available because SURAL misidentified the payment date on five of six transactions.

Respondent contends that the terms of payment for all the sales were by letter of credit payable at sight. Because SURAL was entitled to payment at sight, no credit expenses were claimed for these sales. Respondent argues that this is consistent with the Department's practice in *Certain Iron Construction Castings from Brazil; Final Determination of Sales at Less than Fair Value*; (51 FR 9477, March 19, 1986) and *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Products from Brazil*, (49 FR 28298, July 11, 1984).

DOC Position: We could not verify the short-term interest rate incurred by SURAL during the period of investigation in either Venezuela or the United States. In addition, we observed at verification that SURAL was not actually credited by the bank for substantial periods on a number of letters of credit which were termed as requiring payment at sight. As a result, we have determined that it is appropriate to make no adjustment for credit in either market on the basis of best information available under section 776(b) of the Act.

Comment 19: Petitioner argues that the Department should base its final determination on the best information available, which is the simple average of the dumping margins alleged in the petition (*i.e.*, 24.26 percent). ITA has issued numerous deficiency letters, and SURAL has submitted 13 supplemental responses. New data were submitted immediately before, during and after verification. At the very least, petitioner asserts that dumping margins for SURAL's ESP transactions should be based on best information available in light of the substantial revisions and additions submitted just prior to and after verification in Venezuela.

Respondent contends that the *de minimis* nature of the revisions does not warrant use of best information available. Respondent argues that its changes were limited to ESP sales that represented less than 13 percent of SURAL's total U.S. sales. Respondent claims that ESP sales were sufficiently verified in Venezuela and tied to SURAL's audited financial statements. With respect to individual variables in the ESP data base, respondent argues the following: ALNOR's interest on its overdrafts represents a penalty and should not be used to calculate the credit expense on ESP sales; if the overdraft rate is used it should be included as part of a weighted-average interest rate for SURAL since the account in question was under the control of SURAL; ALNOR's indirect selling expenses should be used because they were traced both to individual checks and to SURAL's audited financial statements, and should be allocated between purchasing and selling activities according to the ratio of ALNOR's total sales to its total purchases during the period of investigation. Finally, respondent submitted comments concerning the verification procedures followed by the Department's verification team, including the length of time spent on verification, and questioned the experience and abilities of the analysts conducting the verification.

DOC Position: The Department made every attempt to verify the information supplied. Standard verification procedures were followed. The Department extended every reasonable opportunity to respondent to ensure the filing of complete and accurate responses prior to both verifications. Where the information or documentation supplied was unclear,

we requested clarification. When completely new data were submitted during the course of the verification, (*e.g.*, U.S. warehousing and handling charges), we made every effort to verify those data. The verification reports reflect the results of that process. New data were submitted on the eve of verification, during verification, and after verification in the United States. This proceeding has been extended at the request of both parties by a total of over 100 days. Yet, even after the examination of the ESP data submitted during verification in Venezuela, there were still major variables in the ESP data base that could not be verified.

During the public hearing, respondent conceded that there were "problems obtaining information from ALNOR's offices regarding ESP transactions" and that "in the initial verification at ALMOR certain facts could not be verified." (Transcript of public hearing at pages 53 and 54.) In addition, respondent's efforts to support the ESP data during the verification in Venezuela failed. Under these circumstances, where the deficiencies in the verification of the ESP sales are too numerous and too grave to remedy, the Department is required to use best information available. (*See* also the discussion of use of best information available in the "Fair Value Comparisons" section of this notice.) Given the number of revisions to the ESP data that were submitted by SURAL, there is a serious question of whether SURAL's information should be rejected under the Department's procedures as substantially a "new" response submitted after the preliminary determination. Since the new data was not ultimately usable as verified, we do not need to reach this question (*See Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988)).

In contrast, for purchase price sales and the third country sale, we were able to verify all the data reported with the exception of SURAL's short-term credit expenses (for which the Department is using the best information available). Therefore, these sales are being used for the price-to-price comparisons.

Comment 20: Respondent argues that if the exchange rate and the cost of production are determined on a consistent basis, the sale to the United Kingdom is not below the cost of production. Respondent contends that, in the period between the contract date and the actual shipment date, both the value of the British pound vis-a-vis the bolivar and the cost of primary aluminum in bolivars increased. In the preliminary determination, the Department used the weighted average cost of production for the February to June period but exchanged the sale to the United Kindgom on the date of sale. Respondent argues that this methodology seriously distorted the price-to-cost comparison insofar as the sole sale to the United Kingdom occurred at the beginning of a period in which production costs increased significantly because the cost of the primary material input, aluminum, rose in tandem with the appreciating British pound. Respondent concludes that it is unreasonable and unfair to take the appreciation of the pound into account in measuring the cost of aluminum, while at the same time ignoring it in measuring the price that SURAL received.

Petitioner asserts that the Department followed the proper cost and currency conversion methodologies in the preliminary determination. Petitioner rebuts respondent's argument on the grounds that the methods proposed by respondent either artificially reduce SURAL's production costs or take into account exchange rate gains realized after the date of sale. Petitioner claims that respondent's reliance on *Melamine Chemicals, Inc.* v. *United States*, 732 F. 2d 924 (Fed. Cir. 1984), as authority to abandon the Department's usual practice is erroneous. Petitioner argues that *Melamine* in fact validates section 353.56(b) of Commerce's regulations (19 CFR 353.56(b)), which sets forth the Department's rule for exchange rate conversions in the presence of "temporary exchange rate fluctuations." According to petitioner, two conditions must be present before the section applies: (1) The exchange rate must fluctuate rather than merely undergo a sustained change, and (2) the dumping margin must be solely the result of the exchange rate fluctuation. Petitoner contends that, in this care, neither criterion has been met.

DOC Position: We determined that the third country price was above the cost of production using the exchange rate on the date of sale. Since the price was found to be above cost using our standard procedure for exchanging the price to an average cost of production, there is no need to reach this issue in this case.

Verification

Except where noted, we verified the information used in making our final determination in accordance with section 776(a) of the Act. Department officials spent approximately three weeks both in Venezuela and in the United States verifying the responses submitted. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondent. Our verification results are outlined in detail in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of redraw rod from Venezuela entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall continue to require on all entries a cash deposit or the posting of a bond equal to the estimated average amounts by which the foreign market value of redraw rod from Venezuela exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin (percentage)
SURAL	5.80
All Others	5.80

The cash deposit or bonding rate established in the preliminary antidumping duty determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the **Federal Register.** This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does

not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on redraw rod from Venezuela entered or withdrawn from warehouse, for consumption, after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. section 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

June 22, 1988

[FR Doc. 88-14656 Filed 6-29-88; 8:45 am]

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[C-307-702]

Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Venezuela of certain electrical conductor aluminum redraw rod (redraw rod). The estimated net subsidy is 64.62 percent *ad valorem*. However, consistent with our policy of taking into account verified program-wide changes that occur before our preliminary determination, we are adjusting the duty deposit rate to reflect changes in the Exchange of Export Earnings Under the Multiple Exchange Rate System and the Export Bond Program. Therefore, the rate for duty deposit purposes is 38.40 percent *ad valorem*.

We have notified the U.S. International Trade Commission (ITC) of our determination. If the ITC determines that imports of redraw rod materially injure, or threaten material injury to, a U.S. industry, we will direct the U.S. Customs Service to resume suspension of liquidation of all entries of redraw rod from Venezuela that are entered, or withdrawn, from warehouse, for consumption on or after the date of publication of our countervailing duty order and to require a cash deposit on entries of redraw rod in an amount equal to the duty deposit rate.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Investigations, Import Administration, International trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-2815 (Malmrose) or 202/377-2438 (Tillman).

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters of redraw rod in Venezuela. For purposes of this investigation, the following programs are found to confer subsidies:

- Exchange of Export Earnings Under the Multiple Exchange Rate System
- Export Bond Program
- Preferential Input Pricing
- Short-term FINEXPO Financing
- Interest-free Loan from a Government-owned Aluminum Supplier

Case History

Since the last **Federal Register** publication pertaining to this investigation [*Preliminary Affirmative Countervailing Duty Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela* (52 FR 38113, October 14, 1987)], the following events have occurred. On October 2, 1987, we presented respondents with a supplemental questionnaire concerning petitioner's allegations. On October 16, 1987, we presented respondents with a supplemental questionnaire concerning an equity investment by a government-owned aluminum supplier in one of the respondent companies.

On November 2, 1987, at petitioner's request, we extended the final determination date in this investigation to March 7, 1988, to coincide with the final determination date in the companion antidumping investigation (52 FR 42703, November 6, 1987). On December 1, 1987, again at petitioner's request, the date for the preliminary determination in the companion antidumping investigation was extended until February 1, 1988, thereby extending the final determination in both investigations until April 16, 1988 (52 FR 46386, December 7, 1987). On January 26, 1988, we received responses from respondents to our questionnaire concerning the equity investment. On February 9, 1988, we notified Customs to terminate the suspension of liquidation in this investigation as of February 12, 1988. On February 23, 1988, we presented respondents with another supplemental questionnaire concerning aluminum input pricing, FINEXPO financing, and the equity investment. On March 21, 1988, at respondents' request, we extended the final determination date for this investigation and the antidumping investigation until June 22, 1988 (53 FR 9675, March 24, 1988). On March 25, 1988, we received a request from the Government of Venezuela (GOV) for a 13-day postponement of our verification to April 18, 1988.

On April 5, and April 11, 1988, we received partial responses from respondents to our October 2, 1987, and February 23, 1988, supplemental questionnaires. Between April 18 and May 12, 1988, we conducted verification in Venezuela. On May 4, 1988, we received data from respondents regarding the purchase of imports by the redraw rod producers during the review period. On May 9, 1988, we received revised data from respondents regarding CABELUM's and ICONEL's purchases of primary aluminum. On May 16, 1988, we received amended responses regarding the levels of FINEXPO financing received by SURAL and ICONEL during the review period.

In response to requests made at verification, On May 27, 1988, we received all of ALCASA's price lists for primary aluminum and an amended response concerning SURAL's purchases of primary aluminum. On June 2, 1988, we received further information from respondents with respect to the determination of domestic aluminum prices in Venezuela. Although no public hearing was requested, initial briefs were filed on June 8, 1988, and rebuttal briefs on June 10, 1988, by petitioner and respondents.

On April 19, 1988, we received a proposed suspension agreement from respondents. On May 17, 1988, we received from respondents a public interest argument in support of their proposed suspension agreement. On May 18, 1988, we received a letter from Reynolds Aluminum Corporation supporting the proposed suspension agreement. We reviewed the respondents' suspension agreement and its public interest letter. We determined that a suspension agreement was not appropriate in this case and notified the respondents of our decision.

Scope of Investigation

The product covered by this investigation is certain electrical conductor aluminum redraw rod, which is wrought rod of aluminum, electrically conductive and containing not less than 99 percent of aluminum by weight. Redraw rod is currently classified under item numbers 618.1520 and 618.1540 of the *Tariff Schedules of the United States, Annotated* and under item numbers 7604.10.30 and 7604.29.30 of the Harmonized System.

Standing

An August 31,1987, the Department received a letter from Reynolds Aluminum stating that the company takes no position with respect to the petition filed by Southwire. On September 7, 1987, we received a letter from the respondents challenging Southwire's standing to file the petition and requesting dismissal of the petition on the grounds that the petition was not filed "on behalf of" the United States industry, as required by section 702(b)(1) of the Act.

On September 24, 1987, we received a letter from Alcoa Conductor Products Company (ACPC), a division of the Aluminum Company of America (ALCOA), stating that ACPC does not support the position taken by Southwire in its petition and that the petitioner did not speak on behalf of or represent that firm in the proceeding. On October 8, 1987, we sent a letter and a questionnaire to ALCOA requesting information as to the nature and extent of the firm's activities, including its production of redraw rod in the United States, and its percentage share of the United States market. In an October 22, 1987 letter, responded to the Department's request for information. In its ALCOA response ALCOA included an estimate of its share of the U.S. redraw rod market in 1986.

In a November 2, 1987 letter, respondent asserted that on the basis of the ACPC letter, the Department was now required to "canvass the views of all industry members to determine whether they in fact support Southwire." On November 12, 1987, the Department received a letter from the Aluminum Trades Council opposing Southwire's petition because jobs may be jeopardized as a result of a lack of availability of aluminum rod. On June 6, 1988, the Department received a letter from the Aluminum, Brick and Glass Workers International Union expressing its opposition to the petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party . . . files a petition . . . on behalf of an industry" (section 702 of the Act). As we have stated in prior cases [*see e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 26, 1987); *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysis* (50 FR 9852, March 12, 1985)], as well as in the preliminary determination in this case, the Department relies upon the petitioner's representation that it has filed "on behalf of" the domestic industry until it is affirmatively shown that a majority of the domestic industry opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

As we have noted in other cases, to require a petitioner to establish affirmatively that it has the support of a majority of the industry on whose behalf it has filed the petition would, in many cases, "be so onerous as to preclude access to import relief under the antidumping and countervailing duty laws." *Frozen Concentrated Orange Juice from Brazil; Final Determination of Sales at Less than Fair Value* (52 FR 8324, 8325, March 17, 1987).

When a member or members of the domestic industry challenge the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the Department will examine the challenge. When evaluating the challenge, the Department does not consider the following circumstances as evidence of opposition to a petition: a statement by a member of the domestic industry that it does not take any position with respect to the petition, *e.g.*, the Reynolds letter; a statement by an entity that is not a member of the domestic industry, *e.g.*, the letter from the Aluminum Trades Council; opposition to a petition expressed by the respondents or the government that is subject to the investigation.

Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a majority of the domestic industry. Commerce tailors its examination of opposition to the particular facts of the case. Typically, the Department does not canvass the entire domestic industry. Instead, it generally requests the opponent to supply information on the nature and extent of its involvement in the domestic industry. By cumulating the proportion of the domestic industry that is represented by each of the parties in opposition, the Department is able to determine the degree of opposition overall. This was the course followed by the Department in this case.

After ACPC registered its opposition to the petition, the Department sent a questionnare to ACPC to determine the nature and extent of its involvement in the redraw rod industry. From the response, Commerce determined that ALCOA did not represent a majority of the domestic industry. After the Department received the letter from the Aluminum, Brick and Glass Workers International Union, it sent a questionnaire on June 15, 1988 to the Union to determine the proportion of the domestic industry represented by the Union. As of the date of the final determination, the Union had not responded to the questionnaire. No other industry members have expressed opposition to the petition.

Absent evidence of opposition to the petition by other members of the domestic industry, the Department had no basis to conclude that a majority of the industry opposed the petition.

Therefore, the Department reaffirms its preliminary determination in this case that the petition was filed on behalf of the domestic industry, and that the petitioner has standing to bring this petition.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidization (the review peroid) is calendar year 1986. As is common under our method of analysis, if the companies under investigation have different fiscal years, which was the case in this investigation, our review period is the most recently completed calendar year. Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments from respondents and petitioner, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters of redraw rod in Venezuela under the following programs:

A. Exchange of Export Earnings Under the Multiple Exchange Rate System

We have divided our discussion of the multiple exchange rate system into four parts. In this section, we will provide a brief history of the multiple exchange rate system and an overview of how the system currently operates. We will also discuss one aspect of the multiple exchange rate system: the exchange of export earnings. The two other aspects of the multiple exchange rate system, the granting of foreign currency at preferential rates of exchange for the purchase of imports, and the registration of foreign currency debt, are discussed in the "Programs Determined Not to Confer a Subsidy" section.

1. *History and Overview of the Multiple Exchange Rate System.* After more than 19 years under a fixed rate system of 4.30 bolivares (Bs.) to the dollar, the GOV authorized the establishment of a multiple exchange rate system following the devaluation of the bolivar on February 22, 1983. The multiple exchange rate system was intended to give the Venezuelan government greater control over Venezuela's foreign exchange reserves and to manage the inflationary impact of the devaluation of the bolivar.

The Central Bank of Venezuela (CBV) and the Ministry of Finance (MOF) signed an Exchange Agreement on February 28, 1983, instituting the multiple exchange rate system. A fixed rate of Bs. 4.30 to the dollar was established for, among other things, the sale of foreign exchange by the CBV for payments on foreign-sourced private and public debt and the importation of products designated as "essential goods." A second fixed rate of Bs. 6.00 to the dollar was applied to, among other things, the importation of goods and services not declared essential. In addition to these rates, a floating free market rate was established for all exchange operations not specifically provided for elsewhere.

On February 24, 1984 a new Exchange Agreement between the MOF and the CBV was signed altering the multiple exchange rate system. The rate of Bs. 6.00 to the dollar, as it applied to the importation of goods and services not declared essential, was replaced by a new rate of Bs. 7.50 to the dollar. The new Exchange Agreement also initiated a procedure whereby exporters were required to exchange a portion of their export earnings, depending on the value of the imported component of the exported good, at the Bs. 7.50 rate. The remainder of their export earnings could be exchanged at the free rate.

On December 6, 1986, another new Exchange Agreement altered the multiple exchange rate system to approximately its present state. A new fixed rate of Bs. 14.50 to the dollar was established which applied to the importation of goods and services not declared essential and to the conversion of export earnings. As of the date of this Agreement exporters were required to exchange 100 percent of their foreign exchange export earnings at the Bs. 14.50 to the dollar rate. The Bs. 7.50 to the dollar rate was applied to imports deemed "essential" and found on the "essential goods" list. This same rate also applied to the payment of private debt which had been registered with the GOV. (Access to other rates of exchange are also available for payment of shipping costs.)

2. *Exchange of Export Earnings Under the Multiple Exchange Rate System.* As noted above, beginning in 1984, exporters were required to exchange a portion of their export earnings at the official controlled rate of Bs. 7.50 to the dollar. The exact percentage of export earnings that had to be exchanced at this rate was determined by the imported value of the exported product. The imported content of a company's exports was determined by deducting a company's national value-added (VAN) percentage from 100 percent. The VAN percentage is calculated for every exporter in Venezuela by the Institute of Foreign Trade. A company's VAN percentage is based on the difference between the FOB value of a company's exported goods and the cost of the goods' imported components.

From January through June 1986, exporters wre required to sell 50 percent of the value of the imported component of their exported goods at the official controlled rate of Bs. 7.50 per dollar. In July 1986, the percentage was increased to 80 percent. Finally in December 1986, Decree 1379 obligated exporters to sell 100 percent of their export earnings at the official Bs. 14.50 per dollar rate of exchange.

Until the December 1986 change in the multiple exchange rate system, the redraw rod producers were able to buy imports at the official controlled rate of exchange of Bs. 7.50 per dollar but convert a portion of their export earnings at the free market rate of exchange, which was substantially higher. (The imports found on the essential goods list applicable for the period, which could be purchased at the Bs. 4.30 per dollar rate, consisted of medicinal and agricultural products; thus, the Bs. 4.30 rate did not benefit the redraw rod producers.) The difference between the official controlled exchange rate of Bs. 7.50 to the dollar, available to purchase the majority of Venezuelan imports, and the higher composite rate—consisting of the free and the official controlled rates—used for exchanging export earnings, provided a benefit to exporters.

We determine that, under the multiple exchange rate system as it existed bedfore December 1986, a subsidy was conferred on exports because one dollar received from export sales yielded more bolivares than the amount exporters had to pay to purchase one dollar for imports. Because receipt of the higher exchange rate is contingent upon selling dollars earned from export sales, we determine that the exchange of export earnings under the multiple exchange rate system conferred an export subsidy.

To calculate the benefit from this program during the review period, we first converted the total FOB dollar value of redraw rod sales to the United States to bolivares at the official controlled rate of exchange (*i.e.*, Bs 7.50 to the dollar). We then subtracted this amount from the total bolivar amount, as recorded in the accounting records of the redraw rod producers, actually received from sales of redraw rod to the United States. (The bolivar amount recorded in the accounting records of the redraw rod producers is reflective of a composite exchange rate, consisting of the free and official controlled rate). The difference is the benefit. We then divided the beneift by the total bolivar value of sales of redraw rod to the United States. On this basis, we calculated an estimated net subsidy of 53.06 percent *ad valorem*.

We verified that the December 6, 1986 change in the multiple exchange rate system unified the rate at which exporters must convert their export earnings and the rate available to buy the vast majority of Venezuelan imports, *i.e.*, Bs. 14.50 per dollar. We also verified that the number of essential goods eligible to be imported at the Bs. 7.50 rate is very limited, has been decreasing over time, and consists of medicinal and agricultural products. This rate for essential goods is not used by the redraw rod producers to purchase imports; the imports of the redraw rod producers can only be obtained at the Bs. 14.50 rate.

Because the GOV eliminated the differential between the rate for purchasing imports and the rate at which export proceeds are converted, we determine the benefit to exporters of redraw rod under the multiple exchange rate system to be eliminated. Therefore, consistent with our policy of taking into account verified and measurable program-wide changes that occur before our preliminary determination, we determine that the multiple exchange rate system no longer confers an export

subsidy on exports of redraw rod. Therefore, the duty deposit rate for this program is zero.

B. Export Bond Program

The export bond program was established in 1973 by the Law on Export Incentives. It is administered by the Fund for Financing Exports (FINEXPO). Under the program, Venezuelan redraw rod exporters are remunerated for their exports by the GOV in the form of export bonds which may be used to pay taxes or sold for cash.

The value of the export bond is based on a percentage, known as the export bond percentage, of the FOB value of the product exported. The applicable export bond percentage for a company corresponds to that company's VAN percentage. For example, during part of the review period, a company with a VAN of 70 percent was eligible for a 25 percent export bond percentage.

The face value of the export bond is calculated by multiplying the export bond percentage by the FOB value of the exported goods expressed in bolivares (converted at the official rate of exchange: Bs. 7.50 to the dollar prior to December 1986 and Bs. 14.50 to the dollar after December 1986). The resulting figure is the face value of the export bond. We verified that the redraw rod producers enter the value of the export bonds into their accounting records on the date of the invoice.

To receive an export bond, a firm submits to its commercial bank the invoice and shipping documents for the exported merchandise. The bank reviews the documents and remits them to the CBV which issues the export bond.

We verified that all three redraw rod producers took advantage of the export bond program during the review period. We also verified that during the review period, the export bond percentage for the redraw rod producers varied from 20 to 25 percent. Because this program is limited to exporters and does not operate to rebate any indirect taxes, we determine that this program confers an export subsidy on redraw rod.

To calculate the benefit for the review period, we divided the bolivar amount of bonds earned on export sales of redraw rod to the United States by the export sales of redraw rod to the United States. On this basis, we calculated a net subsidy of 11.06 percent *ad valorem*.

The various export bond percentages were increased in January and June of 1987. In January 1987, the applicable export bond percentages for the redraw rod producers rose from 18 and 25 percent to 25 and 30 percent, respectively. In July 1987, the applicable rates were increased again from 25 and 30 percent to 30 and 38 percent, respectively. Consistent with our policy of taking into account verified and measurable program-wide changes that occur before the preliminary determination, we are taking into account the latest increase in the applicable export bond percentages for duty deposit purposes.

To calculate the benefit for duty deposit purposes, we weight-averaged the export bond percentage applicable to each redraw rod producer by each company's proportion of the value of Venezuelan exports of redraw rod to the United States. (This methodological approach was not feasible for the review period because the dollar FOB value for export bond calculation purposes during the review period was totally converted at the official controlled rate, while the redraw rod producers were able to convert part of the dollar FOB value of each sale into bolivares at the free market rate). On this basis, the duty deposit is 37.90 percent *ad valorem*.

C. Preferential Pricing of Inputs Used To Produce Exports

Petitioner alleged that ALCASA and VENALUM, government-owned producers of primary aluminum, are directed by the GOV to charge preferential prices to domestic customers who purchase aluminum for further processing and subsequent export.

The questionnaire responses indicated that the price of primary aluminum for incorporation into domestically sold products (the domestic price) was set based on an average of the London Metals Exchange (LME) price in the three months previous to the sale of the primary aluminum. Contrary to this information, it now appears that the domestic price of primary aluminum in Venezuela has generally been based upon the cost of production of ALCASA, plus a reasonable profit.

The price charged by ALCASA and VENALUM for primary aluminum to be incorporated into exported products (the export price) is calculated according to the export price formula agreed to by certain government agencies and the two aluminum suppliers, ALCASA and VENALUM. The basis of the export price formula is the LME cash settlement price, in the month previous to the export date, as listed in *Metals Week*. To calculate the final price charged, certain discounts are first deducted from the LME price. Then the discoutned LME price is converted into bolivares. For most of the review period, the exchange rate at which the LME price was converted was the rate at which the aluminum suppliers could exchange their export earnings. (This was a composite rate, similar to that described with respect to the redraw rod producers in the section, "Exchange of Export Earnings Under the Multiple Exchange Rate System", above.) Beginning in December 1986, the official controlled rate of Bs. 14.50 to the dollar was used to convert the discounted LME into bolivares.

The general practice of VENALUM and ALCASA is to first invoice their customers at the domestic price. When the amount of product exported by their customers can be confirmed, through the provision of quarterly reports, a price adjustment is made. This procedure was followed by two of the three redraw rod producers. The third redraw rod producer was invoiced at the export price for January through August of 1986. Thereafter, this redraw rod producer was billed the domestic price. The price adjustment, covering the second half of 1986 and the first half of 1987 (the adjustment for the second half of 1987 has not yet been made), for this redraw rod producer was made on April 21, 1988. The information obtained regarding this price adjustment indicates that the LME base price for this redraw rod producer differed from the LME price charged the other redraw rod producers.

We verified the final monthly net domestic and export prices charged and paid by each of the three redraw rod producers. We found that in two months, for two producers, the export price charged was lower than the domestic price. Since receipt of the lower export price was contingent upon export performance, we determine that the difference between the domestic price and the export price in the above-referenced months constitutes an export subsidy.

We calculated the benefit by subtracting the amount paid under the export price from the amount that would have been paid under the domestic price. The difference is the benefit. Dividing the benefit by the total export sales of the three redraw rod producers, we calculated an estimated net subsidy of 0.22 percent *ad valorem*.

D. Short-Term FINEXPO Financing

The Fund for Financing Exports (FINEXPO) administers a number of financing programs available to exporters. (See the "Programs Determined Not To Be Used" section of this notice for a description of all the FINEXPO programs.) We verified that

two of the three producers of redraw rod had loans on which interest was paid during the review period under one of the FINEXPO short-term financing programs. Under this program, FINEXPO, in conjunction with Venezuelan commercial banks, provides short-term loans to Venezuelan exporters. Export receivables, such as drafts under letters of credit, are used as collateral. FINEXPO provides to the participating commercial bank up to 60 percent of the loan principal for these loans at five percent interest. The commercial bank provides the remaining loan principal amount and is required to charge the exporter an average of the FINEXPO rate and its own commercial rate.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential interest rates. It is our practice to use the national average commercial interest rate or the most comparable, predominant commercial rate for short-term financing as the benchmark for short-term loans. We are using as our benchmark rate the national average interest rate charged on loans of less than one year, as shown in the 1986 Annual Report of the CBV. Based on our discussions at the CBV, this rate reflects the average short-term commercial lending rate of commercial banks. Comparing this interest rate to the rate charged under the FINEXPO program, we find that the rate on the FINEXPO financing is preferential. Therefore, we determine the FINEXPO loans under this program to be countervailable.

To derive the benefit for one of the redraw rod producers, we calculated the amount of interest that would have been paid at the benchmark rate on those loans related to sales to the United States on which interest was paid during the review period. For the other producer, we calculated the amount of interest that would have been paid at the benchmark interest rate on those FINEXPO loans related only to sales of redraw rod to the United States (this methodology was not feasible for the first redraw rod producer because the export receivables of the first producer, used as collateral, related to both redraw rod and other products). We subtracted from the above two figures the amount of interest that was actually paid. We then divided the difference by the total sales to the United States by the first producer and the total sales of redraw rod to the United States by the other two producers. On this basis, we calculate an estimated net subsidy of 0.14 percent *ad valorem.*

E. Interest-Free Loan From a Government-Owned Aluminum Supplier

During verification we discovered that one of the government-owned primary aluminum supplier companies had provided one of the redraw rod producers with a large loan. In response to our questions, company officials stated that no principal or interest payments had been made on this loan since 1985. No other information concerning this loan was offered. Using the limited information on the record as best information available, we assume that this loan was made to a specific enterprise and that it was given on terms inconsistent with commercial considerations. Therefore, the loan is countervailable.

To calulate the benefit, we considered this loan to be a one-year interest-free loan during the review period. We calculated the interest that would have been paid at the national average short-term interest rate found in the 1985 Annual Report of the CBV. The interest that would have been paid at the national average interest rate is the amount of the benefit. We then divided the benefit by the total sales of all three redraw rod producers. On this basis, we calculated an estimated net subsidy of 0.14 percent *ad valorem.*

II. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters of redraw rod in Venezuela under the following programs:

A. Granting of Foreign Currency at Preferential Rates for Imports Under the Multiple Exchange Rate System

As discussed above, one of the purposes in instituting the multiple exchange rate system was to establish greater control over Venezuela's foreign currency reserves. To this end, the MOF through its Office of the Differential Exchange Rate System (RECADI) issues import permits (DCIs) to importers which allow them access to preferential exchange rates for their imports.

As explained previously, imports into the Venezuelan economy are separated by the GOV into goods considered essential and non-essential. In December 1986, the exchange rate at which essential goods could be imported into Venezuela rose from Bs. 4.30 to the dollar to Bs. 7.50 to the dollar. The rate for non-essential goods rose rom Bs. 7.50 to the dollar to Bs. 14.50 to the dollar. We verified that goods considered essential were for agricultural or medicinal use and were not used by the redraw rod producers.

Since the amount of foreign exchange available in any given year for imports into Venezuela is limited, a system of allocating it among Venezuelan companies has been devised. Each year a series of negotiations takes place between the MOF and the Venezuelan Federation of Chambers of Commerce in which all Venezuelan industries are represented. As a result of these negotiations, companies receive a foreign exchange budget to purchase imports at the official controlled rate. We verified that over 8,000 individual companies, representing a broad range of industries, have been given foreign currency budgets.

Because the allocation of foreign currency at preferential rates for imports is not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that it is not countervailable.

B. Registration of Foreign Currency Debt Under the Multiple Exchange Rate System

The process of registering foreign debt was begun in 1983 under Decree 1930 in order to allow Venezuelan companies to continue paying their debts at the original rate of exchange even though the GOV was devaluing the bolivar. After debts are registered at RECADI, companies are eligible to pay off the debt with foreign currency obtained at preferential exchange rates. Originally, debtors were eligible to repay their debts at Bs. 4.30 to the dollar, but the system was revised in December 1986. Debts are now eligible for a repayment rate of Bs. 7.50 to the dollar with a guarantee permium added for locking in that preferential rate. We verified that all three redraw rod producers had at least some of their foreign debt registered.

To be eligible for a registration, a company's debt must have been contracted before February 1983. The application form and all necessary documentation of the loan was to be filed with RECADI by June 1983. The ultimate decision-making power for granting debt registration was placed in a body named "Commisison 61." We verified that the registration criteria used by this body did not not favor certain industries or regions over others and did not provide a preference for exporters. We also verified through a random sample of decisions made by Commission 61 that registration decisions were made solely on the basis of the established legal criteria. In addition, we verified that the companies

which benefitted from this program were regionally diverse and included producers of a wide variety of products, including the following: tools, pumps, shoes, chemicals, plastics, non-ferrous metals, refrigeration equipment, electrical goods, petrochemicals and graphic arts.

Because registration of foreign currency debt is not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that this program is not countervailable.

C. Import Duty Reductions

Petitioner alleged that a system of import duty reductions is maintained by the GOV which is aimed specifically at providing a benefit to the aluminum products industry. We verified that all three redraw rod producers received import duty reductions.

The sole program allowing import duty reductions is provided by Title IV of the Venezuelan Organic Customs Law. We verified that import duty reductions under this law are granted whenever national production or supply is inadequate to meet the demand for a particular item. We also verified that a board range of products were granted import duty reductions, including: storage batteries, adhesives and gums, coal briquets, spring water, ferrous alloys, pottery, foodstuffs, electrical insulation, carpets and fatty acids. Furthermore, we verified that if an import duty reduction is provided to one company, an other company can receive the same reduction. Since import duty reductions are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that this program is not countervailable.

D. The Financing Company of Venezuela (FIVCA)

FIVCA was established in 1976 as the financing society subsidiary to the Industrial Bank of Venezuela. (Financing societies serve to provide long-term financing in Venezuela). Its objectives are to make long-term funds available to the Venezuelan industrial sector according to the economic policies established by the GOV. FIVCA financing is covered under Article 2 of Resolution 85-10-03 of the CBV, which specifies a maximum interest rate of 14 percent for financing societies operating under Article 63, Number 6 of the General Law on Banks. Article 63 relates to the financing of industrial, agricultural, and forestry activities.

We verified that the one FIVCA loan outstanding to one of the rod producers was set at the maximum interest rate of 14 percent and that the company was making the scheduled principal and interest payments. Furthermore, we verified through an examination of the loan documentation that the interest rate charged is variable according to the maximum interest rate allowable under CBV regulations. Because this loan program does not offer financing on terms inconsistent with commercial considerations, we determine that it is not countervailable.

E. The Industrial Credit Fund (FONCREI)

FONCREI was created in 1974 by the Government of Venezuela in order to make long-term credits available to the Venezuelan industrial sector. FONCREI does not loan to applicant companies directly but does so through commercial banks and financing societies. We verified that one redraw rod producer had a FONCREI loan outstanding during the review period.

FONCREI applies the same interest rate to all of its loans in a single year. The interest rate is set by FONCREI subject to the approval of the CBV. The term of a loan differs depending on a company's ability to repay, which, in turn, depends upon a company's projected rate of return. However, no term can exceed 15 years.

Applicant companies must first be approved under a process of "prior consultation," and then after acceptance by a commercial bank, must gain final approval by FONCREI. We reviewed the criteria used by FONCREI in its decision-making process and did not find any preference given to exporters. We verified that FONCREI financing was used by the producers of: foodstuffs, footwear, basic metals, textiles, lumber, chemicals, rubber products, machinery and graphic arts. We also verified that industries throughout Venezuela benefitted from FONCREI loans. Because this loan program is not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that it is not countervailable.

F. Government Equity Investment in CABELUM

In March 1986, ALCASA acquired 30 percent of CABELUM's capital stock. We examined CABELUM's financial condition by an analysis of the financial statements for the years prior to the equity acquisition. We found that prior to this acquisition, profts were increasing, the company had a positive shareholders equity, and the return on equity was adequate. Therefore, we find that CABELUM was equityworthy in 1986 at the date of the acquisition. Thus, we determine that ALCASA's acquisition of equity was not on terms inconsistent with commercial considerations.

III. Programs Determined Not To Be Used

Based on verified information, we determine that manufacturers, producers, or exporters of redraw rod in Venezuela did not apply for, claim, or receive benefits, unless otherwise noted, during the review period for exports of redraw rod to the United States under the programs listed below. Programs not described below are fully described in the preliminary determination of this investigation (52 FR 38113, October 14, 1987).

A. Preferential Tax Incentives

Petitioner originally alleged that tax incentives were available to the redraw rod producers under decrees 1384, 1374, and 1776. We verified that Decree 1384 was part of the Venezuelan customs code and that Decree 1374 had lapsed prior to the review period. At verification, we found that certain tax benefits are available to Venezuelan manufacturers under decrees 1776 and 1775, which were both promulgated on December 31, 1982.

Decree 1776 seeks to stimulate the domestic production of capital goods in order to reduce Venezuela's dependence on foreign supplies of technology. The decree sets out a series of tax benefits for makers of specific capital goods which are listed in the decree. Eligible companies may receive a variety of fiscal and financial incentives.

Decree 1775 establishes tax credits for manufacturers of finished or intermediate goods based on their level of domestic value-added. Eligible companies could receive tax credits ranging from 10 to 25 percent of the value of new investments depending on the percentage of domestic value-added of the acquired asset. These rates of credit applied only in the three years subsequent to the publication of the decree after which the rate fell to 10 percent for all eligible investments.

Although one redraw rod producer claimed Decree 1775 benefits on its tax return filed in the review period, we verified that the MOF rejected the claim. The other redraw rod producers claimed Decree 1775 benefits on their tax returns filed in 1987. Thus under our standard lag methodology for income tax programs, no benefit was provided during the review period. However, if a countervailing duty order is issued as a result of this investigation, Decree 1775 benefits will be examined closely in any administrative review under section 751 of the Act, if a review is requested.

B. Preferential Export Financing (FINEXPO)

FINEXPO was established in 1973 to promote the export of non-traditional goods and services of Venezuelan origin. FINEXPO operates a variety of programs which provide financing at preferential rates to Venezuelan exporters and, under one program, foreign importers of Venezuelan goods. Operations or capital needs for which companies can receive this financing include feasibility studies, market research, promotional expenses, fixed capital investment, working capital, bills financing, inventory financing, financing of services rendered abroad, and financing for importers representing foreign state-owned companies. FINEXPO also provides financing of bills of exchange of foreign importers of Venezuelan goods by foreign banks through lines of credit established with FINEXPO.

At verification, we discovered that one redraw rod producer applied, and was approved, for a FINEXPO working capital loan after the review period. However, FINEXPO officials stated that the loan documents had not yet been signed. We will examine this loan in any administrative review under section 751 of the Act, if a review is requested.

We verified that the other redraw rod producers did not have any other FINEXPO financing on which principal or interest was outstanding during the review period.

C. The Basic Ingredient Export Program (PIBE)

PIBE, which was established by Decree 1645 of July 8, 1987, allows for expedited approval of foreign exchange acquisitions to purchase raw material imports intended for exported goods. The program is managed by the Institute for Foreign Trade under RECADI's budget. Users of PIBE are required to resell to the CBV at the official exchange rate a percentage of their export earnings equal to the percentage of those earnings accounted for by the imported raw materials. This provision is intended to remain in effect even if the law requiring all export earnings to be exchanged at the official rate is revised. We verified that none of the redraw rod producers have been approved for the PIBE program.

D. Other Government Loans

1. Ministry of Finance (MOF)
2. The Industrial Bank of Venezuela (BIV)
3. The Venezuela Investment Fund (FIV)

E. Government Loan Guarantees

F. Sales Tax Exemption

IV. Programs Determined Not To Exist

Based on verified information, we determine that the following programs do not exist. These programs were discussed in the preliminary determination in this investigation (52 FR 38113, October 14, 1987).

A. Tax Contributions to Cover Debt Service Costs

B. Assumption of Foreign Currency Debt

Interested Party Comments

Comment 1: Respondents challenge the standing of petitioner to bring the petition "on behalf of" the domestic industry. For the proposition that a petitioner must establish that a majority of the domestic industry supports the petition, respondents rely upon *Gilmore Steel Corp. v. United States*, 7 CIT 219, 585 F. Supp. 670 (CIT 1984). In particular, respondents point to a statement by the Court that a petitioner "must also show that a majority of that industry backs its petition." *Gilmore*, 585 F. Supp. at 676. Respondents argue that because Southwire has not demonstrated that its petition has the support of a majority of the domestic industry, Southwire lacks standing to bring the petition.

DOC Position: A close examination of the *Gilmore* case reveals that the particular statement relied upon by respondent is *dicta*; it was not part of the holding or even the reasoning for the decision. It was part of the Court's recognition that there are two standing requirements in the statute: the "interested party" requirement and the "on behalf of an industry" requirement. The Court determined that the plain meaning of the words "on behalf of" is "as the representative of," "as the proxy for," or "as the surrogate." 585 F. Supp. at 675. Accordingly, the Court concluded that a petitioner may file in a representative capacity, on behalf of an industry. *Id.* at 676. The Court did not consider the question as to who bears the burden of establishing whether a petitioner is in fact representative of the industry. Indeed, there was no issue in the *Gilmore* case as to who bore the burden of establishing the petitioner's representation of the industry, because the record in that case established that Gilmore's petition was opposed nearly unanimously by the entire industry. [*See, Carbon Steel Plate from Belgium and the Federal Republic of Germany; Rescission of Notice Announcing Initiation of Antidumping Investigation and Dismissal of Petition*, 49 FR 3504 (January 27, 1984)]. The issue before the Court in *Gilmore* was whether the Department had the authority to terminate an investigation where a majority of the domestic industry affirmatively opposed the petition.

There is nothing in the statute, its legislative history, or our regulations which requires that petitioners establish affirmatively that they have the support of a majority of their industry. (*See* "Standing" section above.)

Comment 2: Although respondents do not agree that section 771(6) of the Act is inapplicable in this case, they argue that the export bond program and exchange control system must be viewed as component parts of a single mechanism through which the GOV controls exchange transactions. Respondents contend that the issue is not whether the multiple exchange rate system should be an "offset" to the export bond market. Rather, the issue is whether the net effect of the multiple exchange rate system and the export bond program confers any benefit upon the producers of redraw rod. Respondents further maintain that the relevant legislation establishing the two programs should not be expected to show a link because the legislation was not written to meet the requirements of the verification process.

Respondents make four arguments to support their proposition that the two programs are interrelated. First, they argue that the interrelationship was confirmed by statements of GOV officials during verification. Second, they point out that the original purpose of the export bond program was to compensate Venezuelan exporters for the overvaluation of the bolivar, then fixed at Bs. 4.30/dollar. Third, respondents assert that the interrelationship of the two programs is evidenced by the fact that, as the differential between the free market rate and the official controlled rate has widened, the GOV has reponded by increasing the value of the export bond. Finally, respondents contend that the interrelationship of the two programs is shown by the high correlation between the prevailing free market exchange rate and the "effective" exchange rate realized by the exporters after taking into account the value of the export bonds received.

Petitioner disagrees with respondents' position that the export bond program is a mechanism whereby Venezuelan exporters are compensated for losses allegedly sustained under the multiple exchange rate system. Petitioner asserts that the legislative history of the statutory offset provision in section 771(6) of the Act precludes treatment of

the alleged currency exchange losses as an offset to benefits received under the export bond program. Petitioner also cites the *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Ecuador* (52 FR 1361, January 13, 1987) and a recent opinion by the Court of International Trade in *Fabricas El Carmen, S.A. v. U.S.*, 9 ITRD 1457 (CIT 1987), to support its position that the requirement of exchanging foreign exchange earnings at the official controlled rate of exchange is not a permissible offset to other subsidies received. Moreover, petitioner notes that the verification process failed to establish any relationship between the export bond program and the multiple exchange rate system.

Finally, petitioner points out that respondents' efforts to establish a linkage between the export bond program and the multiple exchange rate system in Venezuela by reference to a 1971 study of the overvaluation of Venezuela's currency actually undermines respondents' position. In particular, petitioner contends that devaluation through the adoption of a single free market exchange rate would have assisted exporters and would have had a broad impact on the Venezuelan economy. However, the GOV chose not to devalue fully the currency; it decided to maintain an overvalued currency and simply pay exporters, through the export bond program, to export merchandise. This, petitioner argues, is the most fundamental form of export subsidization.

DOC Position: We disagree with respondents that an interrelationship between the two programs has been established. First, we do not consider the exchange of export earnings under the multiple exchange rate system prior to December 1986 to be an offset to the export bond program, as provided for under section 771(6) of the Act. This section of the Act permits the Department to subtract from the gross subsidy the amount of "any application fee, deposit or similar payment." We have consistently interpreted this provision very narrowly, in accordance with the plain meaning of the language and, as petitioner points out, the very clear legislative history.

The restrictions of the multiple exchange rate system are clearly not in the nature of an "application fee, deposit or similar payment." Such payments are an essential first step in qualifying for the receipt of a benefit. The fundamental characteristic of an application fee, for example, is that it is a procedural step intrinsic to the program providing the benefit. In this case, there is a very limited amount of probative evidence that the exchange of export earnings under the multiple exchange rate system is intrinsic to satisfying the administrative and procedural requirements for qualifying for export bonds. Furthermore, we note that the legislative history makes it very clear that the list of offsets cited in section 771(6) is all-inclusive. The Department has no discretion in expanding the list of allowable offsets.

Respondents' assertion that the two programs are, in fact, components of a single mechanism by which the GOV control exchange transactions clearly poses an even more onerous burden of proof on the respondents than demonstrating that the multiple exchange rate system is an offset. The respondents are, in essence, asking the Department to find that the two programs are actually one. Yet, no hard evidence has been offered by respondents to support their assertion of an interrelationship. Despite numerous clear and repeated requests to do so, in our verification outline and during verification, respondents were unable to produce a single piece of documentary evidence showing that the two programs are related.

The Department is well aware of the fact that national legislation is not written to satisfy the requirements of a countervailing duty investigation. However, as respondents know, the Department did not limit its request for evidence of some interrelationship to national legislation. The verification outline only asked for "documentary evidence." Despite respondents' claims that the two programs are interrelated and our repeated requests for documentary evidence, we were not shown any relevant legal documents, legislative history, government agency annual reports, policy statements, internal memoranda, or academic studies which even superficially indicate that the two programs are interrelated. The annual reports of the administering authority for the export bond program, the Fund for Financing Exports, strongly indicates that the policy behind the export bond program is to stimulate non-traditional exports. In the same report, the multiple exchange rate system is not even mentioned in the description of the export bond program.

Although respondents have been able to show some correlation between the prevailing free market exchange rate and the "effective" exchange rate in 1986, this still fails to prove that a unitary system exists. (We note that the correlation is negligible in 1987.) Furthermore, without any hard evidence that the GOV created or administers these two programs as a single unified policy, this correlation is meaningless in terms of the standards set forth in the Act for determining whether a program confers a subsidy. For these reasons, we determine that respondents have not met their burden of providing that the two programs are in fact one integrated program.

Comment 3: Respondents argue that the purpose and effect of the multiple exchange rate program, as it existed for most of 1986, was to provide special treatment for certain imported goods. Therefore, according to respondents, the Department's assumption, in its preliminary determination, that the intended benefit under the multiple exchange rate system was to allow exporters to exchange a portion of their exports earnings at the free rate, is incorrect. Respondents maintain that the correct analytical approach to the multiple exchange rate system is to examine whether or not the granting of foreign currency at preferential rates of exchange to purchase imports constitutes a subsidy under U.S. law.

Respondents also take issue with the Department's statement in the preliminary determination that "one dollar received for export sales yields more bolivares than exporters paid to purchase one dollar for imports." Respondents maintain this statement is incorrect because during 1986: (1) exporters could not exchange all their earnings at the free market rate and (2) exporters often had to make use of the free market rate to import goods. In a related argument, respondents assert that the calculation of the benefit under the multipe exchange rate system did not take into account the extent to which exporters had actually utilized the preferential rates available for imports.

Respondents further contend that the implicit rationale of the Department's analysis, that a subsidy automatically arises where exporters are permitted to exchange their export earnings at a free market rate when a lower, controlled rate exists for other transactions, is without statutory support. According to respondents, the theory would lead to the imposition of countervailing duties even in situations where only a limited class of products was eligible for importation at the official rate.

Finally, respondents point out that benefitting from the exchange rate differential was not dependent upon "selling dollars earned from export sales" as was stated in the preliminary determination. According to

respondents, under Venezula's exchange control law, companies and individuals are permitted to maintain foreign currency accounts outside Venezuela and exchange such funds for bolivares at the free market rate.

Petitioner disagrees with respondents' argument that the purpose and effect of the multiple exchange rate system was to subsidize imports. Petitioner, citing a report by the United States Trade Representative, claims that since 1983, Venezuela has actively restricted imports to conserve foreign exchange.

DOC Position: The Department does not take into account the intent of the foreign government when determining the countervailability of a program. However, even if we were to assume that the intention of the GOV in establishing the multiple exchange rate system was to insulate the economy from higher price imports, the fact remains that exporters, during the review period, were able to convert a portion of their export earnings at an exchange rate more beneficial than the official controlled rate used to purchase most imports. Thus, we disagree that the focus of our attention should be solely on whether or not the granting of foreign currency at preferential rates to purchase imports constitutes a subsidy under U.S. law.

We are cognizant of the fact that during 1986 exporters could not exchange all their earnings at the free market rate and that exporters in 1986 may have had to use the free market rate to import goods. These facts, however do not change our analysis. We did not assume, in our calculation of the benefit under the multiple exchange rate system, that exporters could exchange all their export earnings at the free rate. The benefit under our methodology is the difference between the composite rate (a combination of the free and official controlled rates of exchange) used by the producers of redraw rod and the rate at which foreign currency could be obtained to purchase the vast majority of Venezuelan imports. Although respondents maintain that exporters in 1986 often had to make use of the free market rate to import goods, this assertion could not be verified.

We also disagree with respondents' contention that the implicit rationale of the Department's analysis is that a subsidy automatically arises where exporters are permitted to exchange their export earnings at a free rate when a lower controlled rate applies only to a limited class of products. These essence of our methodological approach with respect to the exchange of export earnings under the multiple exchange rate system is that the effective rate upon which the Venezuelan economy operates is the exchange rate used to import goods not designated by GOV as "essential goods." In this regard, we note that at verification we obtained a periodic economic report prepared by CBV. This report indicates that the weighted-average exchange rate for imports is predominantly reflective of the exchange rate used to obtain foreign currency to purchase products not designated as essential. We verified that "essential goods," as designated by GOV, is a rather limited class of products. Therefore, we did not use the exchange rate used to buy these goods. Instead, we used the exchange rate used to obtain foreign currency for the purchase of most other Venezuelan imports (*i.e.*, Bs. 7.50 to the dollar during most of the review period) as our benchmark.

The fact that we are not countervailing the conversion of the export earnings under the multiple exchange rate system as it now exists, despite the existence of a lower rate for importing "essential goods" belies respondents' contention that we would find a benefit where only a limited class of products was eligible for a lower rate.

While respondents' last point, that benefitting from the exchange rate differential was not dependent upon "selling dollars earned from export sales," may have merit, respondents provided no information at verification to demonstrate or support their argument. Therefore, we cannot consider it for purposes of our final determination.

Comment 4: Respondents contend that Venezuelan exporters would have to obtain dollars at the free rate of exchange to pay any possible countervailing duties assessed. If the Department were to use the current applicable nominal percentage of the export bond program, the resulting duty deposit rate should be at most, 18.37 percent, assuming a free rate of exchange rate of Bs. 30 to the dollar.

Petitioner disagrees with respondents' position that the methodology used by the Department to calculate the benefit of the export bond program overstates the real economic benefit of the program because the basis of the calculation assumes that a Venezuelan exporter can obtain foreign exchange at the official rate to pay any resulting countervailing duty. Petitioner maintains that countervailing duties are paid by the U.S. importer of record, not the Venezuelan exporter.

DOC Position: The importer is responsible for the payment of any countervailing duty. Therefore, respondents' argument is irrelevant.

Comment 5: Petitioner contends that, in the preliminary determination, the Department improperly included subsidy income, derived from the multiple exchange rate system, in the denominator of the benefit calculation for the export bond program. Petitioner cites the *Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from Brazil (Brazil Sheet and Strip)* (51 FR 40837, November 10, 1986) to support its position. For the final determination, petitioner asserts that any countervailable exchange earnings received by the redraw rod producers under the multiple exchange rate system in 1986 should be excluded from the sales value over which the Department allocates the bolivar value of export bonds and other subsidies received by the companies during the review period. Finally, petitioner argues that the exclusion of subsidy income from the denominator will not result in the double counting of subsidies because the subsidy income to be excluded from the denominator was provided under a program the termination of which was taken into account in establishing the duty deposit rate.

Respondents argue that even if the multiple exchange rate system could be properly described as conferring a subsidy, exclusion of the alleged subsidy income under the system would double count the amount of any benefit.

DOC Position: We do not agree with petitioner that exchange earnings earned under the multiple exchange rate system should be excluded from the sales value used as the denominator in calculating the estimated net subsidy of the other countervailable programs. It is reasonable to assume that, if Venezuelan exporters of redraw rod are denied the subsidy inherent in the higher rate of exchange available for converting export earnings than for buying imports, they would have exported less redraw rod in quantity terms. It is impossible to say precisely, however, by what quantity the level of exports would have fallen. If we were to accept petitioner's contention, by eliminating the subsidy income from the denominator, we may inadvertently penalize exporters for exports that they would never have made absent the subsidy income.

The present case is distinguishable from *Brazil Sheet and Strip* because the benefit in that case was clearly identifiable and recorded as a separate line item in the accounting records of the respondent companies. In the instant case, the value of the benefit cannot be similarly isolated. Therefore, it would be

too speculative to attempt to extract the benefit from the multiple exchange rate system from the companies' sales values.

Comment 6: Petitioner contends that the duty deposit rate should reflect increases in the export bond percentage which occurred after the review period but prior to the preliminary determination.

Respondents argue that the continued fluctuation in the dollar/bolivar exchange rate (see *Comment 4*) and the possibility that the value of the export bond might be reduced, mandate that the Department base its calculation on data for the review period.

DOC Position: We verified that the export bond percentages under this program were increased both during and after the review period, with the most recent change occurring in July 1987. This latest increase became effective after the review period but prior to our preliminary determination and we were able to verify and measure the benefits from that increase. Therefore, our criteria for a program-wide change determination have been met and we have accordingly adjusted the duty deposit rate to reflect this change.

Comment 7: Petitioner argues that the benefit under the export bond program should be calculated according to the current nominal export bond percentage applicable to redraw rod producers. Petitioner maintains that the value of the export bonds does not depend upon any future contingency, such as the recipients' total taxable income or income tax liability and can be calculated precisely at the time of export. Petitioner refers to the *Final Affirmative Countervailing Duty Determination: Certain Steel Wire Nails from New Zealand ("New Zealand Nails")* (52 FR 37196, October 5, 1987) as support for its position.

DOC Position: We agree. Respondents are able to predict accurately the value of the bond at the time of the sale. In fact, the redraw rod producers book the value of the bonds on the date of the invoice even though CBV has not actually issued the bond to the company. Therefore, we have followed our methodology in *New Zealand Nails* in this determination.

Comment 8: Respondents argue that any benefit under the export bond program should be reduced to reflect the discounted amount exporters of redraw rod normally received after selling their right to receive the bond.

Petitioner contends that the value of export bonds should not be reduced to reflect the discounted amount exporters receive after discounting. Petitioner argues that companies discount the bonds due to administrative delays by the GOV in processing bond applications and that the Department in the past has not taken into account, in calculating subsidies, reductions in benefits due to administrative delays.

DOC Position: We have consistently disallowed as an offset under section 771(6) of the Act, reductions in benefits due to administrative delays. [See *Final Affirmative Countervailing Duty Determination: Certain Welded Carbon Steel Pipe and Tube Products from Turkey* (51 FR 1268, January 10, 1986)].

Comment 9: Petitioner argues that the producers of redraw rod receive a certain discount under the export price formula applicable to primary aluminum purchases and that there is no commercial justification for this discount. Furthermore, petitioner contends that, if the domestic price does not have an equivalent discount and there is nothing inherent in the domestic price calculation to make up for the lack of such a discount, the discount in the export price formula constitutes an export subsidy.

Moreover, petitioner contends that the current domestic price ceiling on primary aluminum may not always be so far below the LME price as to negate the preference enjoyed by exporters over domestic consumers by reason of the discount available in the export price formula. In addition, petitioner maintains that, given the respondents' history of misleading the Department concerning the domestic pricing of aluminum, the existence of the ceiling price should not be assumed. Consequently, petitioner submits that the Department should use the best information available and assume that the discount under the export price formula is not available under the domestic price. Finally, petitioner asserts that the final net export and domestic prices for primary aluminum were not verified because verification could not be performed at the aluminum suppliers.

Respondents argue that, because the bases of the export price and domestic price are different, the fact that a discount is included in the export price calculation and not the domestic price calculation is unimportant. The only relevant consideration, according to the respondents, is the final prices paid for primary aluminum under both pricing structures.

Respondents also contend that the domestic and export prices paid by the redraw rod producers were verified at the companies and that verification at the aluminum suppliers was not necessary. Finally, respondents maintain that the Department is neither required, nor permitted, to speculate as to what may happen in the future concerning aluminum input pricing in Venezuela.

DOC Position: We were able to sufficiently verify at the three respondent companies that the export price charged was generally higher than the domestic price during 1986, our review period. (When it was not, we determined the difference to be countervailable.) This is true even with the inclusion of certain discounts in the export price formula. We note petitioner's concerns with respect to the often untimely and inaccurate information submitted by respondents regarding the aluminum input pricing issue. If a countervailing duty order is issued as a result of this investigation, we will reexamine the entire aluminum input pricing issue in any administrative review that may be requested.

Comment 10: Petitioner contends that the cost of export credit insurance, which is required to receive FINEXPO financing, should not be considered an offset to the benefit under the program. As support for its argument, petitioner points out that in consideration of credit insurance premium payments, a firm not only becomes eligible for FINEXPO financing, but also receives something of value, namely credit insurance.

Respondents contend that the cost of the credit insurance should be considered an offset. They argue that the purchase of insurance has no real practical purpose other than to qualify for FINEXPO financing, since the payment obligations used as collateral for the financing were backed by irrevocable letters of credit.

DOC Position: We determine that the payment of the export credit insurance premiums is not an offset under section 771(6) of the Act. Payment of credit insurance premiums is not analogous in this case to "an application fee, deposit or similar payment." In consideration for the payments cited as offsets in the statute, a company only becomes eligible for receipt of the government benefit. In the instant case, in consideration for the purchase of export credit insurance, a company not only becomes eligible for a government benefit but also receives something of additional value, limited though it may be.

Comment 11: Respondents argue that FINEXPO short-term loans provide a mechanism for the financing of dollar-denominated export receivables within Venezuela. Thus, respondents assert, for all practical purposes the loans are the functional equivalent of dollar-denominated loans. Therefore,

according to respondents, the appropriate benchmark is the average United States prime rate charged by banks on short-term business loans. However, respondents continue, if the Department were to use a Venezuelan benchmark, the benefit under the program would be negligible. Respondents argue that the benefit should be calculated by: (1) using as a benchmark the interest rate charged by the commercial bank on the portion of the financing provided from such bank's own resources; (2) deducting the cost of insurance as an offset; and (3) allocating the benefit over redraw rod sales to the United States.

Moreover, respondents contend that the loans under the FINEXPO program are relatively unique because of the use of high quality collateral and the added security of an insurance policy guaranteeing payment. Consequently, respondents argue that the standard national average interest rates are clearly inapplicable as benchmarks.

Petitioner asserts that the most appropriate benchmark in calculating a benfit under the short-term FINEXPO financing program is the national average commercial interest rate for short-term financing in Venezuela. Petitioner cites the *Subsidies Appendix* in support of its position. Petitioner also disagrees with respondents' contention that the Department should calculate company-specific countervailing duty rates for FINEXPP financing. Petitioner maintains that a "significant differential" under section 706(a)(2)(A) of the Act does not exist among the companies.

DOC Position: In accordance with past practice [See the *Final Affirmative Countervailing Duty Determination: Certain Steel Wire Nails from Thailand* (52 FR36987, October 2, 1987)], we have used the national average shrot-term interest rate as our benchmark in calculating the benefit under the FINEXPP program. Using a U.S. benchmark is inappropriate because the loan is not denominated in dollars. Finally, although the collateral for these loans may be of high quality, the high inflation rate in Venezuela and the government-controlled interest rates would tend to encourage banks to charge the highest interest rates possible, regardless of the quality of the collateral.

Comment 12: Petitioner contends that the redraw rod producers received a tax credit under Decree 1775 in 1987 and that the duty deposit rate should reflect the receipt of the credit.

Respondents argue that the benefits under Decree 1775 are available to a wide range of industrial sectors and, therefore, do not confer a countervailable benefit..

DOC Position: We disagree with petitioner that the tax credits received outside the review period should be reflected in the duty deposit rate. Any benefits that may have accrued from this program in 1987 would be captured in any administrative review that may be requested, if the program is found to confer a subsidy. Furthermore, in accordance with past practice, under our lag methodology, tax benefits claimed in 1987 would be allocated over 1988 sales, for which data are unavailable.

Comment 13: Petitioner argues that, if SURAL paid a lower rate of slaes tax than other companies during the review period, the difference should be treated as a countervailable subsidy.

Respondents contends that the sales taxes were paid at the full rate under the law.

DOC Position: We verified that SURAL paid the same rate of sales tax in 1986 as other industries within the same municipality. We also verified that SURAL paid its municipal sales taxes at the rate decreed by law. Therefore, there is no countervailable subsidy.

Comment 14: Respondents assert that the following programs should be found not to exist: MOF loans and loan guarantees, and sales tax exemptions.

DOC Position: We verified that a program of MOF-provided loans to public sector companies does exist. We also verified that public sector companies are eligible to contract for loans with private financial institutions with the full guarantee of the loan provided by the GOV.

We cannot determine that the provision of a sales tax exemption does not exist. While it is not a program as such, we cannot dismiss it entirely because a sales tax exemption was arranged by a Venezuelan steel company in 1984. [See *Preliminary Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Venezuela* (50 FR 11227, March 20, 1985)]. We have determined, however, that the producers of redraw rod did not receive any exemptions from sales taxes during the review period.

Verification

Except where noted, we verified the information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures including meeting with government and company officials, examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published on October 14, 1987, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require that a cash deposit or bond be posted equal to the estimated bonding rate. The final countervailing duty determination was extended to coincide with the final antidumping duty determination on the same product from Venezuela, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). Under Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, on February 9, 1988, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after February 12, 1988, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between October 14, 1987, and February 11, 1988. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit on all entries of the subject merchandise in an amount equal to 38.40 percent *ad valorem*.

ITC Notification

In accordance with section 705(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material

injury, or the threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on all entries of redraw rod from Venezuela entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Jan W. Mares,

Assistant Secretary for Import Administration.

June 22, 1988.

[FR Doc. 88-14773 Filed 6-29-88; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Novo Laboratories

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Novo Laboratories, having a place of business at Danbury, Connecticut, and BACTEC Corporation, having a place of business at Houston, Texas, a co-exclusive right in the United States and in certain foreign countries under the rights of the United States of America to manufacture, use, and sell, for the agricultural crop and forestry markets, products embodied in the invention entitled "Acetate Selected *Bacillus thuringiensis* and Method of Use," U.S. Patent Application 7-050,450. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the intended licenses must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-14684 Filed 6-29-88; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License, Organic Biotechnology, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Organic Biotechnology, Inc., having a place of business at Cambridge, Massachusetts, and BACTEC Corporation, having a place of business at Houston, Texas, a co-exclusive right in the United States and in certain foreign countries under the right of the United States of America to manufacture, use, and sell, for the home and garden markets, products embodied in the invention entitled "Acetate Selected *Bacillus thuringiensis* and Method of Use," U.S. Patent Application 7-050,450. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 C.F.R. 404.7. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the intended licenses must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-14685 Filed 6-29-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 21 and 22 July 1988.

Time:

0800-1700 hours, 21 July
0800-1430 hours, 22 July

Place: Fort Rucker, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its initial meeting at the United States Army Safety Center (USASC), Fort Rucker, Alabama. Briefings will be conducted by various members of the USASC staff as well as a representative from the Army General Counsel. Past, current and planned actions will be discussed in accordance with the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-14680 Filed 6-29-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) For a Draft Feasibility Report on Proposed and Alternative Improvements to the Lower Monongahela River Navigation System—Locks and Dams No. 2, No. 3, and No. 4 Near Pittsburgh, PA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Pittsburgh District, U.S. Army Corps of Engineers, is studying the feasibility of replacing and/or reconditioning the lowermost three locks and dams (Locks and Dams No. 2, No. 3, and No. 4) on the Monongahela River Navigation System. Two of these facilities (Locks and Dams 3 and 4) consist of undersized locks (56 feet x 360 feet and 56 feet x 720 feet) and deteriorating locks and dams built between 1905 and 1932. Because of the age and condition of these structures and the necessity to keep the navigation system whole and operating, replacement or reconditioning action will become necessary in the very near future.

SUPPLEMENTARY INFORMATION: The Lower Monongahela River Navigation

Report will be prepared under an authorizing resolution adopted by the Committee on Public Works and Transportation of the United States House of Representatives on September 23, 1976. The report will examine the existing problems and concerns within the study area (River Mile 0 to River Mile 41.5) of the Lower Monongahela River and determine the proper action to recommend to alleviate these problems.

The reasonable alternatives currently encompass a new dam structure at Locks and Dam 2 (River Mile 11.2) and new twin 84 foot x 720 foot locks at Locks and Dam 4 (River Mile 41.5). In addition, Locks and Dam 3 would be replaced immediately downstream at River Mile 22.2 or upstream at River Mile 24.6. Also under consideration are the following two alternatives:

(1) The construction of locks and dam at River Mile 22.2 to rpelace both Locks and Dams 2 and 3; and

(2) The construction of locks and dam at River Mile 26.1 to replace both Locks and Dams 3 and 4.

Significant issues that will be discussed in the Draft EIS include possible changes in Monongahela River pool elevations, navigation channel dredging, and dredged material disposal. The impact of navigation improvements and related changes in navigation traffic on Monongahela River water quality, fish population, and bottom habitat will also be key topics for discussion in the Draft EIS.

The Pittsburgh District met with the U.S. Fish and Wildlife Service and Pennsylvania Fish Commission on May 9, 1988 to discuss Fish and Wildlife Service activities that are required for the preparation of a Fish and Wildlife Coordination Act Report on the Lower Monongahela River Navigation Study. The public involvement program will formally begin in FY 89 and shall consist of a scoping meeting (date not scheduled) and Federal, State, and local interagency coordination, interaction with private industry, and additional public meetings. Comments are encouraged from concerned Federal, State, and local agencies, as well as from private industries, local groups, and the general public. For further details, contact Mr. James A. Purdy at the Pittsburgh District, U.S. Army Corps of Engineers, William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222–4186, phone number 412–644–6844.

The Draft EIS will be included within the Draft Feasibility Report, which is scheduled for completion in October 1989.

George M. Miller, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88–14683 Filed 6–29–88; 8:45 am]

BILLING CODE 3710-85-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 22, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet for the third time on 26 July 1988, from 8:00 a.m. to 5:00 p.m., at the General Dynamics (GD) Corporation, Ft Worth, TX and on 27 July 1988 from 8:00 a.m. to 5:00 p.m., at the Texas Instruments (TI) Corporation, Ft Worth, TX.

The purpose of this meeting is to receive briefings and gather information on GD's and TI's perception of the problem and their efforts to solve them. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–14682 Filed 6–29–88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Coordinating Subcommittee on Petroleum Storage & Transportation, Committee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Wednesday, July 20, 1988, 10:00 a.m. (Please note time change).

Place: O'Hara Hilton, Amelia Room, O'Hara International Airport, Chicago, Illinois (Please note change in meeting place).

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, D.C. 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review task group status and discuss study draft assignments.

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.

—Review task group status.

—Discuss study draft assignments.

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 88–14789 Filed 6–29–88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-31-NG]

Great Lakes Gas Transmission Co.; Application to Amend Authorization to Import and Export Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to import and export natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 16, 1988, of an application filed by Great Lakes Gas Transmission Company (Great Lakes) requesting an amendment to its natural gas import/export authorization granted by the ERA in Opinion and Orders No. 81 and 81-A issued May 9, 1985, July 24, 1985, respectively. The amendment for which Great Lakes seeks approval would permit it to increase volumes of natural gas it presently imports and exports under a transportation service agreement with TransCanada Pipelines Limited (TransCanada) from 887,500 Mcf per day to 925,000 Mcf per day for a term ending November 1, 2005.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-1657.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Great Lakes is a Delaware corporation with its principal office in Detroit, Michigan. Great Lakes would import all of the volumes under the TransCanada contract at the U.S.-Canadian boundary near Emerson, Manitoba, Canada for transportation through Minnesota to the U.S.-Canadian boundary near Sault Ste. Marie and St. Clair, Michigan. There, the gas would be exported back into Canada for redelivery to TransCanada and its customers. None of the gas volumes, including additional the 37,500 Mcf in daily contract quantities Great Lakes requests to import and export, would be delivered to markets in the United States.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issues determined by the Administrator to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the import authority and on the domestic need for the gas in their responses on the requested export authority. The applicant asserts that this import and export arrangement will be in the public interest because TransCanada has advised Great Lakes that the increase in transportation volumes for which import and export authorization is being requested is necessary to satisfy its forecasted market requirements in Eastern Canada for the sale and transportation services it offers to its customers. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., August 1, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it it material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Great Lakes' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 23, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-14788 Filed 6-29-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Pre-Freshman Engineering Program (PREP)

AGENCY: Office of Energy Research, DOE.

ACTION: Program solicitation announcement.

SUMMARY: The purpose of this notice is to announce the availability of the PREP

solicitation, to identify the institutions which will be eligible for this grant program, and to inform potential applicants of the closing date and location for submission of applications for awards under this program.

SUPPLEMENTARY INFORMATION:

Background

The Department of Energy (DOE) is concerned with the supply of science and engineering professionals to perform its R&D mission and is authorized in the Energy Reorganization Act of 1974 to "* * * assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools, and other institutions * * *", 42 U.S.C. 5813 (11).

Specifically, DOE's concern is based on the consideration that the future supply of engineering manpower is threatened by two factors: Fewer students enrolling in science and mathematics courses in high school and fewer students available to join the science and engineering pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science or mathematics course. Once the traditional math/science sequence is disrupted it is too late for students to meet the minimum requirements for admission to college and university engineering programs.

The primary purpose of PREP will be to alleviate manpower shortages in engineering by preparing and guiding high school students in the selection of college-preparatory courses in science and mathematics. In the past 15 years, 224 PREP projects have been funded.

These projects have reached over 15,000 students, principally women and minorities who have been underrepresented in the field of engineering. Pending Congressional action, DOE intends to commit about $300,000 for the Pre-Freshman Engineering Program for fiscal year 1989. DOE invites all qualified institutions (see following section) to write for a copy of its Pre-Freshman Engineering Program solicitation, DOE/ER-0369, Notice of Program Announcement Number DE-PS05-89ER75433.

Eligibility and Limitations

The overall intent of the program is to increase the number of engineers who graduate from college, and who will continue to play critically important roles in the Nation's overall energy programs. Since PREP is designed to accomplish this purpose by preparing high school students for, and guiding them in, the selection of college-preparatory courses in science and mathematics, institutions which offer engineering degree programs are deemed most qualified. Accordingly, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(1), applications will be accepted only from colleges and universities which grant engineering degrees at the baccalaureate level, institutions which have articulation agreements with engineering degree-granting institutions and institutions which have formal dual-degree pre-engineering programs with institutions granting engineering degrees at the baccalaureate level. (If applying under the latter two categories, specific details should be given about the formal dual-degree program or articulation agreement). Other institutions interested in participating in PREP may do so through cooperative projects with engineering degree-granting institutions (in this case, the application must be submitted by the engineering degree-granting institution).

Application Forms: Program solicitations are expected to be ready for mailing by August 1, 1988. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies of this solicitation may be obtained by writing to: Division of University and Industry Programs, ER-44, Office of Field Operations Management, Office of Energy Research, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone Number: (202) 586-1634.

Closing Date for Submission of Applications: To be eligible, applications must be received by the Department of Energy by 4:30 p.m., October 30, 1988.

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to: PREP Contracting Officer; Procurement and Contracts Division; Oak Ridge Operations; Department of Energy; Oak Ridge, Tennessee 37831; Telephone Number: (615) 576-7564.

(Catalog of Federal Domestic Assistance No. 81.047, Pre-Freshman Engineering Program).

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 88-14787 Filed 6-29-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-478-000, et al.]

Ocean State Power, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Ocean State Power

June 22, 1988.

[Docket No. ER88-478-000]

Take notice that on June 21, 1988, Ocean State Power (Ocean State) tendered for filing the following amendments (the "Amendments") to its rate schedules with the Federal Energy Regulatory Commission:

Supplement No. 6 to Rate Schedule FERC No. 1

Supplement No. 3 to Rate Schedule FERC No. 2

Supplement No. 3 to Rate Schedule FERC No. 3

Supplement No. 3 to Rate Schedule FERC No. 4

The Amendments to the rate schedules request approval of Ocean State's proposed rate of return on equity. The Amendments do not constitute a rate increase.

Ocean State Power has requested a waiver of the 120-day maximum notice set forth in the Commission's regulations and that the amended rate schedules be permitted to become effective upon commencement of the test phase of the facility.

Copies of the filing were served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission, and TransCanada Pipelines Limited.

Comment date: July 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Donald C. Lutken

[Docket No. ID-2016-000]

June 24, 1988.

Take notice that on June 16, 1988, Donald C. Lutken tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position	Corporation
Chairman of the Board.	Mississippi Power & Light Company.
Director	Arkansas Power & Light Company.
Director	System Energy Resources, Inc.
Director	MSU System Service, Inc.
Director	System Fuels, Inc.
Director	Electec, Inc.
Director	Lamar Life Insurance Company.
Director	Unifirst Bank for Savings.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER88-473-000]

June 24, 1988.

Take notice that on June 20, 1988, Portland General Electric Company (PGE) tendered for filing a Sales Agreement with the Sacramento Municipal Utility District for the sale during a one-month period beginning on March 1, 1988, of up to 55,800 MWh of firm energy deliverable at rates not in excess of 75 MW per hour.

The contract rates for energy to be sold are based upon PGE's incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of March 1, 1988 and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Sacramento Municipal Utility District and the Oregon Public Utility Commission.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER88-474-000]

June 24, 1988.

Take notice that on June 20, 1988, Portland General Electric Company (PGE) tendered for filing a Sales Agreement with the Sacramento Municipal Utility District for the sale during a one-month period beginning on March 1, 1988, of up to 107,850 MWh of firm energy deliverable at rates not in excess of 150 MW per hour.

The contract rates for energy to be sold are based upon PGE's incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states that reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of April 1, 1988 and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Sacramento Municipal Utility District and the Oregon Public Utility Commission.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Tapoco, Inc.

[Docket No. ER82-774-000]

June 24, 1988.

Take notice that on June 20, 1988, Tapoco, Inc. tendered for filing a compliance report pursuant to Ordering Paragraph (D) of Opinion No. 277, 39 FERC ¶ 61,363 (June 29, 1987). Tapoco, Inc. states that according to requirements of Ordering Paragraph (D) it made a wire transfer to Nantahala Power & Light Company in the amount of $304,508.96 on June 17, 1988, representing $301,006 of principle and $3,502.96 of interest computed in accordance with 18 CFR 35.19(a).

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this document.

6. Centel Corporation

[Docket No. ER88-469-000]

June 24, 1988.

Take notice that on June 15, 1988, Centel Corporation (Centel) tendered for filing an Electric Sales, Transmission and Service Contract between Centel and Kansas Electric Power Cooperatives, Inc. (KEPCo). This contract has no rate impact and allows for Centel to serve the KEPCo power requirement above their other resources. It also allows for the transmission of KEPCo resources over the Centel transmission system.

Copies of the filing were served upon the Kansas Electric Power Cooperative, Inc., and the Utilities Division, Kansas Corporation Commission, Topeka, KS.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER88-470-000]

June 24, 1988.

Take notice that on June 15, 1988, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an executed electric service agreement between itself and the City of Kiel Utilities. Service had previously been rendered under the terms of the unexecuted service agreement of Wisconsin Electric's wholesale tariff, FERC Volume No. 1, Rate Schedule TR-1.

Wisconsin Electric requests an effective date of July 7, 1986, in order to conform with the date of the execution of the service agreement. Accordingly, Wisconsin Electric requests waiver of the Commission's notice requirements.

Copies of the filing have been served on the City of Kiel Utilities, and the Public Service Commission of Wisconsin.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas Power and Light Company

[Docket No. ER88-471-000]

June 24, 1988.

Take notice that on June 16, 1988, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated June 7, 1988, with the City of Elwood, Elwood, Kansas for wholesale electric service to that community. KPL states that this contract provides essentially for a ten year extension of the original terms of the presently approved contract with a provision that the City of Elwood may convert to a partial requirements service upon two years written notice. The proposed effective date is August 1, 1988. In addition, KPL states that copies of the contract have been mailed to the City of Elwood and the State Corporation Commission.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Interstate Power Company

[Docket No. ER88-472-000]

June 24, 1988.

Take notice that on June 17, 1988, Interstate Power Company (Company) tendered for filing a set of revised exhibits to the Agreement for Integrated Transmission Area between Central Iowa Power Cooperative and Interstate Power Company (FERC No. 125, Supplements 13, 14, 15, 16 and 17).

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Gulf States Utilities Company

[Docket No. EL88-31-000]

June 24, 1988.

Take notice that on June 20, 1988, Gulf States Utilities Company (Gulf States) tendered for filing pursuant to Section 205(d) of the Federal Power Act and Section 35.11 of the Commission's Regulations, a request for waiver of the prior notice requirement of section 205(d) and to enter an order providing that the rate schedule change under Service Schedule CTOC to be effective as of the dates set forth below. Gulf States states that good cause for the waiver exists in that (1) the requested effective dates are established by the contract between Gulf States and the affected customer, Cajun Electric Power Cooperative, Inc. (Cajun); (2) Cajun had notice of the rate changes and did not protest them; and (3) waiver is in the public interest.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Citizens Utilities Company

[Docket No. ES88-43-000]

June 24, 1988.

Take notice that on June 17, 1988, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act, in connection with provision of funds for the construction, extension and improvement of public utility facilities through the issuance of up to $93,000,000 in principal amount of industrial development revenue bonds, special purpose revenue bonds and environmental control revenue bonds (Bonds), requesting an order (a) authorizing negotiations with one or more underwriters; (b) exempting the issuance of Bonds from compliance with competitive bidding and certain negotiated placement requirements; and (c) authorizing the assumption by the Company of obligations and liabilities in respect of the Bonds, on terms and conditions to be negotiated.

Comment date: July 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. El Paso Electric Company

[Docket No. ES88-41-000]

June 24, 1988.

Take notice that on June 16, 1988, El Paso Electric Company filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to Section 204 of the Federal Power Act to issue, either on a secured or unsecured basis, short-term obligations and commercial paper, not to exceed in the aggregate $200,000,000 prinicipal amount at any one time outstanding, and, in no case, to mature later than December 31, 1989.

Comment date: July 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ES88-42-000]

June 24, 1988.

Take notice that on June 16, 1988, Commonwealth Edison Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $1,400,000,000 of short-term promissory notes on or before December 31, 1990, with final maturities of not later than December 31, 1991.

Comment date: July 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

14. Kamine Carthage Cogen Co., Inc.

[Docket No. QF88-436-000]

June 24, 1988.

On June 14, 1988, Kamine Carthage Cogen Co., Inc. (Applicant), of 1620 Route 22 East, Union, New Jersey 07083, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the James River Corporation, 695 West End Ave., Carthage, New York. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used for papermaking processes including repulping and drying. Primary energy source will be natural gas. The net electric power production capacity of the facility will be 50 MW. Installation of the new facility is scheduled to begin in September 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

15. WCP Ltd. Partnership

[Docket No. QF88-438-000]

June 24, 1988.

On June 14, 1988, WCP Ltd. Partnership, 900 Park Avenue, Suite 21C, New York, New York 10021 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located adjacent to the Amalgamated Warbasse Houses, Inc. housing project in Kings County, Brooklyn, New York. The facility will consist of three natural gas engine generator sets and three diesel engine generator sets. Waste heat will be recovered from the jacket water, lubricating oil and exhaust gases for space heating and cooling within the adjacent housing project. Net electric power production capacity will be approximately 6.9 MW. The facility is expected to be placed in operation in the fourth quarter of 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14721 Filed 6-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-411-000]

Manchester Pipeline Corp.; Petition for Declaratory Order Disclaiming Jurisdiction

June 24, 1988.

Take notice that on May 25, 1988, Manchester Pipeline Corporation (Manchester), 1520 Liberty Tower, Oklahoma City, Oklahoma 73102, filed in Docket No. CP88-411-000 a petition for an order declaring that certain natural gas pipeline facilities, the Manchester system and the North Nash system, are gathering facilities pursuant

to section 1(b) of the Natural Gas Act and thereby, are exempt from the jurisdiction of the Commission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Manchester states that the Manchester system consists of 6 miles of 4-inch pipeline and 13 miles of 6-inch pipeline that commences in Grant County, Oklahoma, and terminates at an interconnection with Williams Natural Gas Company (Williams), an interstate pipeline, in Harper County, Kansas. It is stated that the Manchester system also interconnects with the 6-inch pipeline of Peoples Natural Gas Company in Harper County, Kansas, a Kansas intrastate pipeline.

It is explained that until October 1986, the Manchester system gathered gas only from eleven wells owned by William H. Davis and his working interest partners. It is stated that Manchester purchased the gas from the producer at the wellhead and then resold it to certain spot marketers. However, in October 1986, it is stated that Manchester began purchasing gas from certain working interests in two wells owned by Fina Oil & Chemical Company (Fina) in the area of the Davis wells in Grant County. It is explained that Manchester now moves the Fina gas through its system, along with the Davis production and resells it. In addition, it is explained that Manchester currently sells all of its gas on a spot basis to Williams Gas Marketing Company, Peoples Service, Inc. (People's marketing affiliate), GasTrak, a marketing company located in Kansas City, Missouri, and various other spot marketing entities. It is stated that the point of sale in these transactions is at the points of interconnection between Manchester and Williams or Peoples.

Manchester states that its system has moved approximately 12 Bcf through its system since 1985, primarily to the Williams pipeline connection. It is stated that the gas sold by Manchester qualifies as section 102 gas under the Natural Gas Policy Act (NGPA). It is stated that the price charged by Manchester for its gas has been far below the maximum lawful price under the NGPA.

Manchester states that originally, the system did not require the utilization of compression. In 1986, however, it is stated that Manchester was required to install a 700 hp, two-stage compression facility near the Grant County wells to permit the wells to meet line pressure. IN 1985, it is stated, Manchester paid for the installation of a dehydrator on Williams' system near the Williams interconnection in Kansas. However, that facility turned out to be inadequate to handle the volume of gas delivered by Manchester, therefore, an additional dehydrator, and separator facilities were installed near the Grant County wells in order to prevent line freeze-ups during the winter months and to meet the gas specifications of Peoples and Williams.

It is explained that the Manchester system does not operate a processing plant. It is stated that the Manchester gas which is delivered to Williams is processed at the Cities Service processing plant outside of Wichita, Kansas, far downstream from the Manchester system, where the liquids are stripped out. It is further explained that Williams also has a 4000 to 4800 hp compression facility at Hayesville, Kansas, near the Cities Service processing plant. Manchester states that there are currently no compression, dehydration or processing facilities at the Peoples connect point. It is stated that the Manchester gas which is delivered to Peoples is processed at Peoples' plant located in Cheney, Kansas, also far downstream from the Manchester system, where liquids are removed and where there is also compression and separator facilities.

Manchester states that the North Nash system consists of 3 miles of 4-inch line and 10 miles of 6-inch line that commences in southern Grant County, Oklahoma, and terminates at an interconnection with Williams also in southern Grant County, Oklahoma. It is stated that the North Nash system also interconnects with the 12-inch pipeline of Oklahoma Natural Gas Company (ONG), an Oklahoma intrastate pipeline. It is stated that the North Nash system gathers low-pressure casinghead natural gas from 22 oil wells drilled by Davis and which have produced a cumulative volume of 5,500 Mcf per day of casinghead gas in the North Nash field located in southern Grant County, Oklahoma, in order to bring the gas to market. Manchester states that during the period December 1987 through March 1988, gas from the North Nash system was gathered into Williams' interstate pipeline. However, it is stated, that since March, the gas has been gathered into ONG's intrastate system for sale to an Oklahoma end user. Manchester states that once Williams reopens its system under Order No. 500, gas from the North Nash system may be gathered into Williams, ONG or both.

It is stated that Davis intends to drill eight to ten new wells near the southern end of the North Nash system. In addition to casinghead gas from the existing wells and the planned future Davis wells, it is contemplated that natural gas from third-party wells will be picked up by the North Nash system.

It is stated that a 350 hp, two-stage compression facility was originally installed near the point of origin of the North Nash system in order to move low-pressure casinghead gas to the point of delivery on Williams, along with a dehydrator. It is explained that dehydration and separation facilities are required in order to prevent gathering line freeze-ups due to the high liquid content of the casinghead gas stream emitted from the oil wells. It is stated that Williams required Manchester to install such facilities on the North Nash system. It is further stated that all gas delivered by the North Nash system to Williams is treated at the Cities Service processing plant, located adjacent to the Williams line, outside of Wichita, Kansas, far downstream from the North Nash system.

It is further explained that upon commencement of delivery into ONG, a small refrigeration processor was installed in order to reduce the Btu content of the gas to meet ONG's specifications. It is stated that this also entailed the setting of another 350 hp, two-stage compressor near the point of origin of the system. It is stated that the line pressure in the North Nash system is approximately 40 psia.

Manchester states that the Manchester system was constructed as a gathering system, exempt from Commission regulation under section 1(b) of the NGA. Manchester maintains that it appears that the system continues to be a non-jurisdictional exempt gathering system because the length, diameter and pressures of the system do not reflect the specifications generally associated with pipelines designed for interstate transportation, the entire system is upstream of processing facilities on the Williams and Peoples systems, it serves only to gather the Davis and Fina gas, thus, functioning as a gathering system for Williams and Peoples and the compression is an operational necessity due to the wellhead and field pressure.

Manchester also maintains that the North Nash system is a non-jurisdictional system because the modest length and diameter of the system reflect a gathering function, the operating pressure of the system is very low, there is no significant processing plants on the system other than the small refrigeration plant required to meet the Btu specifications of ONG, and the entire plant is located behind the Cities Service plant through which gas is delivered to Williams is processed.

Any person desiring to be heard or to make any protest with reference to said petition should on or before July 15, 1988, 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). 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14732 Filed 6-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-19806-003, et al.]

OXY NGL Inc. (Successor to Oxy Cities Service NGL Inc.); Name Change

June 24, 1988.

Take notice that on June 6, 1988, OXY NGL Inc., of P. O. Box 300, Tulsa, Oklahoma 74102, filed an application pursuant to § 157.23(b) of the Federal Energy Regulatory Commission's Regulations, requesting that OXY NGL Inc. be substituted in place of Oxy Cities Service NGL Inc. in the certificates of public convenience and necessity listed on the attached Exhibit A. OXY NGL Inc. also requests that the FERC Gas Rate Schedules of Oxy Cities Service NGL Inc. listed on the attached Exhibit A be redesignated as those of OXY NGL Inc. and that OXY NGL Inc. be substituted in place of Oxy Cities Service NGL Inc. in any related proceedings presently pending before the Commission. This application is on file with the Commission and open to public inspection.

Effective April 1, 1988, the corporate name of Oxy Cities Service NGL Inc. was changed to OXY NGL Inc. as evidenced by Oxy Cities Service NGL Inc.'s Articles of Amendment dated March 7, 1988.

Notice is hereby given that all the certificates and related rate schedules as listed in the attached Exhibit A except as noted are hereby redesignated to reflect the corporate name change from Oxy Cities Service NGL Inc. to OXY NGL Inc.

Lois D. Cashell,

Acting Secretary.

EXHIBIT A

FERC gas rate schedule No.	Purchaser	Certificate docket No.
1	Transwestern Pipeline Company.	G-19806.
2	Williams Natural Gas Company.	G-4579.
3	El Paso Natural Gas Company.	G-4579.
4	El Paso Natural Gas Company.	G-13450.
5	Transwestern Pipeline Company.	CI61-1332.
6	Natural Gas Pipeline Company of America.	CI65-561.
7	K N Energy Inc.	G-18297.
[1] 8	Tennessee Gas Pipeline Company.	CI70-691.
[1] 9	Tennessee Gas Pipeline Company.	CI70-691.
10	Williston Basin Interstate Pipeline Company.	CI69-168.
12	Williston Basin Interstate Pipeline Company.	CI84-4.

[1] These certificates and rate schedules have not been redesignated since they were abandoned pursuant to Order No. 490.

[FR Doc. 88-14734 Filed 6-29-88; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. FA87-66-000]

Western Massachusetts Electric Co.; Filing

June 24, 1988.

Take notice that on June 20, 1988, Western Massachusetts Electric Company (Western Massachusetts) tendered for filing, in accordance with Commission Order issued June 2, 1988, refunds to its wholesale customers on June 17, 1988, with interest accrued through that date, and for the revenue requirements associated with the spent nuclear fuel rate base reduction for the period 12/1/82 through 2/6/84.

Western Massachusetts has filed the following:

Attachment A—Computation of the monthly refunds, including interest, for the period December 1, 1982 through June 17, 1988.

Copies of this filing have been served upon Western Massachusetts Electric Company's wholesale customers, as well as all persons on the official service list.

Any person desiring to be heard or to protect 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, 385.214). All such motions or protests should be filed on or before July 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person 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. 88-14733 Filed 6-29-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order During the Period of June 6 Through June 17, 1988

During the week of June 6 through June 17, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggreived party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the

hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

June 23, 1988.

Le Paul Oil Company, Inc., Troy, OH, KEE-0160, Reporting Requirements

Le Paul Oil Company, Inc. filed an Application for Exception from the requirement to complete and file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." On June 14, 1988, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 88-14791 Filed 6-29-6-88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMAMRY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $3 million obtained as the result of a Consent Order which the DOE entered into the Total Petroleum, Inc.

DATE AND ADDRESS: Applications for Refund from the Total Petroleum consent order funds based on purchases of refined petroleum products from Total must be received within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Total Petroleum, Inc. Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585. All applications should conspicuously display a reference to Case No. KEF-0081.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATOIN: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR § 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by Total Petroleum, Inc. and the DOE, which settled possible pricing violations in the firm's sales of motor gasoline and No. 2 oils to customers during the period from September 1, 1973 through October 31, 1980.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Total Petroleum consent order funds was issued on May 8, 1987, 52 FR 18443 (May 15, 1987).

As the Decision and Order published with the Notice indicates, Applications for Refunds may now be filed by customers who purchased motor gasoline and No. 2 oil from Total Petroleum, Inc., during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: June 24, 1988.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

Decision and Order

June 24, 1988.

Implementation of Special Refund Procedures1Name of Firm: Total Petroleum, Inc.

Date of Filing: October 2, 1986.

Case Number: KEF-0081.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 2, 1986, the ERA requested that the OHA formulate procedures to distribute $5 million which the DOE received pursuant to a Consent Order entered into by Total Petroleum, Inc. (Total) and the DOE.

I. Background

During the period January 1, 1973 through January 27, 1981, Total engaged in the production, importation, sale and refining of crude oil, the sale of refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products. Total was therefore subject to the federal petroleum price and allocation regulations.

On June 12, 1986, a Consent Order was executed between Total and the DOE which resolved a number of outstanding enforcement issues involving Total and Vickers Petroleum, Inc. (Vickers), a petroleum products reseller which was acquired by Total in October 1980.[1] The Consent Order was finalized on August 5, 1986. Under the terms of the settlement, Total paid $5 million to the DOE. The Consent Order states that the DOE has made no formal findings of violation and that Total does not admit it has committed any regulatory violations. Of the settlement fund, now held in an interest-bearing escrow account maintained by the Department of the Treasury, $2 million is intended to resolve all claims concerning Total's possible crude oil violations. Consent Order

¶ 402. The remaining $3 million is attributable to issues arising from Total's sale of refined products.

On May 8, 1987, we issued a Proposed Decision and Order (PDO) setting forth a tentative plan for the distribution of the Total consent order funds. In order to notify all interested parties, the PDO was published in the **Federal Register**, 52 FR 18443 (May 15, 1987), and mailed to various petroleum product dealers' associations. We allowed 30 days for interested parties to comment on the proposed refund procedures. The only comments received regarding the distribution of the refined product pool were submitted by the law firm of Bassman, Mitchell & Alfano and concern the burden of proof imposed upon resellers seeking refunds above the small claims threshold. In this Decision and Order, we will address those comments and adopt final procedues for the distribution of the $3 million refined product pool provided by Total.[2]

[1] These issues were:

(i) Allegations in a Proposed Remedial Order which the ERA issued to Total on April 25, 1985 alleging non-compliance with certain provisions of the Crude Oil Entitlements Program, 10 CFR 211.67.

(ii) Total's compliance with a Consent Order executed in January 1981, requiring Total to make restitution for alleged overcharges by implementing a price rollback in its retail sales of motor gasoline and paying $2 million to the DOE with respect to its wholesale sales of motor gasoline, No. 2 heating oil, and No. 2-D diesel fuel during the period from September 1, 1973 through October 31, 1980. Total implemented the price rollback but did not remit the $2 million to the DOE.

(iii) Vicker's compliance with a Consent Order requiring it to refund $2,850,000 to the DOE and to implement a price rollback of $6,300,000 in its retail sales of motor gasoline. Vickers remitted $2,850,000 to the DOE and implemented a price rollback. However, the ERA and Vickers disagreed as to whether the firm refunded the entire amount required under the Consent Order.

[2] All comments received in response to the provision of the Total PDO concerning the distribution of the $2 million crude oil pool have been addressed in a consolidated Decision and Order which implemented special refund procedures for the distribution of crude oil monies remitted to the DOE pursuant to 111 DOE consent orders, remedial orders and court-approved settlements. *See Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988).

II. Jurisdiction

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the PDO, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Total consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Final Refund Procedures

A. Eligible Claimants. In accordance with the goals of the Subpart V regulations, we will provide refunds to claimants who demonstrate that they were injured by Total's alleged regulatory violations during the period September 1, 1973 through October 31, 1980 (the consent order period).[3]

As indicated above, Total remitted $3 million to the DOE to settle allegations regarding its sales of refined products. This portion of the settlement fund shall be distributed to wholesale customers of Total who purchased motor gasoline and No. 2 oils (No. 2 heating oil and No. 2-D diesel fuel) from the firm during the consent order period. As we pointed out in the PD&O, the principal refined product pricing issue resolved by the Consent Order pertains to Total's pricing of motor gasoline and No. 2 oils in sales to its wholesale customers. This matter was the subject of an earlier Consent Order with which Total did not comply (*see* N.1). The dispute involving Total's compliance with that earlier Consent Order is specifically mentioned as an issue which is resolved by the current Consent Order. Total Consent Order ¶ 501. *See also* 51 FR 22850 (June 23, 1986) (Notice of Proposed Consent Order). Moreover, the amount of money which Total originally agreed to remit to the DOE in settlement of claims regarding its wholesale sales of motor gasoline and No. 2 oils, $2 million, plus the interest which accrued on this amount from the date on which it should have been remitted to the DOE, totals more than the $3 million of available refined product-related funds. We have therefore determined that the entire $3 million should be available for distribution to Total's wholesale customers.

During the consent order period, Total sold to three groups of wholesale customers. *See* Letter dated November 3, 1986, from L.C. Ross, Total's Vice-President, to Janice Pliner, OHA staff analyst. First, Total sold petroleum products to customers of its Alma, Michigan refinery throughout the entire consent order period. Second, on April, 1, 1978, Total acquired another refinery located in Arkansas City, Kansas, from APCO Petroleum Corporation, and began selling to customers of that refinery. Finally, on October 2, 1980, Total purchased Vickers and began selling to Vickers' wholesale customers. In the PDO we proposed that customers in all three groups be eligible to apply for refunds in this proceeding. In the absence of any objections to this proposal, we shall adopt it.

However, customers who purchased product from the former APCO refinery or who were Vickers' customers may only apply for refunds for the periods beginning April 1, 1978 or October 2, 1980, respectively. Prior to those dates, Total had no relationship with those customers. In addition as we stated in the PDO, no refunds will be granted for purchases of No. 2 oils made after June 30, 1976, the last day on which No. 2 oils were controlled.

DATES OF REFUND ELIGIBILITY

Site of purchase	Motor gasoline	No. 2 Oils
Total Refinery	9/1/73-10/31/80	9/1/73-6/30/76
Former APCO Refinery	4/1/78-10/31/80	Not eligible.
Former Vickers Refinery	10/2/80-10/31/80	Not eligible.

B. Showing of Injury. In the PDO, we tentatively determined that in order to demonstrate injury, a reseller claimant (including refiners and retailers) must provide evidence that it would have maintained its prices for the specified petroleum products purchased from Total at the same level had the alleged overcharges not occurred. We have received no objection to this proposal. Accordingly, a reseller claimant should show that at the time it purchased petroleum products from Total, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982). In addition, a reseller must show that it had "banks" of unrecovered increased product costs from the date of purchase through decontrol in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[4] The maintenance of a bank, however, will not automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

1. Applicants Claiming a Refund of $5,000 or Less. In the PDO we tentatively determined that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of covered products from Total. In this connection, we observed that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury should not exceed the amount of the refund to be gained. We therefore proposed to adopt a small claims presumption. We have received no objection to the small claims presumption of injury and will therefore adopt it. *See e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984). Any reseller applicant claiming a refund of $5,000 or less, based upon the volumetric refund amounts established below, need not

[3] Although the Total consent order covers the period January 1, 1973 through January 27, 1981, for the reasons discussed in this section of the Decision, eligibility for refund in this proceeding is limited to the period September 1, 1973 through October 31, 1989.

[4] Claimants who have previously relied upon banked costs in order to receive refunds in other special refund proceeding should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987).

make a detailed showing of injury in order to be eligible to receive a refund.

2. Medium range claimants. The PDO also proposed that reseller claimants seeking refunds in excess of the $5,000 small claims threshold be required to submit a detailed demonstration that they were injured by Total's prices. In its comments on the PDO, Bassman, Mitchell & Alfano argues that both equity and administrative efficiency would be served if OHA modified its proposed demonstration of injury criteria and adopt a presumption of injury level for reseller claimants advancing claims in excess of $5,000, but less than $50,000 (medium range claimants). These comments have merit.

Based upon OHA's experience in many special refund proceedings, we believe it is a reasonable assumption that firms which purchased and sold Total's refined products likely experienced some injury as a result of Total's alleged overcharges. *See, e.g., Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987). Furthermore, our experience indicates that an injury presumption of 40 percent would provide an approximate measure of the injury incurred by a typical medium range claimant in this proceeding. *Id.* We shall therefore permit any medium range claimant to elect to receive a refund based upon 40 percent of the total allocable (volumetric) share which is calculated by multiplying its documented purchase volumes by the appropriate volumetric refund amount established in Part IIIC below. This option will enable a medium range claimant to rceive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000, without having to make a demonstration of injury. Medium range claimants may of course choose to pursue a claim in excess of the 40 percent presumption level. However, such a claim must be accompanied by the detailed demonstration of injury required of larger claimants.[5]

3. Applicants Claiming a Refund in Excess of $50,000. Applicants whose claims exceed $50,000 shall be required to satisfy the demonstration of injury requirement discussed above. Such a showing requires the submission of product-specific cost bank data for each product which forms the basis for a refund claim in this proceeding. The cost bank data must cover the period from november 1973 through the date of decontrol for the particular product, and should be presented on a monthly basis.[6] A large claimant must also submit for each product weighted average cost data prepared on a monthly basis for each month during which the applicant purchased Total product. This data will enable OHA to compare the weighted average prices paid to Total by the applicant with average regional prices. In the event a claimant cannot provide product cost data, the OHA will consider any credible alternative method of injury assessment submitted by the claimant.

14. Spot Purchasers. In the PDO, we proposed that resellers that made spot purchases from Total be ineligible to receive a refund, even a refund below the small claims threshold level, unless they can make a showing that rebuts the presumption that they were not injured by Totals' pricing practices. This proposal was based upon our finding that spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers*, 8 DOE at 85,396–97. This presumption shall also be adopted since we have received no objection to it. Accordingly, any reseller claimant who was a spot purchaser must submit evidence that rebuts the spot purchaser presumption and establish the extent to which it was injured as a result of its spot purchase(s).

5. *End-Users.* The PDO also proposed to adopt a finding that end-users (or ultimate consumers) of Total motor gasoline and No. 2 oils whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges addressed in this proceeding. This presumption has not been challenged by commenters and will be adopted. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the time covered by the Consent Order, and thus were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), and cases cited therein. Thus, in order to qualify for a refund from the Total consent order fund, end-users who purchased Total motor gasoline and No. 2 oils need only document their purchases from the firm.

6. Regulated Firms. In addition, we proposed that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the overcharges alleged by th ERA. We noted that in the case of regulated firms, e.g., public utilities, any overcharges incurred as a result of Total's alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms should be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives should likewise directly influence the prices charged to their member customers. Since our proposed treatment of regulated firms did not generate a comment or challenge, we shall adopt it in its present form. Consequently, we shall add such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982), and *Office of Special Counsel*, 9 DOE ¶ 82,244 (1982). Instead, those firms should provide with their application a full explanation of the manner in which refunds will be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by a cooperative to non-members, however, will be treated the same as sales by any other reseller.

C. Calculation of Refund Amounts. Refunds to eligible claimants will be calculated on the basis of a volumetric refund amount. We have divided the Total refined product refund pool into two pools in proportion to the manner in which the January 1981 settlement amount was divided. Thus, the refund

[5] A claimant who makes a detailed demonstration of injury will be eligible to receive a refund equal to its full allocable share. However, a claimant who attempts to make a detailed showing of injury, but instead provides evidence that leads us to conclude that it passed through all of the alleged overcharges will receive no refund. If we conclude that a claimant who attempts to prove injury absorbed some of the alleged overcharges, we will grant a partial refund based upon the extent of the injury shown and not the $5,000 or 40 percent presumptions. *See Union Texas Petroleum Corp./Arrow Enterprises, Inc.*, 15 DOE ¶ 85,087 (1986); *Quaker State Oil Refining Corp./Campbell oil Co.*, 15 DOE ¶ 85,089 (1986).

[6] Retailer applicants will not be required to submit bank information in connection with sales made after July 15, 1979, the date on which the amendment to the price rule eliminating the banking requirement for retailers became effective. 44 FR 42541 (July 19, 1979). Reseller applicants will not be required to submit bank information for the period beginning May 1, 1980, with the exception of the firms who elected not to be subject to the new price rules which became effective on that date. 45 Fed. Reg. 29546 (May 2, 1980); 45 FR 81255 (December 10, 1980).

pool for motor gasoline purchases is $2,100,000 and the refund pool for No. 2 oil purchases is $900,000. We have determined the volumetric refund factors by dividing each of Total's refined product refund pools by the estimated total volume of applicable product(s) sold by Total to its wholesale customers during the relevant period. This results in refund amounts of $0.000651 ($2,100,000 divided by 3,225,066,372 gallons) for each gallon of motor gasoline and $0.002652 ($900,000 divided by 339,338,279 gallons) for each gallon of No. 2 oils which an applicant purchased from Total during the relevant period. In addition, the interest which has accrued on the money in escrow will be added to the refund of each successful applicant in proportion to the size of its refund.

In addition, as in previous cases, we are establishing a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims for amounts less than $15.00 outweighs the benefits of restitution in those instances. *See Mobil Oil Corp., 13 DOE ¶ 85,339 (1985).*

IV. Refund Application Requirements

We will now accept Applications for Refund from purchasers of motor gasoline and No. 2 oils from Total during the consent order period. All Applications for Refund must contain the following information:

(1) A conspicuous reference to "Total Petroleum Refund Proceeding-Case No. KEF-0081" and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom any refund check should be made out and the address to which any check should be mailed.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The manner in which the applicant used the Total product, e.g., whether the applicant is a refiner, petroleum jobber, gas station, consumer, consignee agent, public utility, or cooperative.

(4) Monthly schedules of the applicant's purchases of motor gasoline and/or No. 2 oils from Total during the consent order period. The applicant must indicate the source of this volume information and, if estimates were used, the estimation method must be explained in detail.

(5) If the applicant was supplied directly by Total, it must provide its Total customer number. If the applicant was an indirect purchaser, it must submit the name, address and telephone number of its immediate supplier and indicate why it believes that the covered product was originally sold by Total.

(6) If the applicant is a refiner, reseller, or retailer whose volumetric share exceeds $5,000, it must indicate whether it elects to receive as its refund the larger or $5,000 or 40 percent of its allocable share up to $50,000. It it does not elect to use the presumptions, it must submit a detailed showing that it was injured by Total's overcharges.

(7) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf any other refund application in the Total proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization.

(8) If the applicant is or was entirely or partly owned by Total, it must explain the nature of the affiliation.

(9) If the applicant has been involved in an enforcement proceeding brought by DOE or private action under Section 210 of the Economic Stabilization Act of 1970, it should describe the action and its current status. If the applicant was a party to any such action which is no longer pending, it should indicate how the proceeding was resolved. The applicant must keep the OHA informed of any change in status during the pendency of its Application for Refund.

(10) The Application should also contain the following statement signed by the individual applicant or a responsible official of the business or organization applying for a refund: "I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001."

All Applications should be sent to: Total Petroleum Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All Applications must be filed in duplicate and postmarked by no later than 90 days after publication of this Decision and Order in the Federal Register. Any applicant who believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application with the confidential information deleted, together with a statement specifying why the information is confidential.

V. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C.A. §§ 4501–4507. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Total consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Total customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for refined product refunds from the fund remitted to the Department of Energy by Total Petroleum, Inc. pursuant to the Consent Order executed on June 12, 1986 may now be filed.

(2) Applications for Refund from the Total Petroleum, Inc. refined product refund pool must be filed by no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: June 24, 1988.

Richard T. Tedrow, for George B. Breznay

Acting Director, Office of Hearings and Appeals.

[FR Doc. 88-14790 Filed 6-29-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180783; FRL-3407-6]

Receipt of an Application for a Specific Exemption to Use Bifenthrin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Kansas State Board of Agriculture (hereafter referred to as "Applicant") for use of bifenthrin (Capture) (CAS 82657-04-3) to control Banks grass mites and two-spotted spider mites in Kansas. Capture, manufactured by FMC Corporation, contains the active ingredient (2-methyl[1,1'-biphenyl]-3-yl) methyl-3-(2-

chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethyl cyclopropanecarboxylate. EPA, in accordance with 40 CFR 166.24, is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before July 15, 1988.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180783," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

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

FOR FURTHER INFORMATION CONTACT: By mail:

Gene Asbury, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7890).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue an emergency exemption for the use of bifenthrin to control Banks grass mites, *Oligonychus pratensis* (Banks) and two-spotted spider mites, *Tetranychus urticae* (Koch) in field corn and corn grown for seed production in Kansas. Bifenthrin, is a synthetic pyrethroid insecticide/miticide currently registered for greenhouse ornamentals application as a foliar spray. No permanent tolerances have been established for bifenthrin on any raw agricultural commodities. There are temporary tolerances, associated with experimental use permits, for residues of bifenthrin on a variety of commodities including field corn.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes two air applications applied at a rate of 0.08 pounds of active ingredient (5.12 ounces of Capture 2EC product) per acre per application. Capture is to be applied in a minimum of two gallons of water per acre.

Kansas proposes to treat a maximum of 118,240 acres of field corn and corn grown for seed production in the state and estimates that if two applications are applied to these acres that a maximum of 18,918 pounds active ingredient or 9,109 gallons of product would be needed under the proposed exemption. It is unlikely that each of the requested acres will be treated; and of those acres treated it is unlikely that each will be treated using the maximum number of applications.

The Applicant specified certain restrictions and requirements as follows:

1. Applications will be made by aerial equipment only and no applications will be made after September 1, 1988.

2. For control of mites when mite populations and leaf loss/stippling expands beyound the second lower leaf of the plant (on the average) in the individual fields.

3. All general precautions and restrictions on the existing labels shall apply.

4. Since bifenthrin is toxic to aquatic organisms, steps will be taken to assure that the pesticide will be kept out of any body of water. Water is not to be contaminated by cleansing of equipment or disposal of wastes or excess pesticide. Bifenthrin is not to be applied within 500 feet of any fish bearing waters.

5. Precautions will be made to avoid or minimize spray drift to non-target areas. No applications will be made when wind speeds exceed 10 mph.

6. No applications are to be made within Quivera, Kirwin, or Cheyenne Bottoms Wildlife Refuges.

7. Do not graze livestock in treated areas or cut treated crops for feed within 30 days of the last application.

8. A 30-day crop rotation restriction will be observed.

9. The EPA will be notified immediately of any misuse, environmental problems or other adverse effects resulting from the use of this pesticide in connection with this exemption.

10. Application will be made by certified applicators and enforcement monitoring will be handled by the Kansas State Board of Agriculture using procedures established by the existing enforcement grant agreement between the Board of Agriculture and the Environmental Protection Agency.

According to the Applicant, with the use of Capture in the pest management programs, corn growers will be able to control mites which they have had problems controlling with registered pesticides. Mite infestations in field corn are principally a western Kansas problem, and are most serious during dry years. Fields in the western Kansas area, because of the normal conditions of low rainfall, must be kept under close observation for mite infestations annually during the months of June, July and August to allow early detection of infestations. Early detection is essential due to the explosive reproductive potential of these pest species. Weather, geography, plant stress and mite overwintering habits are all factors contributing to the Banks grass mite problem in Kansas. Kansas indicates that the growing season has been dry and hot and if these weather conditions continue, they would result in optimal conditions for mite development and a potential emergency situation. There is also a potential water shortage which would result in stressful conditions to the corn that would make mite damages more likely.

Performance test results indicate that existing registered pesticides will no longer control the sustained mite pressures of a normal Kansas summer because of a history of development of resistance to registered pesticides.

The Applicant indicates that corn yield losses due to damage from mites vary with the degree and extent of infestation. The use of bifenthrin could prevent mite losses due to resistance to already registered pesticides of nearly $400,000 to the corn growers of the state. If mite populations reach emergency levels in Kansas this year, losses could be far greater.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Program Management

and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: June 21, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-14720 Filed 6-29-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/28N; FRL-3407-7]

Inorganic Arsenicals; Intent to Cancel Registrations for Pesticide Products Registered for Non-Wood Preservative Use; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination; Notice of Intent to Cancel; Notice of Intent to Deny Applications for Registration.

SUMMARY: On January 2, 1987, EPA (the Agency) proposed to cancel most registrations and deny applications for the inorganic arsenicals for non-wood preservative use due to the oncogenic risks posed during mixing/loading and application, and due to the acute risks from accidental ingestion. This Notice announces the Agency's final determination to cancel registrations and deny applications for all non-wood use pesticide products that contain the inorganic arsenicals lead arsenate, calcium arsenate, sodium arsenate and sodium arsenite, with the exception of the turf herbicidal use of the flowable formulation of calcium arsenate, the grapefruit growth regulator use of lead arsenate, and the grape fungicidal use of sodium arsenite. These three uses, and the desiccant uses of arsenic acid on okra (grown for seed) and cotton, are still under Special Review, and are not covered by this Notice. This Notice also announces the Agency's determination to cancel all registrations and deny applications for all non-wood preservative use pesticide products containing arsenic trioxide, with the exception of the registrations for the solid formulations to control ants (packaged in a sealed metal container) and moles, gophers, and pocket gophers.

DATE: Requests for a hearing by a registrant, applicant, or other adversely affected party must be received on or before August 1, 1988, or, for a registrant or applicant, within 30 days from their receipt by mail of this Notice, whichever date is the later applicable deadline.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Additional information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail:

Ronald Cannarella, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall #2 1921 Jefferson Davis Highway, Arlington, VA, (703-557-5488).

SUPPLEMENTARY INFORMATION: This Notice is organized into seven units. Unit I, entitled "Introduction", provides a general discussion of the regulatory framework within which this action is taken and summarizes the regulatory history of the inorganic arsenicals. Unit II, entitled "Summary of Agency's Risk Assessment", sets forth a summary of the basis for the Agency's regulatory position in the PD 2/3 and includes discussions of hazard identification, exposure analysis, and quantitative risk assessment. Unit III, entitled "Summary of the Agency's Benefits Analysis", summarizes the benefits analysis presented in the PD 2/3. Unit IV, entitled "Comments and Agency Response to PD 2/3", sets forth and responds to comments of the Scientific Advisory Panel, the Secretary of Agriculture, and other public comments received by the Agency in response to the PD 2/3. Unit V, entitled "Final Regulatory Decision", presents the Agency's final regulatory decision, including existing stocks and disposal provisions. Unit VI, entitled "Procedural Matters", explains how persons may request a hearing and the consequences of requesting or failing to request a hearing. Unit VII contains information on the public docket which has been established for the Special Review of the inorganic arsenicals. Unit VIII lists references referred to in the text.

I. Introduction

A. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA. That standard requires, among other things, that the pesticide performs its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the standard for registration is on the proponents of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may cancel the registration whenever it is determined that the pesticide causes unreasonable adverse effects on the environment. The Agency created the Special Review Process, previously known as the Rebuttable Presumption Against Registration (RPAR) Process, to facilitate the identification of pesticide uses which may not satisfy the statutory requirements for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review is initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR 154.7. The Agency announces that a Special Review is initiated by publishing a Notice of Initiation (supported by Position Document 1 (PD 1)) in the **Federal Register**. Registrants and other interested persons are invited to review the data upon which the decision to initiate a Special Review is based. After reviewing public comments and available data, the Agency prepares a risk/benefit assessment for the registered pesticidal uses considered in the PD 1.

In order to carry out a thorough assessment, the Agency may require additional information on registered products under section 3(c)(2)(B) of FIFRA. This process is referred to as Data Call-In. Failure to comply with Data Call-In requirements for a product constitutes grounds for suspension of that product's registration.

In determining whether the use of a pesticide poses risks which are greater than the benefits, the Agency considers possible changes to the terms and conditions of registration which can

reduce risks. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of registration. Alternatively, the Agency may determine that no changes in the terms and conditions of the registration will adequately ensure that use of the pesticide will not pose any unreasonable adverse effects. If the Agency makes such a determination, it may seek cancellation and, if necessary, suspension.

Once the risk/benefit analysis is completed, the Agency publishes the Preliminary Determination (supported by Position Document 2/3 (PD 2/3)) in the **Federal Register**. That document presents a detailed discussion of the risks and benefits assessments, and sets forth the regulatory action the Agency proposes to take.

The public is invited to submit data and information to rebut the Agency's proposed action by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant risk to humans or the environment. In addition to submitting evidence to rebut the risk presumption, commenters may submit evidence as to whether the economic, social, and environmental benefits of the use of the pesticide outweigh the risk of use. The Preliminary Determination is sent to the U.S. Department of Agriculture (USDA) and the Agency's Scientific Advisory Panel (SAP) for review and comment. After reviewing the comments of the SAP, USDA and other interested persons, the Agency reaches its final regulatory determination and concludes the Special Review by publication of a Final Determination (supported by Position Document 4 (PD 4)) in the **Federal Register**.

Adversely affected persons may request a hearing on the cancellation, modification or denial of an application for a specified registration and use. If they do so in a legally effective manner, that registration and use will be maintained pending a decision at the close of an administrative hearing.

B. Regulatory History

The Environmental Protection Agency issued a Notice of Rebuttable Presumption Against Registration (hereafter referred to as Special Review) for the wood preservative and non-wood preservative uses of the inorganic arsenicals which was published in the **Federal Register** of October 18, 1978 (43 FR 48267). That Notice was based on a determination that use of the inorganic arsenicals met or exceeded the risk criteria for oncogenicity, teratogenicity and mutagenicity under 40 CFR 162.11 (these criteria are now found at 40 CFR 154.7). Subsequently, acute toxicity also became a concern when evidence of this adverse effect was received by the Agency.

The Agency issued a Preliminary Determination (PD 2/3) on February 19, 1981, (46 FR 13020) which proposed changes to the terms and conditions of registration for the wood preservative uses of the inorganic arsenicals. That proposal was based on a detailed assessment of the risks and benefits of continued registration of the wood preservative use of the inorganic arsenicals. The Final Determination, which required certain modifications to the terms and conditions of registration, was published in the **Federal Register** of July 13, 1984 (49 FR 28666). The Agency received hearing requests from registrants contesting the requirements of that Notice. After considering alternative mechanisms suggested by registrants for accomplishing the goals of the July 13, 1984 Notice, the Agency issued an Amended Notice of Intent to Cancel, which was published in the **Federal Register** of January 10, 1986 (51 FR 1334). That Notice resolved issues relating to the wood preservative uses of the inorganic arsenicals with minor modifications to the requirements of the July 13, 1984 Notice. All registrants have either modified their registrations in accordance with the requirements of the Amended Notice or their registrations were cancelled by operation of law.

For the non-wood preservative uses of lead arsenate, calcium arsenate, sodium arsenite, arsenic trioxide, and sodium arsenate (with the exception of the turf herbicidal use of the flowable formulation of calcium arsenate, the grapefruit growth regulator use of lead arsenate, the grape fungicidal use of sodium arsenite, and the desiccant uses of arsenic acid on okra [grown for seed] and cotton), the Agency issued a Notice of Preliminary Determination in the **Federal Register** of January 2, 1987 (52 FR 132). All registrations of copper acetoarsenite were voluntarily cancelled and were not considered in the Preliminary Determination.

The use patterns excepted from the non-wood Preliminary Determination will herein be referred to as "major uses", and the inorganic arsenical uses considered in that decision will herein be referred to as the "minor uses" of the inorganic arsenicals for non-wood preservative use.

The risk assessment presented in the Preliminary Determination identified two main hazards associated with the minor uses of the inorganic arsenicals: oncogenicity for mixer/loaders and applicators, and acute toxicity to the general public, resulting in a large number of accidental exposures. The benefits assessment identified numerous effective and economic alternatives for all of the minor uses. Based on available risk/benefit information, the Agency concluded in the January 2, 1987 Preliminary Determination that the risks posed by the minor uses of the inorganic arsenicals outweighed the benefits of continued registration. In the January 2, 1987 Notice, the Agency announced its proposed decision to cancel product registrations and deny applications for all of the inorganic arsenical non-wood preservative uses (with the exception of products registered for the major uses).

In the interval since the Agency issued its Preliminary Determination for the non-wood preservative uses, nearly all registrations for the minor uses of the inorganic arsenical pesticides have been voluntarily cancelled by the registrants, or suspended for failure to submit data requested by the Agency under the authority of FIFRA section 3(c)(2)(B). Uses for which all registrations have been voluntarily cancelled by the registrants are not addressed in this action. Risks and benefits of registrations which have been suspended pursuant to FIFRA section 3(c)(2)(B) are considered in this action, even though the registrations are inactive. The benefits of suspended registrations are considered to be minimal, however.

As discussed in the January 2, 1987 Notice, consideration of the major uses was deferred until the Agency's Risk Assessment Council reassesses the carcinogenic potency of inorganic arsenic as it relates to dietary and dermal exposures. The Agency has required food crop residue data from registrants under the authority of section 3(c)(2)(B) of FIFRA. These residue data, and the reassessment of the carcinogenic potency of inorganic arsenic, are pivotal to conducting a risk assessment for the dietary and dermal routes of exposure resulting from the major uses enumerated above.

The January 2, 1987 Notice provided a 45-day period during which the public was asked to comment on the proposed decision. Four registrants responded to that Notice in defense of their products, stating that, contrary to the conclusions of the Agency's risk/benefit analysis, the acute risks associated with the use of their products did not outweigh the benefits. The Agency also received additional data detailing numerous poisoning incidents involving the inorganic arsenicals. These comments

are discussed in Unit IV of this document.

After reviewing the comments and available data, the Agency has concluded that, with the exception of two arsenic trioxide registrations, the oncogenic risks resulting from inhalation during mixing/loading and application, or acute risks associated with the accidental ingestion of the inorganic arsenicals registered for the minor uses outweigh the limited benefits. Therefore, the registrations for these uses should be cancelled.

The two excepted uses of arsenic trioxide are (1) the insecticide use of arsenic trioxide in a solid formulation and packaged in a sealed metal container, and (2) the solid formulation arsenic trioxide for the control of moles, gophers, and pocket gophers. The Agency has concluded that the two excepted uses pose no significant oncogenic or acute risks, and that the benefits of use outweigh any risks. Accordingly, these uses will be retained unchanged.

The Agency is also concerned with oncogenic risk to applicators exposed to inorganic arsenical pesticides via the dermal route. Dermal exposure assessments were included in the Preliminary Determination. However, the oncogenic risk has not been quantified for dermal exposures for products subject to this Notice because the Agency's Risk Assessment Forum is still assessing the carcinogenic potency for dermal exposure. Any additional risk associated with the dermal component of exposure will only add to the Agency's concern about the risks of use of the pesticide products cancelled by this Notice.

II. Summary of the Agency's Risk Assessment

The adverse effects of concern associated with inorganic arsenical pesticides are oncogenicity, mutagenicity, teratogenicity, and acute toxicity. An extensive body of data is contained in published studies describing the adverse health effects associated with exposure to inorganic arsenic. The EPA Office of Health and Environmental Assessment (OHEA) has reviewed the existing scientific literature and developed a "Health Assessment Document for Inorganic Arsenic" (Ref. 1). Risk information is also contained in the following Position Documents: Wood Preservatives Position Document ⅔ (46 FR 13020), Wood Preservatives Position Document 4 (49 FR 28666), and Non-wood Preservatives Position Document ⅔ (52 FR 132). These documents are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161; Tel: (702) 487-4600. A brief summary of the risk data contained in those documents is presented here.

A. Summary of Hazard Identification

1. *Oncogenicity.* Human epidemiology studies have provided the most persuasive evidence linking exposure to inorganic arsenic to an increase in cancer in humans. Detailed discussions of these studies are contained in the OHEA Document and are summarized in the PD ⅔ for non-wood preservative uses.

Based on the human data, the Agency's Carcinogen Assessment Group (CAG) has determined that sufficient evidence exists to classify inorganic arsenic as a Group A carcinogen (carcinogenic to humans) based on the Agency's classification scheme published in the **Federal Register** of September 24, 1986 (51 FR 33992).

2. *Mutagenicity.* Various inorganic arsenicals have been assayed for mutagenic activity in a variety of test systems ranging from bacterial cells to peripheral lymphocytes from humans exposed to arsenic. Inorganic arsenicals may have the potential to cause chromosomal changes in human beings, although the mutagenic potency of arsenic is weak when compared to other known metal mutagens. Specifically, arsenic is clastogenic (causing chromosome breakage) and induces sister chromatid exchanges in a variety of cell types including human cells *in vitro.* Arsenic also may affect DNA by its occasional substitution for phosphorus or by the inhibition of DNA repair processes. Data indicate that arsenic is either inactive or extremely weak in inducing gene mutations *in vitro.* Further discussion of the mutagenicity of arsenic is presented in the OHEA Document.

3. *Teratogenicity.* Parenteral administration of arsenic to experimental animals during pregnancy has produced gross malformations in the offspring. Additionally, increased mortality, increased resorptions, and decreased body weights of fetuses have been observed in these studies. In contrast, oral administration of sodium arsenate to experimental animals has either failed to produce gross malformations in the offspring or has produced only a slightly increased incidence and only at dosage levels that have also caused significant maternal toxicity. No-observed effect-levels (NOELs) could not be established from these studies. Oral administration of sodium arsenite to experimental animals did not produce gross malformations in the offspring, but increased resorptions were reported. Further discussion of the teratogenicity of arsenic is presented in the OHEA Document.

4. *Acute toxicity.* Arsenic is known to be acutely toxic. The symptoms which follow oral exposure to inorganic arsenic include severe gastro-intestinal damage resulting in vomiting and diarrhea, and general vascular collapse leading to shock, coma, and death. Muscular cramps, facial edema, and cardiovascular reactions are also known to occur following oral exposure to arsenic.

Trivalent arsenicals such as arsenic trioxide and sodium arsenite are approximately four times as acutely toxic as pentavalent lead arsenate and sodium arsenate. However, pentavalent and trivalent inorganic arsenicals are both in the Agency's acute toxicity Category I, the most toxic category. Further discussion of the acute toxicity of arsenic is presented in the OHEA Document.

Many poisonings and fatalities have been associated with the use of inorganic arsenical pesticides. Information reported to the Agency's Pesticide Incident Monitoring System (PIMS) indicates that a significant number of poisoning incidents have occurred as a result of accidental ingestion of arsenical rodenticides containing arsenic trioxide, and insect baits containing sodium arsenite, sodium arsenate and lead arsenate. The majority of the incidents involved children. All registrations for insecticide baits containing sodium arsenite and lead arsenate have been voluntarily cancelled. Consequently, the acute risks of these chemicals will not be discussed further. Detailed information regarding poisoning incident data for insecticides containing sodium arsenate is discussed in the Agency's response to a comment by Senoret Chemical Co., Inc., found in Unit IV.C.1 of this document.

Information available to the Agency regarding acute exposures to arsenic trioxide rodenticides indicates that the liquid formulation used to control rats and mice is generally identified as the source of the exposure. It does not appear that solid formulation mole killers are responsible for the pattern of exposures to arsenic trioxide rodenticides reported to PIMS. In addition, PIMS data indicate that accidental exposures to arsenic trioxide insecticides were due to formulations other than the solid formulation contained in a sealed metal dispensing device. Evidence available to the Agency indicates that the solid formulation contained in a sealed metal

container does not expose the public to arsenic trioxide.

B. Summary of the Risks Posed by the Minor Uses of the Inorganic Arsenicals

The Agency concludes that there are demonstrated oncogenic or acute risk concerns associated with all of the uses of the inorganic arsenicals considered in this action. The Agency's concern regarding the acute risk posed by the use of the inorganic arsenicals subject to this Notice is based on actual poisoning incident data. The Agency also has concerns based on the mutagenic and teratogenic effects shown by the inorganic arsenicals; however, these risk concerns will not be discussed further here because of the inadequacy of the available information for risk quantification.

The linear non-threshold model was used to estimate cancer risks at low levels of inhalation exposure for applicators and mixer/loaders. In conducting the inhalation exposure analysis, the Agency assumed a worst-case scenario; that exposed persons wore no special protective clothing, that 100 percent of inhaled inorganic arsenic is absorbed, and that an applicator or mixer/loader weighs 70 kg. The Upper Confidence Limit (UCL) calculation of carcinogenic potency used for quantifying risks from inhalation exposure to the inorganic arsenicals is 1.13×10^{-2} $(mg/kg/day)^{-1}$ over a 30-year working lifetime.

Oncogenic risks to mixer/loaders and applicators due to inhalation have been quantified for those uses where the Agency has estimates of inhalation exposure. Exposure estimates and calculated risk values for the uses considered in this action are discussed at length in the January 2, 1987 **Federal Register** Notice. The calculated values are upper-bound estimates, and represent a 95 percent likelihood that the actual inhalation risks are not greater than those calculated. As discussed previously in this Notice, the oncogenic risks resulting from dermal and dietary exposure have not been quantified.

The following Table 1 summarizes the oncogenic risks to mixer/loaders and applicators, and acute exposure incidents involving the general public associated with the registered minor uses of the inorganic arsenicals:

TABLE 1.—ONCOGENIC RISK AND ACUTE TOXICITY HAZARD ASSOCIATED WITH INORGANIC ARSENICALS.

Pesticide	Annual exposure (days)	Upper limit oncogenicity risk [a] from inhalation		Acute toxicity hazard
		Mixer/Loader	Applicator	General public
Lead Arsenate				
1. Insecticide [b]	6	10^{-3}	10^{-3}	
Sodium Arsenite				
1. Herbicide	1	10^{-5}	10^{-3} to 10^{-4}	
Sodium Arsenate				
1. Insecticide	6	0[c]	neg.	37 hospitalizations/ year [d].
Calcium Arsenate				
1. Insecticide and Molluscicide [b]	NA	0[c]	NA	
Aresenic trioxide				
1. Rodenticide	6	0[c]	neg.	19 incidents (5 deaths) [e].
2. Insecticide	1	0[c]	neg.	3 incidents (1 death) [e]

[a]—Inorganic arsenic is classified as a Human Carcinogen (Group A) in accordance with the Agency's Proposed Guidelines (U.S. EPA, 1984, 49 FR 46294).
[b]—Registrations for these uses have been suspended. There is no indication of any current use.
NA—No data available.
neg—Negligible inhalation exposure, although some dermal exposure and risk would be expected.
[c]—There is no mixing/loading, the product is "ready to use".
[d]—Estimate based upon survey of 12 percent of the nation's hospital admissions from 1971-1976. Survey results extrapolated to estimate the number of cases per year in the United States.
[e]—Summary of case histories of exposure incidents reported to the Pesticide Incident Monitoring System (PIMS), 1966-1979.

III. Summary of Agency's Benefits Analysis

In this Unit, the Agency provides a summary of the benefits associated with the use of the inorganic arsenicals.

In March 1982, the Agency performed a use-by-use benefits analysis of the non-wood uses of the inorganic arsenicals. This analysis was updated in March 1985 and was presented in the PD ⅔ for non-wood preservative uses. Addressed in the analysis were the major and minor uses of arsenic acid, lead arsenate, sodium arsenite, calcium arsenate, arsenic trioxide, and sodium arsenate. The analysis estimated quantities utilized, identified alternatives and their availability, determined the change in pesticide costs associated with the use of the alternatives, and evaluated the impact of cancellation on crop production and retail prices, as appropriate.

Since publication of the PD ⅔, most registrations for the minor uses of these chemicals have either been cancelled voluntarily by the registrant, or have been suspended by the Agency for failure to comply with data submission requirements in accordance with section 3(c)(2)(B) of FIFRA.

A summary of the benefits assessment presented in the PD ⅔ for the five inorganic arsenicals covered by this action is presented below.

1. *Lead arsenate.* Lead arsenate is currently registered as a foliar spray to control insects on fruit trees and ornamentals, and as a growth regulator on grapefruit. The growth regulator use on grapefruit is still under Special Review. All registrations for the minor uses of lead arsenate have been suspended by the Agency for failure to comply with data submission requirements under section 3(c)(2)(B) of FIFRA, or have been voluntarily cancelled. The Agency is unaware of any current use of lead arsenate as an insecticide. No comments were received in response to the PD ⅔ indicating any current use. A number of effective and economical alternative insecticides are available including chlorpyrifos, diazinon, azinphos-methyl, carbaryl and methoxychlor. There would be no economic impact from cancellation of the insecticidal registrations of lead arsenate.

2. *Sodium arsenite.* Sodium arsenite is registered as a terrestrial herbicide for the control of trees and weeds. Sodium arsenite is no longer manufactured for

use as a herbicide, although still registered for this use. Economical and effective alternative herbicides including sodium chlorate and dicamba are available. No economic impact is expected as a result of cancellation of the herbicide registrations of sodium arsenite.

3. *Calcium arsenate.* Calcium arsenate is registered as a insecticide and molluscicide bait, and as an herbicide for use on turf. The herbicidal use on turf is still under Special Review. The only remaining minor use registration of calcium arsenate, as an insecticide and molluscicide bait has been suspended for failure of the registrant to submit data requested by the Agency pursuant to section 3(c)(2)(B) of FIFRA. Data available to the Agency indicates that, prior to suspension, there has been no usage of calcium arsenate baits for many years. Economical and effective alternatives including metaldehyde and carbaryl are available. No economic impact is expected as a result of cancellation of this registration. Thus, the benefits of calcium arsenate insecticide and mollus cicide baits are considered minimal.

4. *Arsenic trioxide.* Approximately 85 percent of the pesticidal use of arsenic trioxide is as a liquid rodenticide bait applied above ground to control rats and mice in and around dwellings. A small percentage of the remainder is used either in a solid formulation applied below ground to kill moles, gophers, and pocket gophers, or as an ant bait.

Twenty years of laboratory efficacy data suggest that liquid arsenic trioxide baits are ineffective for the control of rats and mice (Ref. 2). There are numerous effective alternatives available for the control of rodents, including strychnine, anticoagulant rodenticides, and mechanical control (trapping). No adverse economic impact is anticipated if the use of arsenic trioxide for the control of mice and rats were cancelled.

Arsenic trioxide rodenticides are effective in controlling moles, gophers, and pocket gophers. Available effective and economical alternatives include strychnine and mechanical control. No adverse economic impact is anticipated if this use were cancelled.

Arsenic trioxide ant baits are used to control ants in and around domestic dwellings. They are effective in controlling ants, but are not widely used. No adverse economic impact is anticipated if the use for ant control were cancelled. There are numerous alternatives available such as propoxur, diazinon, chlorpyrifos and boric acid.

5. *Sodium arsenate.* Sodium arsenate ant baits are used in approximately 1 percent of U.S. homes for the control of sweet-eating ants. They are formulated as a sugar based syrup, and are dispensed by applying to a "bait station", such as a cardboard chip, piece of bread, or a bottle cap. The bait station is placed where ants are a problem. Although sodium arsenate ant baits maintain less than 1 percent of the market, they are considered the most effective ant bait products for the control of sweet-eating ants. Comparatively priced alternatives such as diazinon, chlorpyrifos, boric acid and propoxur are available in bait form and/or as aerosol sprays. The aerosol formulations are currently the most popular form of ant control for home use on the market today. No significant adverse economic impact is anticipated if the registrations for this use were cancelled, because of the availability of economical and effective alternatives.

IV. Comments and Agency Response to PD 2/3

The Agency transmitted the Preliminary Determination to the U.S. Department of Agriculture (USDA) and the FIFRA Scientific Advisory Panel (SAP) for review and comment. Units IV.A. and B. contain the SAP and USDA comments in their entirety. The Agency also received public comments in response to the **Federal Register** Notice. Public comments along with the Agency's response are summarized in Unit IV.C.

A. Comments From USDA

In accordance with FIFRA section 6, the Agency's Preliminary Determination (PD 2/3) was sent to the U.S. Department of Agriculture (USDA) for comment. USDA's comments are printed in full below:

February 5, 1987

Mr. Douglas D. Campt, Director,
Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460

Dear Mr. Campt: This is in response to your letter of December 22, 1986, forwarding EPA's preliminary determination to cancel certain pesticide products containing inorganic arsenicals.

The U.S. Department of Agriculture does not have any objection to your proceeding with the proposed decision as furnished.

Sincerely,

Charles L. Smith,

Coordinator, Pesticides and Pesticides Assessment.

B. Comments From Scientific Advisory Panel

In accordance with FIFRA section 24, the Agency's Preliminary Determination (PD 2/3) was sent to the FIFRA Scientific Advisory Panel (SAP) for comment. The SAP waived its review of the inorganic arsenicals PD 2/3 because the majority of the products covered by that document were either suspended or cancelled. The Panel's response is reproduced here in its entirety:

Memorandum

Subject: Request for Waiver of the Scientific Advisory Panel's review of the Notice of Preliminary Determination to Cancel Registrations of Pesticide Products Containing Inorganic Arsenicals Registered for Non-wood Preservative Use and the Draft Notice of Intent to Cancel.

From: Stephen L. Johnson, Executive Secretary FIFRA Scientific Advisory Panel.

To: Dr. Wendell W. Kilgore, Chairman FIFRA Scientific Advisory Panel. (Copied to Director, Office of Pesticide Programs.)

Attached is a **Federal Register** Notice announcing the Preliminary Determination to Cancel certain registrations of products containing inorganic arsenicals and a draft Notice of Intent to Cancel these registrations. This Notice proposes cancellation of all the registered uses of the inorganic arsenicals: lead arsenate, calcium arsenate, sodium arsenate, sodium arsenite and arsenic trioxide except for the grapefruit growth regulator use of lead arsenate, the grape fungicidal use of sodium arsenite and the turf herbicidal use of the flowable formulation of calcium arsenate. These three uses and the desiccant use of arsenic acid are still under Special Review. A preliminary determination regarding these uses will be issued once the Risk Assessment Forum has completed its reassessment of the carcinogenic potency of inorganic arsenic as it relates to dermal and dietary exposure.

I am requesting that the Scientific Advisory Panel waive its review of these documents because many of the products that would be subject to this cancellation Notice are inactive registrations. Registrants did not provide data required by several Data Call-In Notices, and many registrations were either voluntarily cancelled or suspended. Furthermore, the uses covered by this Notice represent only 2 percent of annual usage of inorganic arsenical pesticides, many of which have not been produced in several years. Thus, this action is primarily administrative in nature. These documents consist of discussions of the legal background, summaries of previous scientific and economic reviews, and procedures for compliance with the Notices.

Recommendation

The Panel waive scientific review and comment on the Notice of Preliminary Determination to Cancel Registrations of Pesticide Products Containing Inorganic Arsenicals Registered for Non-wood Use and the Draft Notice of Intent to Cancel since there are no scientific issues to be considered. Please indicate below whether or not you concur or nonconcur with this recommendation and I will notify the Agency whether or not a waiver can be issued.

Attachments

(Concurrence signed by Dr. Wendell W. Kilgore, Chairman, FIFRA Scientific Advisory Panel, February 2, 1987.)

C. Comments From the Public and Agency Responses

Responses to the PD 2/3 were received by the Agency from four registrants (Refs. 3, 4, 5 and 6). Three poison treatment centers submitted comments and information concerning acute exposure incidents involving sodium arsenate ant killers (Refs. 7, 8, 9 and 10). The information received from the poison treatment centers is summarized below in the Agency's response to Senoret Chemical Co., Inc.'s comment on the toxicity of their product. A summary of the registrants' comments and the Agency's responses follow.

1. Senoret's comment on toxicity of their product

Senoret Chemical Co., Inc., a formulator of sodium arsenate ant killers (ant baits) submitted data on the toxicity of their product, Terro Ant Killer. They state that with an LD_{50} of 5.85 g/kg of body weight, their product is only slightly toxic. The company feels that the high number of poisonings reported in connection with their product does not accurately reflect the true hazard. Senoret states that no adverse effects to children who have ingested their product have ever been reported to them.

Agency response. Although the use of arsenical ant baits has declined in recent years, the Agency has received sufficient documentation to conclude that exposure to ant baits containing sodium arsenate continues to be a leading cause of child poisonings. Terro Ant Killer is identified as the causative agent in the majority of the incidents involving sodium arsenate ant killers.

In 1985, the Colorado Pesticide Hazard Assessment Project completed a review of hospitalizations due to pesticide poisonings during the study period 1971 through 1976 (Ref. 11). The review was based on a 12 percent sample of hospital admissions. The review indicated that Terro Ant Killer was identified as the causative agent in 22 hospitalizations during the study period. Based on these data, it is estimated that Terro Ant Killer was responsible for an estimated 29 hospitalizations nationwide per year during the period 1971 through 1976. The estimated number of hospitalizations per year was calculated as follows: (observed number of incidents during the period 1971–1976x8)/6 years=29.

(Five sodium arsenate ant killers were specifically identified as the poisoning agent in the study. Those products are Terro Ant Killer, Jones Ant Killer, Jones Ant Poison, Fatsco Ant Poison, and "Ant button containing sodium arsenate". These five products were responsible for a total of 28 hospitalized poisonings during the study period 1971–1976. All sodium arsenate ant killers, including Terro, were responsible for an estimated 37 hospitalizations nationwide per year during the same period.)

Hospitalized cases receive treatments that are quite stressful for the child and the parents, including injections, pumping of the stomach, and administration of syrup of ipecac to induce vomiting. It should be noted that the treatment for exposure to arsenic puts an already traumatized child at further risk of injury or death.

Incident reports detailing arsenic exposures due to ant baits were submitted to the Agency from three Poison Control Centers: Blodgett Regional Poison Control Center in Grand Rapids, Michigan; the Children's Hospital Poison Control Center of Detroit, Michigan; and the Texas Tech University Health Sciences Center of Lubbock, Texas. The data are summarized in the following paragraphs.

a. Blodgett Regional Poison Control Center, Grand Rapids, Michigan. The response from Blodgett made reference to a study which analyzed the agents responsible for the arsenic exposures referred to the Center during 1985 (Ref. 12). The study showed that, from January 1, 1985 to December 31, 1985, 56 cases of acute arsenic exposure were referred to the Center. Fifty-five of the 56 cases were hospitalized.

Eighty-nine percent of all arsenic exposures treated at the Center during 1985 involved the product Terro Ant Killer. Further analysis of these cases revealed that 90 percent of the Terro cases were accidental exposures involving children age 7 and under. Of the childhood cases involving Terro, at least 38 cases, or 84 percent, involved oral contact with or ingestion of the bait station, where a few drops of the arsenic solution from the original container were dispensed either on cardboard, a piece of paper, a piece of cotton, or in a bottle cap. For the remainder of the cases, exposure was either directly from the container in which the product was packaged (a 1 or 2 fluid ounce bottle), or the specified method of exposure was not reported to the Center.

Of the 38 cases where the child was exposed to the ant killer from the bait station, 19 children (50 percent) had arsenic levels in the urine in excess of 50 micrograms per liter; 15 of the 19 children had arsenic levels in the urine in excess of 200 micrograms per liter. The treatment protocol at the Blodgett Regional Poison Control Center requires that arsenic levels greater than 200 micrograms per liter in the urine receive chelation therapy to remove the arsenic from the body. The Centers for Disease Control in Atlanta, Georgia considers an arsenic concentration of 50 micrograms or greater per liter in a 24 hour urine specimen to indicate excessive arsenic in that person (Ref. 13).

b. Children's Hospital Poison Control Center, Detroit, Michigan (Ref. 14). Thirty-seven cases of human exposure to arsenical pesticides were reported to the Center during 1986. Twenty-nine of the 37 incidents involved children under the age of 7 years old. Twenty six of the childhood exposures were due to Terro Ant Killer, and the remainder due to Jones Ant Killer, a sodium arsenate ant killer in a liquid sugar-based formulation. Of the 19 cases where the route of exposure was defined, 13 were due to ingesting or sucking on the bait station. Twenty of the 29 children underwent Emergency Room decontamination for arsenic, and 6 were hospitalized.

c. Texas Tech University Health Sciences Center, Lubbock, Texas. The Texas Tech University Health Sciences Center responded to the PD 2/3 in two separate letters. The first response indicated that, from January 1, 1986 through December 31, 1986, 20 calls identifying Terro Ant Killer as the causative agent in a pesticide exposure were received by the National Pesticides Telecommunication Network (NPTN), located at the Center.

The second response from the Center cited a study, summarized in a letter in the New England Journal of Medicine (Ref. 15), and published as an article in The Journal of Family Practice (Ref. 16). The study analyzed 20 cases of arsenic poisoning reported to the Minnesota State Board of Health from 1976 to 1979. Six of the cases were due to accidental exposure to Terro and five of the six were children. The study concluded:

> Although a variety of potential sources [of arsenic] exist, the present survey found that more than 80 percent of the poisoning cases with identified sources resulted from a readily available commercial ant insecticide (Terro Ant Killer). This agent was most prominent in the cases of childhood accidental exposure. As compared with earlier reviews, the results of the present survey suggest that arsenic use with homicidal intent and from accidental exposure to industrial sources is relatively rare. On the other hand, arsenic poisonings from ant insecticide are surprisingly high. As a result of the findings of this survey, a question exists whether the benefits of ant killers containing arsenic are sufficient to

justify the substantial morbidity associated with their use.

The Agency is concerned with the clear pattern of poisonings which emerges from these data. Although the data submitted to the Agency from various sources may appear somewhat inconsistent, the more recent data indicates that a substantial number of poisoning incidents may be occurring nationwide.

2. Senoret's comment on alternative active ingredients

Senoret states that the alternatives to sodium arsenate mentioned in the PD ⅔ are not acceptable in their formulation because: (a) they are to toxic and kill the ant before it can return to the nest to feed the larvae, or (b) they are not toxic enough, or (c) they have a detectable taste and would be rejected by foraging ants.

Agency response. The Agency has identified alternate pesticides and methods of application that are effective in controlling sweet-eating ants in domestic dwellings, and that do not pose the risks associated with liquid ant baits. Alternative active ingredients include chlorpyrifos, diazinon, propoxur, and boric acid. Alternative formulations and methods of dispensation include aerosol sprays and baits contained in packaging which precludes exposure to humans. Although these alternatives may not be as effective as Senoret's product in controlling sweet-eating ants, they are considered preferable alternatives by the Agency due to the negligible acute hazard posed by their use.

3. Senoret comment on calculation of dermal exposure

Senoret questioned the significance of the Agency's estimate in the PD ⅔ that spillage of 6 mL of sodium arsenate ant killer would result in a dermal exposure of 78 mg of arsenic per incident.

Agency response. The Agency presented estimates of dermal exposures for all minor uses where appropriate in the PD ⅔. An exposure estimate was prepared for liquid sodium arsenate ant killer assuming that 6 mL of a formulation containing 1.3 percent arsenic (metal) solution was accidentally spilled on the hands. This amount represents approximately ⅛ of a 2 fluid ounce bottle, and is considered a reasonable amount of pesticide to be spilled in a typical incident. Based on these assumptions, the Agency calculated the dermal exposure as follows: 6 mL(gm)×0.013(%)=0.078 gm arsenic/incident.

As discussed earlier, the risks resulting from dermal exposures to inorganic arsenicals were not quantified in the PD ⅔. Thus, this estimate merely represents the amount of metallic arsenic that could be found on the skin in the event of a spillage incident.

The Agency's primary concern with liquid ant baits containing sodium arsenate is acute oral toxicity, particularly to children. Based on the large number of documented poisoning incidents, the Agency has concluded that the risks clearly outweigh the benefits of use for these products. The Agency did not evaluate the risks of oncogenicity due to dermal exposure for the insecticidal use of sodium arsenate for reasons discussed in this document. Any additional risk due to dermal exposure would only heighten the Agency's concern. Consequently, the Agency has not modified its decision to cancel this use.

4. Jones' comments on PD ⅔

Jones Chemical Co., Ltd., is a formulator of sodium arsenate ant killers. Jones responded to the PD ⅔, stating that the negligible risk involved in the continued use of their product is far outweighed by the health and safety benefits to the users.

Agency response. Data available to the Agency indicate a large number of poisoning incidents associated with sodium arsenate ant killers such as Jones Ant Killer. (Refer to Unit IV.C.1 of this document for a complete discussion of the Agency's response to the acute hazards associated with the use of sodium arsenate ant baits.) Jones Ant Killer controls sweet-eating ants, which do not pose health or safety risks to the public. There are several alternatives available, such as diazinon, chlorpyrifos, boric acid and propoxur. The Agency believes that the demonstrated risks of this type of product far outweigh the limited benefits in controlling sweet-eating ants.

5. Comments from Grant Laboratories on the safety andeffectiveness of their product

Grant Laboratories manufactures an ant bait for use in and around domestic dwellings. Their product is marketed as a solid formulation of arsenic trioxide contained in a sealed metal container. Grant Laboratories commented on "the proven safety of the product". They claimed that the exposure estimates presented by the Agency in the PD ⅔ are for dust or liquid formulations and are not indicative of arsenic trioxide formulated as a solid. Grant Laboratories commented that their product is highly effective in controlling ants wherever they are a problem. They added that alternatives such as Baygon (propoxur) are not acceptable since they are too toxic.

Agency response. Pesticide poisoning statistics and reports do not indicate specifically that Grant's product poses a hazard to the public. The Agency concludes that based on the product formulation, its method of application, and packaging (sealed metal container), the product is effective in preventing accidental exposures; therefore, the registration for Grant's Ant Control product will be retained unchanged.

6. Perk Products and Chemical Co., Inc.'s comments on exposure hazard associated with the use of their product

Perk Products and Chemical Co., Ltd. manufactures a solid formulation of arsenic trioxide known as Perkerson's Mole-End for the control of moles. Perk has commented that since their product is solid and is dispensed below the ground into mole runs, it poses no threat to animals or children.

Agency's response. The Agency concurs with this comment. Accident report data do not indicate a pattern of poisonings associated with the use of this product. There is evidence that arsenic trioxide products manufactured as a solid for the control of moles, gophers, and pocket gophers are somewhat effective. Although the benefits associated with the use of this product are small, the risks posed to the public are negligible. Consequently, the registration for Perkerson's Mole-End will be retained unchanged.

V. Final Regulatory Decision

There are three options available to the Agency for regulating pesticides. One, registrations may be continued without change; two, the terms and conditions of registration may be modified; and three, registrations may be cancelled. The Agency has evaluated the risks and benefits of each of the non-wood preservative uses for the minor uses of the inorganic arsenicals and has reached the conclusions summarized below.

No responses to the Agency's proposed decision to cancel the registrations for the minor uses of inorganic arsenicals were received from environmental organizations, consumer groups, trade associations, agricultural associations, or the pest control industry. The USDA concurred with the Agency's proposed decision; the SAP waived its review.

The Agency has concluded that the oncogenic risks to mixer/loaders and applicators of products containing lead arsenate and sodium arsenite outweigh the minimal benefits of those products.

In all cases, effective and economic alternatives are already being used.

The Agency considered risk reduction measures short of cancellation which would reduce the oncogenic risk from lead arsenate and sodium arsenite pesticides. It was determined that the use of protective clothing such as respirators would not reduce the risks to an acceptable level in light of the virtually nonexistent benefits of these pesticides.

The Agency is cancelling the registration for the bait product containing calcium arsenate. In reaching this regulatory decision, the Agency has weighed the qualitative risks associated with the potential exposure to this pesticide versus the virtually nonexistent benefits of the product, which has not been manufactured or available for use for many years.

The Agency is cancelling all registrations for products containing sodium arsenate based on (1) the magnitude of the acute hazard to the public posed by these products, (2) the limited benefits of these products in controlling pests that pose no significant health or economic risks, and (3) the availability of alternatives that provide similar benefits with negligible demonstrated risk.

The Agency considered risk reduction measures short of cancellation that would reduce acute toxicity risks of the sodium arsenate ant bait products. The use of child-resistant bait stations was discussed with Senoret, manufacturer of Terro Ant Killer. This alternative was unacceptable to Senoret. In a correspondence with the Agency, Senoret stated (Ref. 17):

> Because Terro is a liquid with a high sugar content, it has a tendency to crystallize when exposed to the air. Within a couple of days Terro is as hard as a rock and is not attractive to ants at all. For this reason, we tell people to only put Terro out when ants are seen. Because of its liquid state it puts severe limitations on placing the formula in a metal can ant trap. The semiperforated holes in these cans (which the consumer punches out) allow enough air to enter to dry out the bait inside. This applies not only to Terro, but to other formulations as well.

The Agency has concluded that there is no measure short of cancellation to reduce the documented risk of acute poisoning from sodium arsenate ant bait products.

The Agency is cancelling all registrations for non-wood preservative pesticide products containing arsenic trioxide (with the exception of the solid formulation to control moles, gophers, and pocket gophers, and the solid formulation packaged in a sealed metal container used to control ants), based on: (1) acute toxicity hazards, (2) the availability of alternatives, and, (3) in the case of registrations to control mice and rats, lack of effectiveness.

The solid formulation of arsenic trioxide used to control moles, gophers, and pocket gophers and the solid formulation of arsenic trioxide packaged in a sealed metal container used to control ants will be retained. The Agency has concluded that these uses of arsenic trioxide are effective in controlling the subject pests. The risks posed from use are negligible. Consequently the benefits, even though minimal, outweigh the negligible risks.

A. Registrations Cancelled by This Notice

Based on the risk/benefit information presented in this document and detailed in the referenced documents, the Agency will cancel all registrations for non-wood preservative pesticidal products containing the inorganic arsenicals lead arsenate, sodium arsenite, calcium arsenate, arsenic trioxide, and sodium arsenate, with the exception of the products registered for the uses detailed in Units V.B. and V.C. of this document.

B. Continued Registration Without Change

Based on the risk/benefit analysis discussed in this Notice, the following registrations will be retained without change:

1. *Arsenic trioxide insecticide use (solid formulation manufactured in a sealed metal container only) for:*

Domestic outdoor—domestic dwellings

Domestic indoor—domestic dwellings

2. *Arsenic trioxide mole, gopher, and pocket gopher killer use (solid formulation only) for:*

Domestic outdoor—domestic dwellings

Terrestrial non-food crops—golf courses, ornamental plants and lawns, non-crop areas

C. Registrations Not Considered in This Action

Consideration of the lead arsenate plant growth regulator use on grapefruit, the sodium arsenite fungicide use on grapes, the desiccant uses of arsenic acid on okra (grown for seed) and cotton, and the flowable formulation of calcium arsenate for use on turf is deferred pending the Agency's Risk Assessment Council's reassessment of the carcinogenic potency of inorganic arsenic for dermal exposure and the receipt of dietary exposure data required under authority of section 3(c)(2)(B) of FIFRA.

D. Existing Stocks and Disposal Provisions

Pursuant to FIFRA section 6(a)(1), "the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration [is cancelled pursuant to this Notice] to such extent, under such conditions, and for such uses as he may specify, if he determines that such sale or use is not inconsistent with the purposes of [FIFRA] and will not have unreasonable adverse effects on the environment". The Agency has determined that the sale and use of existing stocks of the inorganic arsenical products subject to this Notice is inconsistent with FIFRA, and will cause unreasonable adverse effects on the environment. The risks and benefits of the inorganic arsenical products subject to this Notice, have been discussed above in detail in this Notice, and the Agency does not believe that there are any factors which would change this balance such to warrant the sale and distribution or use of existing stocks for any time period beyond the date of cancellation. Of particular concern are the inorganic arsenical products which pose a risk of acute poisoning to children. The Agency does not believe that allowing the sale and use of existing stocks of such products would be at all reasonable or prudent. To allow such sale and use would only put additional children at risk, without providing any more than negligible benefits.

Accordingly, the Agency will not permit the continued sale, distribution and use of existing stocks of the inorganic arsenical products subject to this Notice beyond the date of cancellation of such products' registrations.

For purposes of this Notice, "existing stocks" are defined as any quantity of inorganic arsenical products subject to this Notice that has been formulated, packaged and labeled for use and is being held for shipment or release or has been shipped or released into commerce prior to the date by which the registration of the product is cancelled pursuant to this Notice.

Registrants are required to contact their distributors of inorganic arsenical products subject to this Notice within five working days of August 1, 1988. To inform them of time limitations on distribution and sale of any existing stocks subject to this Notice, which may be in the possession of each such distributor. Registrants are also required to establish and maintain a record indicating the date of contact for each such distributor.

Any existing stocks provisions previously issued in conjunction with voluntary cancellation of the registration of products subject to this Notice are superceded by the existing stocks determination set forth in this Notice. After August 1, 1988. No person may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, or use any existing stocks of products subject to this Notice. Any registrant who voluntarily cancelled a registration of an inorganic arsenical product subject to the cancellation action announced in this Notice, and who has become subject to the existing stocks determination in this Notice may petition the Agency to allow the continued sale and distribution of existing stocks of such products. In order to receive consideration by the Agency, this petition must be submitted by August 1, 1988.

Any such request should include information concerning the extent of existing stocks of the registrant's inorganic arsenical products and should contain factual information sufficient to support a finding that continued sale and use of existing stocks will not be inconsistent with the purposes of FIFRA and will not result in unreasonable adverse effects on the environment.

Persons holding any existing stocks which may no longer be sold or distributed pursuant to this Notice must dispose of such stocks in accordance with the applicable requirements of the Resource Conservation and Recovery Act (RCRA).

VI. Procedural Matters

This Notice announces the Agency's final decision to cancel all registrations and deny applications for the minor uses of the inorganic arsenicals except for the mole killer use of arsenic trioxide in a solid formulation, and the ant killer use of arsenic trioxide in a solid formulation and contained in a sealed metal container. This denial of application applies to all intrastate products subject to this Notice whether or not an application for federal registration was in fact submitted for such products as required by the Preliminary Determination of January 2, 1987. Under FIFRA sections 6(b)(1) and 3(c)(6), applicants, registrants, and certain other adversely affected parties may request a hearing on the cancellation or denial actions that this Notice initiates. Any hearing concerning cancellation or denial of the application for any inorganic arsenical pesticide product subject to this Notice will be held in accordance with FIFRA section 6(d). Unless a hearing is properly requested in a timely fashion with regard to a particular registration, the application for the registration will be cancelled or denied, as appropriate.

A. Procedures for Requesting a Cancellation or Denial Hearing

Registrants, applicants, and other interested parties who are adversely affected by any decision to cancel or deny the registration of minor use inorganic arsenical products are entitled to request a hearing in which to contest EPA's final decision to cancel or deny the registration(s). Under FIFRA, such persons must submit their requests for a hearing within 30 days from receipt of this Notice or from its publication in the **Federal Register**, whichever is later. Hearing requests must contain information concerning the basis of the request. If a timely, properly formulated hearing request is submitted, the product registrations which are the subject of the request will remain in effect during the cancellation hearing. Similarly, applications for registration with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, registration of that product will be cancelled, or the application for that registration will be denied. A final cancellation will have the effect of prohibiting further sale and distribution of the product.

All registrants, applicants, and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require that all requests must identify the specific registration(s) by Registration Number(s) and the specific use(s) for which a hearing is requested. The hearing request must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice Governing Hearings under section 6 (40 CFR Part 164). In the event of a hearing, each cancellation or denial action concerning the specific use or uses of the specific registered product which is the subject of the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing.

The hearing will be limited to the specific registrations for which the hearing is requested.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation or denial of a registration for a specific inorganic arsenical product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30-day period, registration of that product will be cancelled or the application will be denied.

B. Separation of Functions

The Agency'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 his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of the Agency in any administrative hearing on this Notice of Intent to Cancel and Deny Applications: The Office of Administrative Law Judge, the Office of the Judicial Officer, the Deputy Administrator and the members of the staff in the immediate office of the Administrator. None of the persons designated as the judicial staff may have an *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 these proceedings, without fully complying with the applicable regulations.

VII. Public Docket

Pursuant to 40 CFR 154.15, EPA has established a public docket for the Inorganic Arsenicals Special Review. The public docket includes (1) this Notice; (2) any other notices pertinent to the Inorganic Arsenicals Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to EPA in response to this Notice, and any other Notice, regarding the inorganic arsenicals

submitted at any time during the Special Review process by any person outside government; (4) memoranda describing each meeting held during the Special Review process between EPA personnel and any person outside government pertaining to the minor uses of the inorganic arsenicals, and; (5) a current index of materials in the inorganic arsenicals public docket.

VIII. References

The references used in this **Federal Register** Notice are listed below:

(1) USEPA, ORD, "Health Assessment Document for Inorganic Arsenic—Final Report", (March 1984) (EPA-600/8-83-021F).

(2) Jacobs, William W. "Comments on Risk/Benefit, Summary: Inorganic Arsenicals (Non-Wood uses) Recommendations for Rodenticide Uses". EPA memorandum of August 2, 1985.

(3) Letter from John O. Roberts, President, Senoret Chemical Co., Inc., to Douglas McKinney, Review Manager, USEPA, (January 26, 1987).

(4) Letter from Richard W. Wall, Director of Marketing, Grant Laboratories, to Douglas McKinney, Review Manager, USEPA, (February 6, 1987).

(5) Letter from John Dahlk, President, Jones Products, Inc., to Information Services Section, PMSD/OPP, USEPA, (February 13, 1987).

(6) Letter from Richard V. Perkerson, Jr., Perk Products & Chemical Co., Inc., to Information Services Section, PMSD/OPP, USEPA, (February 25, 1987).

(7) Letter from Regine Aronow, M.D., Director, Children's Hospital Poison Control Center, Detroit, Michigan to Jerome Blondell, USEPA, (November 25, 1987).

(8) Letter from J. Thomas Hutton, M.D., Ph.D, Professor, Texas Tech University Health Sciences Center, Lubbock, Texas to Jerome Blondell, USEPA, (May 1, 1987).

(9) Letter from Anne M. Watson, Pesticide Specialist II, National Pesticide Telecommunications Network, Texas Tech University Health Sciences Center, Lubbock, Texas to Douglas McKinney, Review Manager, USEPA, (March 17, 1987).

(10) Letter from Nancy Dobrenski, Administrative Secretary, Blodgett Regional Poison Center, Grand Rapids, Michigan to Jerome Blondell, USEPA, (December 9, 1987).

(11) Keefe, T.J., Savage, E.P., Munn, S., and H.W. Wheeler, "Evaluation of Epidemiological Factors from Two National Studies of Hospitalized Pesticide Poisonings, U.S.A.", (EPA Report, 1985).

(12) Kersjes, M.P., J.R. Maurer, J.H. Trestrail, "An Analysis of Arsenic Exposures Referred to the Blodgett Poison Control Center". *Vet Hum. Toxicology* 29 (1) (February 1987).

(13) Gedrose, J.K. "Reduction of Children's Arsenic Exposure Following Relocation—Mill Creek, Montana". Morbidity and Mortality Weekly Report, Vol. 36, No. 30, pp. 505-507, (August 7, 1987).

(14) Letter from Regine Aronow, M.D., Director of the Children's Hospital Poison Control Center, Detroit, Michigan to Douglas McKinney, Review Manager, USEPA, (June 5, 1987).

(15) Letter from Thomas J. Hutton, M.D., Ph.D., Bonna L. Christians, M.A., and Raye Lynne Dippel, Ph.D., Letter to the Editor, The New England Journal of Medicine, (October 21, 1982).

(16) Hutton, Thomas J., and Bonna L. Christians, "Sources, Symptoms and Signs of Arsenic Poisoning". *Journal of Family Practice* 17, No. 3, pp. 423-426, (1983).

(17) Letter from John O. Roberts, President, Senoret Chemical Co., Inc. to Douglas McKinney, Review Manager, USEPA, (March 20, 1987).

Dated: June 21, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-14719 Filed 6-29-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of the Expiration Date.

Title: Request for Fire Suppression Assistance.

Abstract: As soon as it is determined that the threat of a major disaster exists from an on-going fire or fires on publicly or privately owned forest or grassland, a State may request Federal assistance for fire suppression. The State must submit FEMA Form 90-58, Request for Fire Suppression Assistance. Additional supporting information may be furnished by the State or requested by FEMA after the initial request has been submitted. Upon approval, FEMA will provide assistance, including grants, equipment, supplies and personnel, to aid any State in the suppression of any fire.

Type of Respondents: States.

Number of Respondents: 5.

Burden Hours: 20.

Frequency of Recordkeeping or Reporting: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: June 23, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-14739 Filed 6-29-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, 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.: 224-200131.

Title: Commonwealth Ports Authority Terminal Agreement.

Parties:

Commonwealth Ports Authority
Tinian Marine Stevedore, Inc.

Synopsis: The agreement permits Tinian Marine Stevedore, Inc., to operate a stevedoring/terminal warehouse business and container storage yard on lot 017 T 01-B at the Commercial Port of Tinian.

Agreement No.: 224-200129.

Title: L.A. Cruise Ship Terminals, Inc. Terminal Agreement.

Parties:

L.A. Cruise Ship Terminals, Inc.
Metropolitan Stevedoring Company (Metropolitan)

Synopsis: The agreement provides that Metropolitan will provide passenger vessel terminal services for L.A. Cruise Ship Terminals, Inc. at terminal facilities at Berths 90, 91, 92, and 93A, B, C, and D at San Pedro, California.

Agreement No.: 224-200130.
Title: Commonwealth Ports Authority Terminal Agreement.
Parties:

Commonwealth Ports Authority
Tinian Stevedores, Inc.

Synopsis: The agreement permits Tinian Stevedores, Inc., to operate a stevedoring/terminal warehousing business and a container storage yard on Lot 017 T 01-A at the Commercial Port of Tinian.

Agreement No.: 224-200132.
Title: Commonwealth Ports Authority Terminal Agreement.
Parties:

Commonwealth Ports Authority
Tinian Marine Stevedore, Inc.

Synopsis: The agreement permits Tinian Marine Stevedore, Inc., to operate a cold storage warehouse, a dry cargo warehouse, and a container yard on Lot 018 T 01 at San Jose Harbor, Tinian.

Agreement No.: 224-200133.
Title: The Port Authority of New York and New Jersey Terminal Agreement.
Parties:

The Port Authority of New York and New Jersey
Sea-Land Service, Inc.

Synopsis: The agreement provides for the operation of the Elizabeth-Port Authority Marine Terminal in Elizabeth, New Jersey. It expands Sea-Land's right to berth vessels at the terminal berthing area and provides for specified additional rental payments for cargoes loaded onto or discharged from berthed vessels. The Agreement supersedes Agreement No. 224-200053.

Agreement No.: 224-010730-002.
Title: Port of Los Angeles Waiver Agreement.
Parties:

City of Los Angeles
L.A. Cruise Ship Terminals, Inc.

Synopsis: The agreement provides that the City has agreed to waive certain tariff penalty charges which L.A. Cruise Ship Terminals, Inc. incurred at its Terminal pursuant to Port of Los Angeles Tariff Item 1227 and Permit No. 506.

By Order of the Federal Maritime Commission.

Dated: June 24, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-14681 Filed 6-29-88; 8:45 am]

BILLING CODE 6730-01-M

Use of High Cube Containers in the U.S./Japan Trade; Investigations, Hearings, Petitions, etc.

The Federal Maritime Commission ("Commission" or "FMC") initiated this inquiry into the use of high-cube continers [1] in the United States/Japan Trade ("Trade") in order to assess the impact of Japanese laws, rules and regulations restricting the ability of ocean carriers to use this equipment and to determine whether commission action is warranted under section 19(l)(b) of the Merchant Marine Act of 1920 ("Section 19"), 46 U.S.C. app. 876, "to adjust or meet * * * conditions unfavorable to shipping in the foreign trade * * * which arise out of or result from foreign laws, rules or regulations * * *."

The Commission has issued a series of orders pursuant to section 15 of the Shipping Act of 1984, 46 U.S.C. 1714,[2] requesting information from carriers serving the Trade on their opportunity for and acutal use of high-cube containers in the Trade. The most recent order, the Commission's Second Supplemental Sectin 15 Order, requested the carriers to update the information received as a result of the Commission's previous orders on the subject, and to provide date for a full calendar year upon which comparison and analysis of progress could be based.

The responses to the Commission's section 15 Orders indicate that there has been a marked increase in the use of high cube containers by all categories of carriers in the Trade since the Commission initiated this inquiry. The major changes in the processing of route and trip applications for the movement with Japan of high-cube containers appear to have been made in the June 1986 Guidelines, issue by the Government of Japan shortly after the Commission served its first section 15 Order. Although there have been only a few additional changes simplifying the process since then, and no changes in the laws themselves, the over-all reduction of the paperwork burden seems to have been substantial. The approval of many more routes for carrier use since the inception of the Commission's inquiry has also been of substantial benefit to the carriers and has increased shipper use of the high cube equipment. The carriers' responses to the most recent section 15 Order are summarized in more detail below.

Summary of Carriers' Responses to the Second Supplemental Section 15 Order

The Commission's Second Supplemental Section 15 Order directed the twenty-three carriers that responded to the two section 15 Orders issued in 1986 to update their responses with information through August 31, 1987. Five carriers did not provide data in response to the Second Supplemental Order. Of these, one carrier did not response because it had left the Trade. The four other carriers said they were not involved in transporting high-cube containers in the trade between the U.S. and Japan during the relevant reporting period.

The volume of high-cube containers moving in the westbound United States to Japan trade ("Westbound Trade") increased between September 1986 and August 1987. It should be noted that the Japanese carriers in particular have made substantial gains in moving high-cube containers in the Westbound Trade since Septembe 1986. U.S.-flag and third-flag carriers, in general, have not increased their carriage of high-cube containers to the same extent as the Japanese-flag carriers. One major exception to this, which accounted for the dramatic increase in the number of high-cube containers moved by third-flag carriers, was a European carrier whose carriage of high-cube containers represents 60 percent of the total high-cube containers transported by third-flag carriers during the period from January 1986 through August 1987. Taiwanese and Korean-flag operators have also shown an increase in carrying high-cube containers.

U.S.-flag carriers transported 1,597 high-cube containers during the period from January through August 1986 and 2,726 high-cube containers from January through August 1987. This represents a 71 percent increase in the transport of high-cube containers in the Westbound Trade by U.S.-flag operators. Japanese-flag carries also boosted their transport of high-cube containers for the same periods by 362 percent and third-flag carriers by 247 percent.

Overall, the number of high-cube containers moved in the Westbound Trade rose from 2,823 for the period January through August 1986 to 7,759 for

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[1] A "high-cube container" is 9'6" high, rather than the standard 8'6" height for marine containers.

[2] Section 15 authorizes the FMC to require any common carrier to file any periodic or special report pertaining to the business of that carrier.

the period January through August 1987. This represents an increase of 175 percent in the total number of high-cube containers transported over-the-road in Japan in the Westbound Trade.

While the percentage increase in the volume of high-cube containers in the eastbound Japan to United States Trade ("Eastbound Trade") has not been as dramatic as those in the Westbound Trade for the same time periods, U.S.-flag carriers did increase their carriage of high-cube containers by 103 percent, the Japanese-flag carriers by 112 percent and third-flag carriers by 128 percent. Overall, the volume of high-cube containers in the Eastbound Trade rose from 4,814 units to 10,208 units, a 112 percent increase.

In general, the Japanese-flag carriers accounted for 46 percent of the total number of high-cube containers transported in the Eastbound Trade during the period January 1986 through August 1987; the U.S.-flag share of the market was 33 percent; and, third-flag carriers moved 21 percent of high-cube containers in the trade. The relative market shares of each group of carriers did not change much from one period to another. For example, the U.S.-flag share was 35 percent of all the high-cube containers moved in the Eastbound Trade from January-August 1986 and was 33 percent for the period January through August 1987.

Thirteen of the eighteen responding carriers said that they did not submit any route applications to the Japan Container Association ("JCA"), that the JCA did not submit any route applications [3] on their behalf, and hence that the Government of Japan did not approve or deny any route applications during this period. All of these thirteen carriers said that they were unaware of any change in the route approval process (since the June Guidelines).

Of the five remaining carriers, U.S.-flag carriers had submitted 309 route applications through the JCA, of which 189 routes had been approved by the Government of Japan, 67 route applications had been denied and 53 applications were pending. The three third-flag carriers in this group had submitted 1,644 route applications, had 820 approved, 744 denied, and 80 additional routes were pending approval by the Government of Japan.[4] These carriers had routes denied on the grounds of low clearance, narrow roads and intersections, exceeded weight limits for bridges and pavement, road construction, a relatively high degree of traffic congestion, insufficient offloading area, inadequate description on applications, and other unnamed reasons. It appears that about half of the route applications of some carriers were denied on the grounds listed above. One carrier, however, mentioned that 49 of its 452 route applications were denied without reason, althought it listed several possible reasons for disapproval, such as imperfect application or overlap of route arrangement.

The five carriers that submitted route applications basically said that there was little change in the application and approval process. One carrier did mention that the application process has been simplified since September 30, 1986 and another noted that it no longer had to attach a copy of the Ministry of Transportation ("MOT") registration for both tractors and chassis when applying for route approval.

The data submitted indicate that the number of shippers requesting the use of or expressing an interest in using high-cube containers has increased 94 percent from 167 to 324 shippers. These figures do not include any increased shipper requests made to Japanese-flag carriers because none of those carriers provided such data. The Japanese-flag carriers advised they do not keep records which indicate if a shipper requested the use of high-cube containers or if the carrier supplied high-cube containers at its discretion. Nonetheless, because the volume of high-cube containers transported in the Trade has increased and most of the responding carriers have experienced a greater number of shippers either requesting the use of or expressing interest in using high-cube containers, it is reasonable to assume that the Japanese-flag carriers have also experienced this upward trend of shippers requesting high-cube containers.[5]

Several carriers said that the volume of paper required for the route application process was reduced primarily due to the elimination of the requirement for the inclusion of copies of inspection certificates for trucks, chassis, and other types of equipment. Also, many of the lines mentioned the simplification of the police trip application process. However, route maps are still required. Many carriers like the flexibility of being able to operate 24 hours a day and consider this to be helpful in meeting shipper needs.

Other carriers point out that the June Guidelines benefit truckers because the route application procedure is really handled by the trucking companies. Nonetheless, carrier operations are said to also benefit from a more simplified, less time-consuming route approval process. Several carriers advised that since the June Guidelines were implemented, 250 routes have been approved by the Japanese Government which brings the total to 527 approved routes for transport of high-cube containers.[6] This is seen by the carriers as a greater opportunity to accept requests of shippers to use high-cube containers.

While most carriers seem to agree that implementation of the June Guidelines has led to a more simplified route application process, they are quick to point out that there has been no real change in Japanese laws concerning movement of high-cube containers over-the-road in Japan. Several carriers believe that all routes should be open to high-cube container transport unless it is physically impossible to move high-cube containers on that route (*i.e.*, due to height limitations in tunnels, narrow bridges, etc.). They are concerned that they are unable to use their high-cube equipment efficiently and enhance service to the shipping public. Several carriers point out that shipper interest in using high-cube containers is growing in proportion to the increase in the number of approved routes. In other words, business opportunities with respect to increased use of high-cube containers might grow even faster if there were no road restrictions.

Despite the fact that there has been much improvement, there are certain areas where a greater relaxation of restrictive practices towards the use of high-cube containers would prove beneficial. The carriers appear to accept the need for route approval by the Government of Japan, but they believe that applications should be processed expeditiously—*i.e.*, within 30 days and on a first-in, first-out basis rather than processing groups of applications.

Another area in which improvement is desirable is the trip permit approval process. One carrier submits that once a

[3] Japanese road laws and regulations require that the route over which a high-cube container will be moved be approved prior to transit.

[4] However, we note that it is unclear in two of these submissions if the reported information is just for the period August 1, 1986 through August 31, 1987 or includes all route applications submitted for approval. The responses of these carriers to this question may apply to all route applications.

[5] In this connection we note the report in the December 3, 1987 *Journal of Commerce*, that one Japanese-flag carrier is spending $42 million on 1,800 dry cargo and 700 refrigerated high-cube containers for use in its trans-Pacific service.

[6] Obviously, these numbers are composites which reflect the duplicative identification of and application for routes inherent in applying the approval process to the operations of each line.

route has been approved by the Ministry of Construction, high-cube containers transportation should be accommodated in the same way as 8'6" containers are. The point being made here is that carriers should not be required to secure local police approval to transport a high-cube container because no such requirements exist for transport of a 8'6" container.

Furthermore, it is noted that while local police permits are valid for one year, a firm may have to apply more than once a year. This is said to result from the fact that tractor and chassis inspection certificates are issued by the MOT and a trip permit, which depends upon vehicle licenses, is only issued thereafter by the National Police Agency ("NPA") with a different expiration date. It is suggested that, if the police trip permit procedures must be retained to accommodate the balance between the local and national government jurisdictions, the permits be of indefinite duration when granted and not fixed at one year intervals.

An additional high-cube transportation problem alluded to in the carrier responses results from the requirement that a carrier must seek approval for an entire route if the pickup or delivery points are located more than three kilometers off an already approved trunk road. The point is made that if a carrier employs more than one side road or deviates more than three kilometers, it must submit a new application for the entire route to the Japan Container Association, Ministry of Construction, and the National Policy Agency for approval. A shortened approval process limited to the side route is therefore urged.

Discussion

The extent of improvements in the ability of ocean carriers to use high cube containers for movements to and from Japan as a result of the Commission's inquiry appears to have been substantial. However, the process and amount of paperwork still required to secure approval for such movements continues to burden, albeit to a much more limited degree, the full and efficient use of carriers' equipment based on commercial considerations. The inefficiencies inherent in the high-cube transportation approval process will continue to affect carriers so long as the Japanese Government, through existing legislation and regulations, treats such movements as exceptions which require approval by some government entity.

However, no carrier is presently expressing perturbance with the system as it is presently functioning. No carrier requested in response to the Second Supplemental section 15 Order that the Commission take section 19 or other action. Nor has any carrier chosen to voluntarily update its response since the close of the last reporting period, or otherwise brought to the Commission's attention a perceived need for further FMC involvement. The carriers appear to have come to terms with the system as it is presently operating and are generally satisfied with the improvements achieved to date. In short, the transportation of high-cube containers on Japanese roads no longer appears to be an "issue" for carriers operating in the Trade.

Nevertheless, and as discussed above, the carriers' responses do identify ways in which the approval process might be rendered more benign. Althought the Commission would hope to see some of these suggestions adopted by the Japanese Government, we are now confident that this is as likely to occur as a matter of normal government accommodationdo commercial necessity and efficiency as it would from continued FMC scrutiny. While the Commission might continue to monitor progress through mandated periodic reports from the carriers, we believe the reporting burdens would not justify the returns to be expected. Moreover, in the absence of current concerns voiced by the U.S.-flag or third-flag carriers in the Trade, no reasons to pursue a Section 19 proceeding appears to exist. Therefore, no further action by this agency appears necessary at present. The Commission will, of course, continue to be receptive to any rquest for Commission consideration of problems in the Trade should the need arise in the future.

Conclusion

The Commission is gratified by the progress and improvements made to date in achieving greater flexibility for carriers in the use of high-cube equipment. As outlined above, we believe that the remaining impediments to the movement of high-cube containers in Japan are not of sufficient magnitude to warrant further FMC action either under section 19 or section 15 at this time.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-14748 Filed 6-29-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 23, 1988.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Request for OMB Approval To Extend, Without Revision, the Following Report

Report title: Annual Report of Trust Assets.

Agency form number: FFIEC 001.

OMB Docket number: 7100-0031.

Frequency: Annual.

Reporters: State member banks with trust powers, and trust company subsidiaries of bank holding companies not otherwise supervised by a federal banking agency.

Annual reporting hours: 2,250.

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a) and 1844(a)] and is not given confidential treatment.

This interagency report is the only report on fiduciary asset totals and activities. It is used to monitor changes in the volume and character of discretionary trust activity, the volume of nondiscretionary trust activity, and the resource needs for supervisory

purposes. The data are also used for statistical and analytical purposes.

Board of Governors of the Federal Reserve System, June 23, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14702 Filed 6-29-88; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

June 24, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following reports, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fourteen calendar days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Report

1. *Report title:* Report of Proceeds From Outstanding Sales to Nonexempt Entities of Short-Term Loans Made Under Long-Term Lending Commitments.

Agency form number: FR 2916.

OMB Docket number: 7100-0087.

Frequency: Weekly.

Reporters: Depository institutions.

Annual reporting hours: 650.

Estimated average hours per response: ¼ hour.

Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a), 461 and 3105(b)(2)] and is given confidential treatment [5 U.S.C. 552 b(4) and b(8)].

The FR 2916 report will collect information on the proceeds of sales to nonexempt entities of short-term loans made under long-term lending commitments that are included in the respondent's weekly FR 2900 report. The report will be collected weekly from those depository institutions that file the FR 2900 report weekly and that have more than $1 million of such sales outstanding any day of the week. The FR 2916 report will be used to determine the size of this activity in order to assess its effects on the demand for reserves and to make appropriate adjustments in the monetary aggregates.

Board of Governors of the Federal Reserve System, June 24, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14703 Filed 6-29-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA220-08-4322-12]

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's (BLM) Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the BLM's Clearance Officer and to the OMB Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7350.

Title: Range Improvement Permit, 43 CFR Part 4120.

Abstract: This form is used by permittees authorized to graze livestock on the public lands to apply for approval by the BLM to construct or maintain range improvements on the public lands.

Bureau Form Number: 4120-7.

Frequency: Occasionally.

Description of Respondents: Applicants requesting permission to construct range improvements.

Annual Responses: 60.

Annual Burden Hours: 20.

BLM Clearance Officer (alternate): Rick Iovaine (202)653-8853.

Date: March 21, 1988.

Dean Stepanek,

Assistant Director for Land and Renewable Resources.

[FR Doc. 88-14705 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-84-M

Availability of a Final Environmental Impact Statement and Record of Decision for the Aptus Industrial and Hazardous Waste Treatment Facility, Utah

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement and proposed record of decision.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), BLM has prepared a Final Environmental Impact Statement (FEIS) and a Proposed Record of Decision (ROD) on the Aptus Industrial and Hazardous Waste Treatment

Facility proposed for Tooele County, Utah. The decision includes amending BLM's Tooele Management Framework Plan.

The FEIS analyzes the environmental impacts of the proposed transfer, storage, and incineration facility, and the transportation and utility corridors, through construction, operation, and closure. It addresses the impacts of Aptus' Proposed Action (the Aragonite Alternative); the Skunk Ridge Alternative; the Clive Alternative; the Aragonite and Clive Alternative; and the No Action Alternative. All sites are located in Tooele County, approximately 70 miles west of Salt Lake City along Interstate Highway 80. The FEIS also addresses the amendment of BLM's Tooele MFP to allow a proposed land exchange to take place.

The incenerator would be designed to thermally destruct both "hazardous" chemical waste materials, as defined under the Resource Conservation and Recovery Act (RCRA) and "toxic" chemical waste materials, as defined under the Toxic Substance Control Act (TSCA). The proposed facility would incinerate up to 10 tons of wastes per hour at approximately 7,000 operating hours per year. The transfer and storage area would operate 365 days a year, 24 hours a day. While the actual facility is proposed to be constructed on private land, the transportation and utility corridors would cross Federal land administered by the BLM. A land exchange is also proposed as part of all alternatives except No Action.

BLM's proposed decision to the (1) provide Aptus with rights-of-way necessary to develop the Aragonite site, and (2) amend the Tooele Management Framework Plan to make 1,120 Federal acres at the Aragonite Site Available for disposal through exchange. The location of this acreage is: T. 1S,R.10W, S½ NW¼ and S½ Sec. 4; E½ SE¼ Sec. 5; and Sec. 9. A decision regarding exchange of the above lands with Aptus will be made after offered lands are identified and related NEPA requirements are met.

A limited number of the FEISs and RODs are available upon request at the following BLM offices:

Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Utah State Office, 324 South State, Suite 301, CFS Building, Salt Lake City, Utah 84111-2303.

Public reading copies are also available at public libraries in Salt Lake City and Tooele, Utah.

BLM's decision is subject to protest by any adversely affected party who participated in the review and comment process. Protests must be made in accordance with the provisions of 43 CFR 1610.5-2 and submitted to: Director Bureau of Land Management, 18th and C Streets NW. Washington, DC 20240.

Protests must be received by the Director, Bureau of Land Management, within 30 days after the date of publication of the Notice of Availability of the Final EIS in the **Federal Register** by the Environmental Protection Agency.

FOR FURTHER INFORMATION CONTACT: Mr. John Stephenson at (801) 524-6762.

Date: June 21, 1988

Kemp Conn,

Acting State Director.

[FR Doc. 88-14746 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-08-4333-11]

Environmental Statement; Moab District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public comment periods on two draft programatic environmental assessments analyzing impacts of commercial recreation guide service within certain Wilderness Study Areas and an animal damage control program within portions of the Moab District.

SUMMARY: The first draft programatic environmental assessment has been prepared in response to proposed uses and anticipated applications for commercial special recreation permits to conduct activities such as guided horseback trips, guided hunting trips, guided 11ama supported hiking trips, and educational tours into selected locations within Desolation Canyon UT-070-068A, Floy Canyon UT-060-068B, Coal Canyon UT-060-100C2, Spruce Canyon UT-060-100C1, Flume Canyon UT-060-100B, Black Ridge Canyons West UT-060-116/117, Westwater Canyon UT-060-118, Lost Spring Canyon UT-060-131B, Negro Bill Canyon UT-060-138, Mill Creek Canyon UT-060-139A, Behind the Rocks UT-060-140A, Indian Creek UT-060-164, Bridger Jack Mesa UT-060-167, Butler Wash UT-060-169, Cheesebox Canyon UT-060-191, Mancos Mesa, UT-060-181, Road Canyon UT-060-201, Fish Creek UT-060-204, Mule Canyon UT-060-205B, Squaw Canyon UT-060-205B, Squaw Canyon UT-060-227, Cross Canyon UT-060-229, Dark Canyon Complex ISA, and UT-060-175, and the Grand Gulch Complex ISA, UT-060-181, UT-060-196, UT-060-197/198, and UT-060-224.

The second draft environmental assessment has been prepared to analyze the impacts of the animal damage control program in Moab District. This program is conducted by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). Eighteen Wilderness Study Areas fall within livestock grazing allotments that have current agreements with APHIS for animal damage control. Under the proposed action, limited animal damage control actions could be allowed within Wilderness Study Areas within the Moab District. Such actions would only be allowed subsequent to confirmed livestock losses on a case-by-case basis.

Interested parties may comment upon the recreation environmental assessment for a period of 30 days, and the animal damage control environmental assessment for a period of 45 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Moab District P.O. Box 970, Moab, Utah 84532. Copies of the draft Environmental Assessment are available upon request.

Gene Nodine,

District Manager.

[FR Doc. 88-14785 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-050-4410-02]

Advisory Council Meeting; Ukiah, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94-579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Redding, California, August 4-5, 1988, to discuss issues and alternatives to be addressed in a resource management plan for public lands in the Bureau's Redding Resource Area.

DATES: The meeting will begin at 10:00 a.m., Thursday, August 4, 1988, and adjourn at 3:00 p.m., Friday, August 5, 1988.

ADDRESS: The meeting will be held at the Bureau of Land Management Office, 355 Hemsted Drive, Redding, California. A portion of Thursday and Friday will be spent visiting some of the public land parcels to be considered in the resource management plan.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie

Street, Ukiah, California 95482; (707) 462-3873.

SUPPLEMENTARY INFORMATION: The Redding Resource Area is responsible for the management of approximately 230,000 acres of public land scattered throughout the five-county area of Siskiyou, Trinity, Shasta, Tehema, and Butte. Predominant uses of the public lands are timber harvesting, grazing, mining, wildlife habitat, recreation, and rights-of-way.

The meeting is open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 1:00 p.m. Thursday, August 4, 1988. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Date: June 22, 1988.

Edwin G. Katlas,

Acting District Manager.

[FR Doc. 88-14781 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-40-M

[AZ-920-08-4212-13; A-18992]

Exchange of Public Land and Private Mineral Estate in Mohave County, AZ

June 20, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange.

SUMMARY: This action informs the public of the completion of an exchange between the United States and New Mexico and Arizona Land Company. The United States transferred 142.00 acres of public land in Mohave County and accepted title from New Mexico and Arizona Land Company on 56,796.20 acres of private mineral estate in Mohave County.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: On June 10, 1988, the Bureau of Land Management issued Patent No. 02-88-0034 and Deed No. AZ-88-009, pursuant to the Federal Land Policy and Management Act of October 21, 1976. The deed transferred the following described land:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 20 W.,
Sec. 9, lots 2 and 3, SW¼NW¼, N½N½ N½NW¼SW¼, N½S½N½NW¼SW¼.

The area described comprises 96.62 acres in Mohave County.

The patent transferred the following described land:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 20 W.,
Sec. 4, lots 5, 8 and 9.

The area described comprises 45.38 acres in Mohave County.

In exchange the following described mineral estate was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 17 N., R. 18 W.,
Sec. 1, W½W½W½, except 4.23 acres described by metes and bounds;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 23, all, except 7.42 acres described by metes and bounds;
Sec. 25, all, except 8.51 acres described by metes and bounds;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all, except 31.60 acres described by metes and bounds.

T. 17 N., R. 19 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 11, all;
Sec. 13, all;
Sec. 15, NE¼, S½NW¼, S½;
Sec. 17, W½NE¼, NW¼, S½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, NE¼, N½NW¼.

T. 18 N., R. 18 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 23, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.

T. 18 N., R. 19 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.

T. 19 N., R. 18 W.,
Sec. 17, all;
Sec. 29, all.

T. 19 N., R. 19 W.,
Sec. 5, lots 1 to 4, incl., S½, S½N½;
Sec. 7, lots 1 to 7, incl., NE¼, E½W½, NE¼SE¼;
Sec. 9, all;
Sec. 13, all;
Sec. 15, S½;
Sec. 17, lots 1 and 2, NE¼, E½NW¼, S½;
Sec. 19, lots 1 and 2, E½, E½W¼;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.

T. 20 N., R. 19 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 29, all;
Sec. 31, lots 1 to 7, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 33, all.

The areas described comprise 56,796.20 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public land and private mineral estate.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-14693 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-050-08-4212-11; AZA-23353]

Realty Action, Lease of Lands; La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of lands, La Paz County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable to be classified for lease under the provisions of the *Recreation and Public Purposes Act* of June 14, 1926, as amended (43

U.S.C. 869 et. seq.) and the regulations established by 43 CFR Parts 2740 and 2910, as amended in the Final Rulemaking published in the Federal Register on December 10, 1965.

T. 10 N., R. 19 W., Gila and Salt River Meridian, Arizona sec. 14, portion of Lots 9 and 10, containing approximately 22 acres.

La Paz County has applied to lease the above described lands for recreational purposes. The county proposes to use these lands to construct a public day use area and related recreational facilities.

Subject to all existing rights, the Lands are hereby segregated from appropriations under any other public land law, including location under the mining laws. This segregation will terminate upon issuance of a lease, publication of a Notice of Termination, or 18 months from the date of this publication, whichever occurs first.

DATES: For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, 3150 Winsor Avenue, Yuma, Arizona 85365. Any objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, effective 60 days from the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602-855-8017.

Robert V. Abbey,
Acting District Manager

Date: June 20, 1988.

[FR Doc. 88-14695 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-08-4212-13; AZA-22880]

Public Land Exchange; Mohave and Yavapai Counties, AZ

AGENCY: Bureau of Land Management—Interior.

ACTION: Notice of realty action—exchange, public land, Mohave and Yavapai Counties, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 14 N., R. 9 W.,
Sec. 4, lots 8-10, portion of MS 2818 and MS 4736 A and B;
Sec. 5, lot 5, SW¼NW¼, W½SE¼NW¼, W½E½SE¼NW¼, W½E½NE¼SW¼, W½NE¼SW¼, W½SW¼, S½NE¼SE¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼, NE¼SW¼SE¼, S½SW¼SE¼;
Sec. 6, lots 1-7, S½NE¼, SE¼NW¼, E½SW¼, SE¼; (minerals only)
Sec. 7, lots 1 and 2, E½NW¼; (minerals only)
Sec. 8, lots 3 and 12, S½SW¼NE¼NE¼, W½E½NW¼NE¼, W½NW¼NE¼, S½SE¼SE¼NE¼, N½NE¼NW¼, SE¼NE¼NW¼;
Sec. 9, SW¼SE¼NW¼;
Sec. 10, lots 1 and 2. (minerals only)
T. 14 N., R. 10 W.,
Sec. 1, lots 1-4, S½N½, S½; (minerals only)
Sec. 11, N½NE¼, NW¼; (minerals only)
Sec. 12, N½N½, SE¼NE¼. (minerals only)
T. 15 N., R. 9 W.,
Sec. 27, SE¼NE¼SE¼, E½SE¼SE¼;
Sec. 28, lots 2 and 5, N½N½NE¼, N½S½N½NE¼;
Sec. 28, lot 4, E½SW¼, W½SE¼; (minerals only)
Sec. 29, lots 12-14, S½NW¼NW¼SW¼, SW¼NW¼SW¼, N½NW¼SW¼SW¼;
Sec. 29, N½, except patented minerals 1216112; (minerals only)
Sec. 30, lots 4 and 7-13;
Sec. 31, lots 1-6, S½NE¼, E½W½, SE¼; (minerals only)
Sec. 32, lot 45;
Sec. 33, lots 13 and 14, portion within MS 2818;
Sec. 33, lots 1 and 6, N½NE¼, SW¼NE¼, NE¼NW¼; (minerals only)
Sec. 34, lot 1, W½NE¼, E½NW¼. (minerals only)
T. 15 N., R. 10 W.,
Sec. 33, S½;
Sec. 34, S½;
Sec. 35, S½.
T. 16 N., R. 10 W.,
Sec. 1, Francis Creek Millsite No. 2.
T. 16 N., R. 13 W.,
Sec. 10, W½E½;
Sec. 11, W½SW¼;
Sec. 15, W½NE¼;
Sec. 22, W½NE¼.
T. 16½ N., R. 13 W.,
Sec. 21, lot 1, NE¼SE¼;
Sec. 27, SW¼SW¼;
Sec. 33, E½NE¼, SE¼SE¼;
Sec. 34, NW¼NW¼.
T. 17 N., R. 13 W.,
Sec. 35, E½SE¼.
T. 20 N., R. 18 W.,
Sec. 6, lots 9 and 11, E½SE¼SE¼SE¼;
Sec. 8, W½NW¼NW¼NE¼;
Sec. 18, lot 6.
T. 21 N., R. 18 W.,
Sec. 34, W½SW¼SW¼SE¼.

Containing 6,105.72 acres, more or less.

Excepting and reserving to the United States:

1. Right-of-way for ditches and canals pursuant to the Act of August 30, 1890;

2. Rights-of-way to the Arizona State Highway Department for highway purposes (AZA-17921 and AZAR-4275); and

3. Right-of-way to the Department of Energy, Western Area Power Administration for electric transmission line purposes (AZAR-035584).

Subject to:

1. Rights-of-way to the Mohave County Board of Supervisors for road purposes (AZA-19005, AZA-19007, and AZA-19008);

2. Rights-of-way to the Arizona Public Service Company for power transmission line purposes (AZA-5961 and AZA-9896);

3. Right-of-way to the Arizona Electric Power Cooperative for power transmission line purposes (AZA-16574);

4. Rights-of-way to the Mohave Electric Cooperative for power transmission line purposes (AZA-9644 and AZPHX-086238);

5. Rights-of-way to the Cyprus Mines Corporation for water plant and power transmission line purposes (AZA-8876, AZAR-012048, and AZPHX-079356);

6. Right-of-way to the Southern Union Gas Company for oil and gas pipeline purposes (AZAR-035564);

7. Right-of-way to the Citizens Utilities Rural Company for telephone and telegraph purposes (AZA-19986);

8. Right-of-way to Jack J. Culp for telephone and telegraph purposes (AZA-22069);

9. Restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84-10 adopted on December 3, 1984, as amended; and

10. Restrictions which may be imposed by Yavapai County in accordance with Flood Control District Ordinance No. 1987-1 adopted on July 6, 1987.

In exchange for these lands, the United States will acquire the following described lands from Byner Cattle Company/Cyprus Bagdad Copper Company/Cyprus Minerals Company of Bagdad, Arizona, or assigns:

Gila and Salt River Meridian

T. 14 N., R. 10 W.,
Sec. 7, lot 4;
Sec. 18, lot 1, NE¼NW¼.
T. 15 N., R. 10 W.,
Sec. 15, SW¼SE¼;
Sec. 21, SE¼SW¼, SE¼;
Sec. 22, N½NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, NW¼SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, NW¼NW¼.
T. 15 N., R. 14 W.,
Sec. 3, lots 1-4, S½N½, S½;
Sec. 11, NW¼NE¼, W½, W½SE¼, SE¼SE¼.
T. 16 N., R. 10 W.,

Sec. 25, Eureka Millsite lot 1683 B.
T. 16 N., R. 13 W.,
Sec. 9, NE¼SE¼, N½N½N½SE¼SE¼;
Sec. 11, E½NW¼;
Sec. 23, SE¼SW¼;
Sec. 26, NW¼NE¼, N½SW¼SE¼, SE¼ SW¼SE¼.
T. 16 N., R. 14 W.,
Sec. 27, SE¼;
Sec. 35, NW¼NW¼.
T. 16½ N., R. 13 W.,
Sec. 21, W½W½SE¼SE¼;
Sec. 28, NW¼NW¼NE¼NE¼, N½NE¼ NW¼NE¼.
T. 16½N., R. 14 W.,
Sec. 19, lots 1–6, E½SW¼, SE¼;
Sec. 21, lots 1–4 S½;
Sec. 27, all;
Sec. 29, E½, SW¼;
Sec. 31, lots 1 and 2, NE¼, E½NW¼, NE¼ SW¼, N½SE¼;
Sec. 33, all.
T. 16½N., R. 15 W.,
Sec. 27, all;
Sec. 35, lots 1–3, S½NE¼, E½NW¼, NE¼ SW¼, W½SE¼.
T. 17 N., R. 13 W.,
Sec. 14, W½NE¼.
T. 17 N., R. 14 W.,
Sec. 23, W½NE¼, W½, SE¼;
Sec. 25, all;
Sec. 27, N½SW¼, SE¼SW¼, S½SE¼;
Sec. 33, NE¼NW¼, S½NW¼, SW¼;
Sec. 35, NW¼NE¼, NE¼NW¼, S½N½, S½.

Containing 8,871.84 acres, more or less. Subject to valid existing rights.

The purpose of the exchange is to acquire high value riparian and wildlife habitats, consolidate federal land to facilitate resource management in range, wildlife and recreation and to consolidate private ownership to enhance management and operation of the Cyprus Bagdad Copper Mine.

To further facilitate the consolidation of private lands at the Cyprus mine, the Bureau proposes to acquire from the State of Arizona the lands and interests described below and subsequently reconvey them to the Cyprus Bagdad Copper Company. These lands have also been examined and found suitable for disposal pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

Gila and Salt River Meridian

T. 14 N., R. 9 W.,
Sec. 6, lots 4–7, S½S½NE¼, SE¼NW¼, E½SW¼, SE¼; (surface only)
Sec. 7, lots 1 and 2, E½NW¼; (surface only)
Sec. 10, lots 1 and 2; (surface only)
Sec. 18, portion of lot 6 within MS 4413; (surface only)
Sec. 20, lot 3. (surface only)
T. 14 N., R. 10 W.,
Sec. 1, lots 1–4, S½N½, S½; (surface only)
Sec. 2, lots 1–4, S½N½, S½;
Sec. 3, lots 1–4, S½N½, S½;
Sec. 4, lots 1–4, S½N½;
Sec. 10, E½;
Sec. 11, N½NE¼, NW¼; (surface only)
Sec. 12, N½N½, SE¼NE¼. (surface only)
T. 15 N., R. 9 W.,
Sec. 26, E½SE¼;
Sec. 29, N½; (surface only)
Sec. 31, lots 1–3, 5 and 6, S½NE¼, E½ NW¼; (surface only)
Sec. 34, lots 2–4, E½NE¼, NE¼SW¼, SE¼.
T. 15 N., R. 10 W.,
Sec. 36, S½S½N½, S½.

Containing 5,205.86 acres, more or less. Subject to valid existing rights.

Publication of this notice will segregate the subject lands from operation of the public land laws. This segregation will terminate upon the issuance of a deed or 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 may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: June 24, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88-14747 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-050-8-4212-13; CAAZCA-20669]

San Bernardino County, California; Realty Action, Land Exchange With Private Party

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Notice of Realty Action—Land Exchange with Private Party, San Bernardino County, California.

SUMMARY: This corrects NORA published November 18, 1987, (Vol. 52, No. 222, p. 44230).

The Federal selected lands remain the same.

The offered private lands are as follows:

SAN BERNARDINO MERIDIAN, CALIFORNIA

Township and range	Section or tract	Subdivision	Approximate acreage	Encumbrances
T. 11 N., R. 17 E.	38	All	40.0	D/C, fishing rights, boundary dispute.
T. 12 N., R. 16 E.	14	SE¼	160.0	Water rights, D/C.
T. 12 N., R. 17 E.	42	S½NE¼,NW¼,N½SE¼	80.0	Water rights, D/C, boundary dispute.
	45	All	160.0	Water rights, D/C, Lanfair Rd., boundary dispute.
	48	E 180 acres	180.0	Water rights, D/C, AT&T, utility line ROW, boundary dispute.
	50	All	40.0	Water rights, D/C, boundary disputes.
	70	E½	80.0	Boundary dispute.
	71	All	160.0	Roads and highways, boundary dispute, AT&T easement for pole lines and conduits.
	87	N. 240 acres	240.0	Water rights, D/C, boundary dispute.
	87	SE¼ S. 160 acres	40.0	Water rights, D/C, boundary dispute.
T. 13 N., R. 11 E.	36	All	640.0	Exc. and res. oil, gas and minerals; roads and highways; no legal access; fishing rights.
T. 13 N., R. 12 E.	36	N½,W½SW¼, SE¼	560.0	Exc. and res. oil, gas and minerals; BOR ROW; fishing rights; roads and highways; no legal access; lease to MCI Telecommunication Corp. for access, road, public utility and tower site.
T. 13 N., R. 16 E.	15	E½W½	160.0	Water rights, D/C, New York Mountain Road.
	22	N½	320.0	Water rights, D/C, oil and gas lease (Shiershke and Cook).

Containing 2,860 acres, more or less.

The patent to the proponent will: (1) Except and reserve ditches and canals, oil and gas and (2) be subject to those rights for Federal Aid highway granted to California Department of Transportation by ROW No. CARI-04112 and CAAZRI-04112, pursuant to the Act of August 27, 1958, (23 U.S.C. 317), and any other existing unserialized roads, highway, railroads, and other encumbrances.

DATES: For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602-855-8017.

Date: June 24, 1988.

Sondra L. Berger,

Acting District Manager.

[FR Doc. 88-14782 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-32-M

[UT-050-08-4212-13]

Notice of Realty Action; Richfield, UT

AGENCY: Bureau of Land Management, Richfield, Utah.

ACTION: Notice of Realty Action.

SUMMARY: The surface and mineral estates of the following described public lands have been determined suitable for disposal by exchange under Section 206 of the *Federal Land Policy and Management Act of 1976*, (43 USC. 1716): T. 42 S., R. 16 W., SLM, Sec. 1, Lots 14, 15, containing 57.65 acres, and Sec. 35, W½NW¼SE¼NW¼; S½SE¼NW¼; containing 25 acres. In exchange for these lands, the United States will acquire the surface estate (except as where noted) of the following described lands from the Nature Conservancy: T. 11 S., R. 18 W., SLM, Sec. 3, S½; Sec. 4, S½; Sec. 5, All (surface and mineral estate); Sec. 6, SE¼SE¼; Sec. 7, NE¼SE¼; Sec. 8, All; Sec. 9, All; Sec. 17, W½SW¼; Sec. 18, W½NE¼, S½NW¼, S½; containing 3210.2 acres; and T. 41 S., R. 14 W., SLM, Sec. 14, a portion of SW¼SW¼; Sec. 15, Lots 7,8; Sec. 22, Lots 1, 2, 3, 4, 5, 6, 7, 8, SW¼SE¼, SE¼SW¼; Sec. 23, NW¼SW¼; Sec. 27, N½NE¼, SE¼NE¼, SE¼SW¼ (surface and mineral estates except for oil and gas), S½SE¼ (those portions west and north of Interstate Highway 15, surface and mineral estates except for oil and gas); Sec. 34 (those portions west and north of Interstate Highway 15, surface and mineral estates except oil and gas); containing 625 acres more or less.

The purpose of the exchange is to acquire non-federal lands valuable for federal natural resource programs. These lands are adjacent to wilderness study areas and contain habitat for threatened and endangered wildlife species.

An environmental assessment report has been prepared for this proposal and is available for public review. The public interest will be served by making the exchange. Equalization of values will be achieved by cash payment not to exceed 25% of the value of the public lands. The public lands described are hereby segregated from the federal mining laws pending disposition of this action.

ADDRESS: Detailed information concerning this exchange and copies of the environmental assessment report are available at the House Range Resource Area Office, 15 East 500 North, P.O. Box 778, Fillmore, Utah 84631, and the Dixie Resource Area Office, 225 N. Bluff St., St. George, UT. 84770. Comments on the proposal should be sent to the House Range Resource Area Office, at the address shown above.

DATE: Interested parties may submit comments for 45 days from the date of publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the exchange are:

1. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, (43 USC 945).

2. Title will be transferred subject to valid existing rights, which includes a pipeline right-of-way in Lot 14, Sec. 1, T. 43 T. 43 S., R. 16 W., Serial Number U-06724.

3. Several archaeological sites are present on the public lands. A site agreement will be entered into between the BLM and the Patentee prior to patent, allowing for entry on the lands by the BLM to completely excavate the archaeological sites.

Any objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Dated: June 24, 1988.

Larry Oldroyd,

District Manager.

[FR Doc. 88-14777 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-08-4212-11; UTU-62500]

Realty Action; Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; UTU-62500; Classification for Lease/Conveyance of Public Lands in Grand County, Utah for Public Purposes.

SUMMARY: Notice is given that the following described parcel of public land in Grand County, Utah has been examined and has been found suitable for lease or conveyance to the Grand County Cemetery District for use and expansion of an existing cemetery servicing the town of Castleton, Utah. The lands are hereby classified as suitable for public purposes under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et seq.) and the regulations thereunder (43 CFR Parts 2740 and 2912);

Salt Lake Meridian, Utah

T. 25 S., R. 23 E.,
Section 25: SE¼SW¼NW¼NE¼NE¼, SW¼SE¼NW¼NE¼NE¼

The described land aggregates 1.25 acres more or less.

Grand County Cemetery District has filed a petition for classification of the lands and concurrently filed an application for lease/conveyance of the lands. The District is proposing to develop, expand, maintain and operate a desert cemetery on the site over a one (1) year lease period, then purchase the land.

The lands are not needed for Federal purposes. Lease or conveyance is in conformance with current BLM land use planning and would be in the public interest.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land

laws, except for public purposes, as provided by the regulations in 43 CFR 2741.5(h)(2). The segregative effect will end upon issuance of a patent.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way will be reserved for ditches and canals contructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The mineral estate is held by private owners, together with the right to prospect for, mine and remove the minerals.

4. Subject to compliance with Executive Order No. 11246 of September 24, 1965, as amended and the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant thereto.

5. Subject to compliance with Section 106 of the National Historic Preservation Act and other applicable cultural resource laws and regulations.

6. Subject to all valid existing rights and reservations of record.

7. All survey monuments, witness corners, reference monuments and bearing trees must be protected against destruction.

8. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Comments: 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 Bureau of Land Management, District Manager, Moab District Office, P.O. Box 970, Moab, Utah 84532. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become final, effective sixty (60) days from the date of publication of this notice.

SUPPLEMENTARY INFORMATION: Additional information concerning this action may be obtained from Mary von Koch, Area Realty Specialist, Grand Resource Area Office, Sand Flats Road, P.O. Box M, Moab, Utah 84532, (801) 259-8193, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Dated: June 22, 1988.

Gene Nodine,

District Manager.

[FR Doc. 88-14783 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-08-5440-10-ZJKA; UTU-62028]

Realty Action; Carbon County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, UTU-62028, Airport Conveyance of Public Land in Carbon County, Utah.

SUMMARY: The following described parcels of public land have been examined and through resource considerations, regulations, and Bureau policies have been found suitable for conveyance to Carbon County, Utah pursuant to the Airport Airway and Improvement Act of 1982 (96 Stat. 692; 49 U.S.C. 2215).

Salt Lake Meridian, Utah

T. 14 S., R. 10 E.,
Sec. 12, SW¼NE¼,
Sec. 24, NW¼NW¼.
Encompassing 80 acres.

Terms, Conditions and Covenants Applicable to the Conveyance are

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. The Secretary of the Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation and maintenance of the airport.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance of the land will be subject to all valid existing rights and reservations of record. Existing rights and reservations of record include, but are not limited to, the following:

a. Federal oil and gas leases UTU-57355 and UTU-59830
b. Pipeline right-of-way UTUO-67467
c. Powerline right-of-way UTUO-15341
d. Powerline right-of-way UTUO-2283
e. Powerline right-of-way UTUO-21372

4. At the discretion of the Secretary of Transportation, the land shall revert to the United States in the event that the land is not developed for airport purposes or used in a manner consistent with the terms of the patent. If only a portion of the land conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that specific part shall, at the discretion of the Secretary, revert to the United States.

5. A detailed list of covenants required by the Federal Aviation Administration to be included in the patent document is available for review at the offices listed below.

DATES: For a period of forty-five (45) days from the date of publication in the **Federal Register**, comments concerning the proposal may be submitted to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

Comments will be reviewed by the Utah State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the land and terms and conditions of the conveyance may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area Office, 900 North 700 East, Price, Utah 84501, (801) 637-4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 Dogwood Road, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Dated: June 22, 1988.

Gene Nodine,

District Manager.

[FR Doc. 88-14784 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-DQ-M

[MT-940-08-4520-11]

Land Resource Management; Filing of Plat Survey; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The official filing of the following plats, accepted December 21, 1987, was suspended due to a protest received on February 16, 1988. The protest was dismissed on June 21, 1988. The plats of survey were officially filed in the Montana State Office effective 10:00 a.m. on June 23, 1988.

Principal Meridan, Montana

Township 1 South, range 6 East; Township 1 North, Range 6 East; Township 2 North, Range 5 East; Township 2 North, Range 6 East; and Township 3 North, Range 5 East.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 22 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: June 23, 1988.

Robert A. Teegarden,

Acting State Director.

[FR Doc. 88-14780 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-DN-M

[MT-940-08-4520-11]

Survey Plat Filings; Montana

AGENCY: Montana State Office, Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: Plats of survey of the lands described below accepted May 27, 1988 and May 31, 1988, were officially filed in the Montana State Office effective 10 a.m. on June 16, 1988.

Fifth Principal Meridian, South Dakota

T. 126 N., R. 49 W.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, the subdivision of sections 1 and 11, and the adjusted original meanders of Lake Traverse, Township 126 North, Range 49 West, Fifth Principal Meridian, South Dakota. The area described is in Roberts County.

Fifth Principal Meridian, South Dakota

T. 123 N., R. 51 W.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of sections 7, 8, and 9, Township 123 North, Range 51 West, Fifth Principal Meridian, South Dakota. The area described is in Roberts County.

Fifth Principal Meridian, South Dakota

T. 124 N., Range 51 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 8 and 9, Township 124 North, Range 51 West, Fifth Principal Meridian, South Dakota. The area described is in Roberts County.

Fifth Principal Meridian, South Dakota

T. 125 N., R. 52 W.

The plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision of section 28, and the adjusted original meanders of Dry Wood Lake; and the survey of a portion of the present meanders of Dry Wood Lake and the division of reliction in front of lots 1, 2, 3, 4, 6, and 7, Township 125 North, Range 52 West, Fifth Principal Meridian, South Dakota. The area described is in Roberts County.

The surveys were executed at the request of the Bureau of Indian Affairs, Aberdeen Area Office.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: June 17, 1988.

Ray Brubaker,

Acting State Director.

[FR Doc. 88-14697 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-040-08-4332-06]

Wilderness Study Area Boundary; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Change in the Boundary of One Wilderness Study Area.

SUMMARY: This notice serves as an amendment to previous wilderness inventory decisions made by the Bureau of Land Management (BLM) of Needle's Eye (AZ-040-1A) Wilderness Study Area (WSA).

SUPPLEMENTARY INFORMATION: The eastern boundary of the Needle's Eye WSA is changed from a road along the Gila River to a road formerly classified as a "way" in the eastern portion of the WSA. The area east of the reclassified road, comprising about 280 acres, will be dropped from the WSA and will no longer be subject to the Interim Management Policy for Lands Under Wilderness Review. The area recommended suitable for wilderness designation (9,201 acres) will not be changed or affected by reclassifying the road. Additional information concerning the use, maintenance and history of the road has been provided by the public. BLM has evaluated the information and has reclassified the "way" as a "road" under wilderness inventory definitions.

FOR FURTHER INFORMATION CONTACT: Ken Mahoney, Bureau of Land Management, 425 E. 4th St., Safford, AZ 85546, or phone (602) 428-4040.

Date: June 20, 1988.

Ray A. Brady,

District Manager.

[FR Doc. 88-14692 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-32-M

[NM-940-08-4220-11; NM NM 024545]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a 120-acre withdrawal for the Cuba Ranger Station Administrative Site continue for an additional 20 years. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATE: Comments should be received by September 28, 1988.

ADDRESS: Comments should be sent to: New Mexico State director, BLM, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 1605 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Santa Fe National Forest

Cuba Ranger Station Administrative Site

T. 21 N., R. 1 W.,
Sec. 18, SW¼SE¼
Sec. 19, W½SE¼.

The area described contains 120 acres in Sandoval County.

The purpose of the withdrawal is to protect the lands for establishing an administrative site. No change is proposed in the purpose of segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will

be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: June 23, 1988.

Denise P. Meridith

Acting Associate State Director

[FR Doc. 88-14779 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2968, Block 311, Mississippi Canyon 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 existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 22, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

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 May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-14786 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-277]

Certain Marine Automatic Pilots; Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of the investigation on the basis of a settlement agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) terminating the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Randi Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, telephone 202-252-1099.

SUPPLEMENTARY INFORMATION: On May 26, 1988, the presiding administrative law judge issued an ID (Order No. 13) granting the joing motion of complainants Electro-Mechanical Products, Inc. and John F. Cyr and respondent King Marine Electronics, Inc., the only respondent in the investigation, to terminate the investigation on the basis of a settlement agreement. The Commission investigative attorney filed a public interest statement in support of the motion. No petitions for review of the ID, or agency or public comments regarding the ID were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commisson rule 210.53 (19 C.F.R. 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advsed that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 24, 1988.

[FR Doc. 88-14678 Filed 6-29-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 245X)]

CSX Transportation, Inc.—Abandonment Exemption—In Brunswick County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 1.63 miles of rail line in Brunswick County, NC, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 30, 1988. Formal expressions of an intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by July 11, 1988, petitions to stay must be filed by July 18, 1988, and petitions for reconsideration must be filed by July 25, 1988. Requests for a public use condition must be filed by July 11, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 245X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Patricia Vail, 500 Water Street-J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call

[1] *See Exemption or Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d (1987), and final rules published at 52 FR 48440 (1987).

(202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD service (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: June 22, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–14754 Filed 6–29–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB-290 (Sub-No. 16)]

Finding; Norfolk and Western Railway Co.; Abandonment

The Commission has issued a certificate authorizing Norfolk and Western Railway Company to abandon its 80.4-mile rail line between Lafayette, IN (milepost SP–259.0) and Gibson City, IL (milepost SP–339.4), in Tippecanoe and Benton Counties, IN, and Vermillion and Ford Counties, IL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: June 24, 1988.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88–14755 Filed 6–29–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31295]

Service on the Delaware and Hudson Railway Co.; Railroad Operation, Acquisition, Construction, etc.

AGENCY: Interstate Commerce Commission.

ACTION: Directed Service Order No. 1504, Supplement Order No. 1.

SUMMARY: The Commission is authorizing The New York, Susquehanna and Western Railway Corporation (NYS&W) to use the locomotives, cars, operating equipment, and various materials of the Delaware and Hudson Railway Company (D&H) to provide previously authorized service as a "directed rail carrier" without federal subsidy or compensation under 40 U.S.C. 11125(b)(5) over the lines of D&H. The compensation for the use of these is to be set through agreement between D&H and NYS&W.

DATES: *Effective Date:* Supplemental Order No. 1 shall be effective on June 23, 1988.

FOR FURTHER INFORMATION CONTACT:

Bernard Gaillard, (202) 275–7849

or

Joseph H. Dettmar, (202) 275–7245

[TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: On June 21, 1988, the Interstate Commerce Commission, pursuant to 49 U.S.C. 11125, authorized The New York, Susquehanna and Western Railway Corporation (NYS&W) to provide service as a "directed rail carrier" without Federal subsidy or compensation under 49 U.S.C. 11125(b)(5) over the lines of the Delaware and Hudson Railway Company (D&H) (predicated on the cessation of service by D&H and its request that the Commission designate and authorize a carrier to provide service over its lines).

This suplemental order responds to a petition filed June 21, 1988, by NYS&W, asking that we authorize NYS&W to use the locomotives, cars, operating equipment, fuel, fuel allocations and materials, as well as supplies for the maintenance of tracks, signals, cars and locomotives of D&H in providing the authorized service. The NYS&W is hereby authorized to use this equipment and material with the compensation for its use to be set through agreement between D&H and NYS&W.

This action will not significantly affect either the quality of the human enviroment or energy conservation.

It is ordered:

1. NYS&W is authorized to use the above-described equipment of D&H, and materials with the compensation therefor to be set through agreement between D&H and NYS&W.

2. This decision and order shall be effective on June 23, 1988.

Decided: June 23, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–14628 Filed 6–29–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31285]

Georgia Woodlands Railroad Co.; Acquisition and Operation Exemption; Georgia Eastern Railroad Co.

Note: This notice was originally published inadvertently on Tuesday, June 28, 1988 at 53 FR 24374. It was actually scheduled to be published in this issue.

Georgia Woodlands Railroad Company (Woodlands) has filed a notice of exemption to acquire and operate a line or railroad owned by Georgia Eastern Railroad Company. The line, known as the Washington Branch, extends from milepost 0.56 near Barnett, GA, to milepost 17.33 near Washington, GA, a distance of 16.68 miles. The transaction was expected to be consummated on June 3, 1988. Any comments must be filed with the Commission and served on Edward K. Wheeler, Wheeler & Wheeler, Suite 200, 1729 H St., NW., Washington, DC 2006 and Rober C. Finley, Chicago West Pullman Transportation Company, 2728 E. 104th St., Chicago, IL 60617.

Woodlands has certified that no properties qualifying for inclusion in the National Register of Historic Places will be transferred as a result of this transaction.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–14398 Filed 6–29–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 27, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 and to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

Revision of a Currently Approved Collection

(1) NCJRS Registration for Service Form.

(2) NIJ 1431/2, NIJ 1431/7, National Institute of Justice.

(3) Annually.

(4) Individuals or households, State or local governments. The NIJ was established to meet technical information needs of the law enforcement, criminal justice, juvenile justice, and investigative communities. This form aids in formulating a mailing list for dissemination of this information.

(5) 15,000 respondents at .1 hours each, 44,000 respondents at .01 hours each.

(6) 1,940 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Revisions

(1) Criminal Justice Block Grants—State and Local Law Enforcement Assistance Act.

(2) Drug Formula Grant Project Report Form A-G, Bureau of Justice Assistance.

(3) Annually.

(4) State or local governments, non-profit institutions. Data is required to support program administration and Congressional reporting mandates for Subtitle K—State and Local Law Enforcement Assistance Act of the Anti-Drug Abuse Act of 1986.

(5) 1,800 respondents at 1 hour each.

(6) 1,800 estimated annual burden hours.

(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) 1988 National Jail Census.

(2) CJ-3, Bureau of Justice Statistics.

(3) Quinquennial.

(4) State or local governments. The National Jail Census is needed to provide current information on inmate population and jail facilities throughout the Country. The last census was conducted in 1983. Data will be used for program planning and policy making for corrections.

(5) 3,400 respondents at .5 hours each.

(6) 1,700 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88-14722 Filed 6-29-88; 8:45 am]

BILLING CODE 4410-18-M

Lodging of Consent Decree Pursuant to Superfund (CERCLA); Wastecontrol of Florida, Inc.

In accordance with Department policy, 28, CFR § 50.7, notice is hereby given that on June 20, 1988, a proposed Consent Decree in *United States* v. *Wastecontrol of Florida, Inc.*, Civil Action No. 88-502-CIV-J-12, was lodged with the United States District Court for the Middle District of Florida. The complaint sought injunctive relief and the recovery of costs under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 42 U.S.C. 9606 and 9607. That action concerned the Hipps Road Landfill Site near Jacksonville, Florida.

Under the proposed Consent Decree, Wastecontrol will pay the Superfund $1 million to compensate the Fund for the response costs incurred by the United States in performing certain remedial actions at the Hipps Road Site. The United States Navy will contribute $600,000 of that $1 million. Wastecontrol has also agreed in the proposed Decree to perform, with one exception, all aspects of the remedy selected by EPA for the Site, including the acquisition of several private properties, installation of a permanent landfill cap or cover, and the design of a groundwater recovery and treatment system. The remaining portion of the remedy will be undertaken by EPA, which will construct, operate and maintain the groundwater recovery and treatment system designed by Wastecontrol. The Decree reserves the right to the United States to recover from Wastecontrol its costs incurred in constructing and maintaining the groundwater remediation system.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Wastecontrol of Florida, Inc.*, D.J. Ref. 90-11-3-232.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Middle District of Florida, 409 Post Office Building, 311 West Monroe Street, Jacksonville, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Na-tural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW. Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Na tural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs $4.70 ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88-14775 Filed 6-29-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act; Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on May 2, 1988, disclosing changes in the membership of COS. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, July 31, 1987, October 5, 1987, October 23, 1987, November 16, 1987, January 12, 1988, and February 9, 1988, COS filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986, (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), December 4, 1987 (52 FR 46129), December 15, 1987 (52 FR 47642), December 18, 1987 (52 FR 48164), February 19, 1988 (53 FR 5060), and March 8, 1988 (53 FR 7411), respectively.

On March 15, 1988, the Naval Data Automation Command became a member of COS. On February 3, 1988, the Ontario Ministry of Government ceased membership in COS.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 88-14691 Filed 6-29-88; 8:45 am]
BILLING CODE 4410-01-M

National Cooperative Research; Institute for Manufacturing & Automation Research

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Institute for Manufacturing & Automation Research ("IMAR") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties of IMAR and its general areas of planned activities are given below.

The parties of IMAR are as follows:

TRW Operations and Support Group
Hughes Aircraft Company
IBM Scientific Center
Rockwell International Corporation
Northrop Corporation
Xerox Corporation
University of Southern California
University of California, Los Angeles

The objectives of IMAR are as follows:

(a) To sponsor and to perform basic and applied research on manufacturing systems, automation and robotics.

(b) To apply research to the latest manufacturing techniques and methods.

(c) To disseminate information on automation and manufacturing technology.

(d) To support and improve education in the areas of automation and manufacturing technology.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 88-14690 Filed 6-29-88; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances; Registration

By Notice dated April 4, 1988, and published in the **Federal Register** on April 11, 1988; (53 FR 11919), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import, and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: June 21, 1988.

[FR Doc. 88-14700 Filed 6-29-88; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-5600]

Amendments To Prohibited Transaction Exemption (PTE) 82-87 for Transactions Involving Certain Residential Mortgage Financing Arrangements

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Adoption of amendments to PTE 82-87, and redesignation as PTE 88-59.

SUMMARY: This document amends PTE 82-87. PTE 82-87 provides exemptions for certain categories of transactions from the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code). These transactions relate to the issuance by employee benefit plans of commitments for the provision of mortgage financing to purchasers of residential dwelling units, the receipt of fees in exchange for the issuance of such commitments, the making or purchase of loans or participation interests therein pursuant to such commitments, the direct making or purchase by one or more employee benefit plans of a mortgage loan or participation interest therein other than where a commitment has been issued, or the sale, exchange, or transfer of mortgage loans or participation interests therein prior to the maturity date of such instrument by employee benefit plans.

The amendments granted pursuant to this notice broaden the applicability of PTE 82-87 to include certain mortgage loan transactions involving multifamily housing and permit the acquisition of a broader range of single-family residential mortgage loans. The amendments affect participants and beneficiaries of employee benefit plans investing in such mortgage loans, the sponsors and trustees of such plans, and

other persons engaging in the described transactions.

EFFECTIVE DATE: January 1, 1975. [certain conditions, as specified herein, are applicable effective June 17, 1982] Certain amendments, as specified herein, are effective June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Lyssa Hall of the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8671 (not a toll-free number) or Daniel Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523-9590 (not a toll free number).

SUPPLEMENTARY INFORMATION: On December 11, 1984, notice was published in the **Federal Register** (49 FR 48236) of the pendency before the Department of Labor (the Department) of proposed amendments to PTE 82-87. The Department proposed the amendments on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code,[1] and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The notice set forth a summary of the facts and representations developed by the Department. This information has been available for public inspection at the Department in Washington, DC.

The Department received public comments with regard to the amendments to PTE 82-87. Upon consideration of all the comments, the Department has determined to adopt one of the proposed amendments to PTE 82-87 and also to modify one of the requirements for relief under the existing exemption. These comments and modifications are discussed below.

The Department has been informed by the Office of Management and Budget that the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) are not applicable to PTE 82-87 because the exemption does not contain a request or requirement for the collection of information as defined in 5 CFR Part 1320 and therefore is not subject to the requirements of that regulation.

For the sake of convenience, the Department has reprinted the entire text of the exemption, as modified, and has redesignated it as PTE 88-59.

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor. In the discussion of the exemption, references to the various provisions of section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

1. Description of Existing Relief

PTE 82-87 (47 FR 21331, May 18, 1982) provides an exemption for several different types of residential mortgage financing transactions in which employee benefit plans participate if certain conditions are met. Specifically, Part I provides relief from the prohibitations of section 406(a) of the Act for the issuance of commitments for the provision of mortgage financing to purchasers of residential dwelling units; the receipt by the plan of a fee in exchange for the issuance of such commitment; the actual making or purchase of a mortgage loan or participation interest therein pursuant to such commitment; the actual making or purchase of a mortgage loan or participation interest therein without the precondition of a commitment; and the sale, exchange or transfer of a mortgage loan or participation therein prior to the maturity date of such instrument provided that the interest sold, exchanged or transferred represented the plan's entire interest in such investment.

Section II A contains both general conditions applicable to all transactions covered by Part I and certain supplemental conditions which took effect 30 days after the grant of exemption was published in the **Federal Register**. Finally, Part III contains definitions of terms used in the class exemption. Through the interrelationship of these provisions, the Department intended to provide extensive relief to financial institutions and other parties in interest who participate in the enumerated residential mortgage loan financing transactions with employee benefit plans.

PTE 82-87 provides an exemption for covered transactions that involve a "recognized mortgage loan" (defined in Section III D). Pursuant to the definition, the exemption applies to any mortgage loan on a "residential dwelling unit" (defined in Section III E) which, at the time of its origination, was eligible, through an established program, for purchase by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) (collecitvely, the Agencies).

The term "residential dwelling unit" has acted to limit the relief available under the exemption by describing the nature of the real estate which collateralizes the subject mortgate loan as non-farm properties comprising 1-4 dwelling units. This limitation was based on the original applicants' request which sought only to obtain relief for mortgage loan transactions involving single family residential properties. The term "residential dwelling unit" represented the Department's understanding of the industry's accepted definition of a single family dwelling. At the request of the commentators to the original proposal, the Department included in the final exemption a variety of types of housing such dwelling unit could take and provided that the structure need not be owner occupited.

2. Description of the Proposal

The December 11, 1984 notice contained two proposed amendments to PTE 82-87. First, the class exemption would be expanded to permit transactions involving real estate mortgage loans secured by multifamily residential properties. As indicated above, the types of mortgage loans qualifying for relief under the class exemption were limited to loans on single-family properties comprising 1-4 dwelling units. Subsequent to the grant of PTE 82-87, a number of interested persons and groups urged the Department to reconsider this limitation. Accordingly, the Department contacted the Department of Housing and Urban Development (HUD) and requested its assistance in developing a record with respect to the financing of multifamily housing. The Department was advised that the Federal agencies operating in the secondary mortgage market [2] have the authority to purchase multifamily housing loans and that the structure of PTE 82-87 could be modified to accommodate transactions involving multifamily properties.

Second, the proposal contained an alternative method of satisfying the "recognized mortgage loan" criterion. This standard initially was developed to provide plan fiduciaries with certainty as to the scope of relief under the exemption by reference to the eligiblity standards of the Federal housing agenices. After PTE 82-87 was finalized, several commentators expressed concern that utilization of the recognized mortgage loan standard as the fundamental eligibility condition under the exemption unfairly inhibited the operation of the mortgage marketplace in certain states or metropolitan areas. The commentators suggested that, because of statutorily mandated limits applicable to the principal amount of the mortgages eligible for purchase under Agency

[2] The Federally operated secondary market consists of the Congressionally authorized mortgage purchase (including guarantee) activities of FNMA, GNMA and FHLMC.

purchase programs, a significant number of mortgage loan transactions originated in such areas did not satisfy the condition of the exemption requiring a recognized mortgage loan. After evaluating these concerns, the Department determined that it was then unable to modify the definition of the term itself. However, in response to the comments, the Department proposed an alternative method of compliance with the definition. Under such an alternative as proposed, a residential mortgage loan would be eligible for purchase under the exemption if the loan obtained a rating from a national rating service that was at least as good as the third highest rating category for similar debt instruments available from one of the national rating services in existence in 1984. The Department proposed the alternative in order to ascertain the degree of ratings available on individual mortgages and in anticipation that such rating programs might develop.

3. Discussion of the Comments

The Department received 13 comments regarding this proposal. The issues raised by the commentators are discussed below.

A. Multifamily Residential Mortgage Loans

The Department received 10 comments regarding its proposal to amend the definition of a "residential dwelling unit" contained in section III(E) of the exemption to include multifamily residential housing. All of the commentators generally supported this expansion of the exemption. Two commentators questioned whether the proposed amendments fully achieved the Department's stated objective of expanding relief to permit plan investments in multifamily residential mortgage loans. It was represented that a number of multifamily mortgage loans utilize Federal Housing Administration (FHA) insurance programs. One commentator suggested that the exemption may not apply to transactions involving multifamily properties financed through FHA insurance programs because of the inability of such loans to satisfy the definition of a recognized mortgage loan. According to the commentator, the acquisition programs established by the Agencies to purchase FHA insured multifamily loans are either no longer in operation or did not provide for the purchase of certain types of FHA insured mortgages. Thus, such FHA insured loans would not qualify as recognized mortgage loans as currently defined. As a result, the commentators urged the Department to modify its policy and expressly include all loans insured by the FHA under the definition of recognized mortgage loan.[3]

The broad relief provided by PTE 82-87 was predicated on the existence of established acquisition programs in the Federally operated secondary market pursuant to which the Agencies purchase individual mortgage loans in accordance with ascertainable underwriting standards. The Department has determined that, although two of the Agencies (FNMA and GNMA) have the statutory authority to purchase all FHA insured loans, neither Agency currently maintains an established purchase program for FHA insured multifamily mortgage loans. Upon consideration of the comments, the Department is unable to conclude that a record has been developed which demonstrates that expansion of the exemption to include FHA insured multifamily mortgage loans which do not satisfy the "recognized loan standard" (for lack of an established Agency purchase program at the time of loan origination) adequately addresses the Department's concern that mortgage loans acquired by a plan within the context of party in interest relationships be objectively recognized as of investment quality and marketable. Accordingly, the Department has determined not to revise the exemption in this regard.

The Department's proposed expansion of the definition of a "residential dwelling unit" was intended to permit the acquisition of FHA insured GNMA "tandem project mortgage loans" on properties that are designed primarily for residential use.[4] The Department determined that the limitation in the proposal to properties "designed primarily for residential use" was appropriate based on its understanding that GNMA's outstanding inventory of tendem project mortgage loans consisted of only multifamily residential properties (i.e., apartment buildings). One commentator suggested that the exemption should extend to all types of properties eligible for inclusion in FHA insured GNMA tandem project mortgage loan programs.[5] The commentator noted that any limitation appears to introduce an artificial distinction which is not relevant from the point of view of plans as mortgage loan investors. In this regard, the Department has consulted with GNMA and understands that the tandem mortgage program is no longer in effect, and that GNMA anticipates that its existing mortgage loan portfolio consisting primarily of loans on residential multifamily structures will be liquidated in the near future. In light of the above, the Department has determined not to extend the exemption to all types of properties eligible for inclusion in FHA insured GNMA tandem project mortgage loan programs. However, the Department has modified the definition of recognized mortgage loan in section III(D) to clarify the scope of the proposal, i.e., that the exemption will be available only for the acquisition of FHA insured GNMA tandem project mortgage loans on properties that are designed primarily for residential use.

It should be noted that the amendment expanding the scope of the exemption to include investments in multifamily residential housing is effective for transactions on or after June 30, 1988.

B. Rating Alternative for Recognized Mortgage Loans

Under the proposed exemption, the definition of a recognized mortgage loan would have been expanded by providing an alternative method of satisfying the definition where the individual mortgage loan obtains a rating from a national rating service. Various commentators noted that the national rating services currently do not rate individual mortgage loans; nor were the commentators aware of any current intention by any of the rating services to develop such a rating program. Accordingly, the commentators concluded that, as a practical matter, the proposal does not expand the categories of mortgage loans which qualify for relief under the exemption. After considering the comments, the Deparment agrees that the proposed definition does not appear to achieve its desired objective. Therefore, the Department has determined not to adopt this proposed amendment.

In lieu of a rating alternative, several commentators urged the Department to reconsider its earlier determination to define a "recognized mortgage loan" by reference to all of the eligibility requirements to which mortgages qualifying for purchase under Agency programs are subject. These requirements include the statutorily-imposed limits on the outstanding

[3] None of the commentators expressed any concern with respect to the application of the class exemption to conventional multifamily financing arrangements.

[4] Tandem project mortgage loans include a broad range of FHA insured financing arrangements in which GNMA has made a commitment to purchase upon completion of construction. GNMA in turn resells the mortgage loans to private investors which could include employee benefit plans.

[5] Such tandem project mortgage loans extend beyond loans on residential multifamily structures to certain buildings that are not residential in the usual sense, e.g., hospitals, nursing homes, group practice facilities and land development projects.

principal amount of any mortgage loan that may be acquired under the Agency programs, in addition to the various underwriting standards applicable to borrowers, loan originators and properties that have been adopted by the Agencies in published manuals. The commentators argued that the dollar limits fail to reflect the realities of the housing marketplace in many areas of the country and are not necessary to prudent mortgagte investments by plans if the loans otherwise satisfy the underwriting criteria established by the Agencies.

In the preamble to the proposal, the Department expressed its concerns regarding the liquidity of mortgage loans in the resale market where the principal amount of the loan exceeds the dollar limits for purchase eligibility by the Agencies. The requirement that mortgage loans be marketable was a significant factor in the Department's original determination to grant PTE 82-87. In seeking to address the Department's concerns regarding the liquidity of such loans, one commentator contacted a number of Wall Street analysts in an effort to profile the current marketplace. According to the commentator, "the market for non-conforming loans has grown and developed dramactically from activity dominated by brokered private placements to an environment where there is active participation and market making by major Wall Street firms and a wide range of private mortgage conduits." The commentator further noted that the marketplace for non-conforming loans (i.e., loans whose principal balance exceeds the ceilings for Agency purchase) "* * * provides a degree of liquidity that is more than adequate to accommodate the private pension fund investors."

The Department remains committed to providing flexible relief to a wide spectrum of entities and types of transactions involved in residential mortgage loan financing consistent with the requirements of section 408(a) of the Act. In this regard, it appears to the Department that the secondary market for non-conforming mortgages has evolved since the grant of PTE 82-87. Accordingly, the Department has determined, based upon the additional record developed, to modify the existing definition of recognized mortgage loan in section III(D) so as to remove application of the dollar limits. However, the Department cautions interested parties that this modification of the class exemption should not be construed as an endorsement of plan investments in large non-conforming mortgages. Decisions regarding specific plan investments must be made by appropriate plan fiduciaries in accordance with the Act's fiduciary responsibility provisions including the prudence and diversification standards contained in section 404(a)(1) of the Act.

The amendment of the exemption to remove application of the dollar limits is effective for transactions on or after June 30, 1988.

C. Miscellaneous

(1) Several commentators urged the Department to delete the requirement that the decision to purchase or sell a mortgage be made on behalf of a plan by a "qualified real estate manager." According to the comments, this condition was unnecessarily restrictive in light of the objective standards already imposed on the investment transaction by the definition of a "recognized mortgage loan." As previously stated in the proposal to PTE 82-87, the Department viewed the existence of an independent decision maker as a significant factor in its ability to provide exemptive relief. It appears to the Department that this requirement is necessary to insulate those plan fiduciaries who might have an interest in the transaction from the decision making process and helps assure that the other conditions of the exemption are met. After further consideration of this issue, the Department continues to believe that the presence of an independent decision maker acting on behalf of a plan is a significant factor in its ability to grant broad exemptive relief.

(2) A commentator noted that not all of the Agencies were acting pursuant to established purchase programs with ascertainable underwriting standards during the period 1975-1980. The commentator suggested that the Department retroactively apply the underwriting standards developed by one of the Agencies in 1980 to mortgage transactions which occurred between 1975 and 1980. The Department is unable to make a finding that the underwriting standards and loan ceilings in effect in 1980 were relevant to purchases made prior to that date. However, the Department is prepared to entertain individual applications for retroactive exemptive relief for transactions not satisfying the conditions of PTE 82-87 if the requisite findings under section 408(a) of ERISA can be made.

(3) Several commentators urged the Department to expand PTE 82-87 to include transactions involving interests in mortgage pools rated by a national rating service and pass-through entities such as grantor trusts which only invest in recognized mortgage loans. Another commentator suggested expansion of PTE 83-1 (48 FR 895, 1/7/83) to cover plan investments in, and transactions involving, pools of mortgages or deeds of trust on multifamily residential property. Finally, one commentator argued that the Department should expand PTE 84-14 (49 FR 9494, 3/13/84) to include relief from the prohibited transactions restrictions for any mortgage investment made for a plan by a qualified professional asset manager—"QPAM"—that is not covered by PTE 82-87. The Department is not persuaded by the arguments in favor of amending PTE 82-87 to permit investments in mortgage pools and other pass-through entities. In this regard, the record is insufficient for the Department to clearly define the types of pools and other entities that would comprise the class covered by such broad relief. Moreover, the Department does not believe that a sufficient showing has been made that the conditions currently contained in PTE 82-87, which do not pertain to transactions such as service arrangements involving pooled mortgage assets in which plans purchase undivided equity interests, would adequately protect employee benefit plans investing in such entities. With respect to the comments concerning expansion of PTE 83-1 and PTE 84-14, the Department notes that amendment of these class exemptions is beyond the scope of this proceeding.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act or section 4975(c)(1) (E) and (F) of the Code;

(3) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(i) The amendments set forth herein are administratively feasible,

(ii) They are in the interests of plans and of their participants and beneficiaries, and

(iii) They are protective of the rights of the participants and beneficiaries of the plans;

(4) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The amendments are supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, PTE 82-87 is amended under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

I. Transactions

Effective January 1, 1975, the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactons if the conditions set forth in Part II below are met:

(A) The issuance of a commitment by one or more employee benefit plans to provide mortgage financing to purchasers of residential dwelling units, either by making or participating in loans directly to purchasers or by purchasing mortgage loans or participation interests in mortgage loans originated by a third party;

(B) The receipt by the plan of a fee in exchange for issuing such commitment;

(C) The actual making or purchase of a mortgage loan or participation interest therein pursuant to such commitment;

(D) The direct making or purchase by one or more employee benefit plans of a mortgage loan or a participation interest therein other than where a commitment has been issued; and

(E) The sale, exchange or transfer of a mortgage loan or participation interest therein by an employee benefit plan prior to the maturity date of such instrument whether or not acquired pursuant to this exemption, provided that the ownership interest sold, exchanged, or transferred represents the plan's entire interest in such investment.

II. Conditions

(A) Effective January 1, 1975, the exemption provided for transactions described in Part I is available only if each of the following conditions, as applicable, is met:

(1) General Conditions.

(a) Any mortgage loan to be acquired must be a "recognized mortgage loan" (as defined in Section D of Part III) or a participation interest in such loan for the purchase of a "residential dwelling unit" (as defined in Section (E) of Part III);

(b) Any mortgage loan must be originated (either directly for the plan or by the origination-purchase process) by an "established mortgage lender" (as defined in Section (B) of Part III); (i) who qualifies the recipient and (ii) as to which neither the plan, nor an employer or group of employers contributing to the plan, nor an employee organization any of whose members are covered by the plan, has the power to exercise a controlling influence over the management or policies of such "established mortgage lender";

(c) The price paid or received by the plan must be at least as favorable to the plan as a similar transaction involving unrelated parties; and

(d) No person who is a developer or a builder involved in the development or construction of the units, or a lender who is associated with the construction financing arrangement for the units, or who, at the time the decision to purchase is made by the plan (whether directly or pursuant to a commitment) is the owner of a mortgage or a participation interest therein which is subsequently sold to the plan, shall have exercised any discretionary authority or control or rendered any investment advice that would make that person a fiduciary with respect to the plan's decision to purchase, or to commit to purchase, a mortgage loan or a participation interest therein or setting the terms thereof.

(2) Specific Conditions Applicable to Commitments.

Where the decision by the plan involves a commitment to purchase either a mortgage loan or participation interest therein:

(a) The commitment must be in writing and must be at least as favorable to the plan as a commitment involving unrelated parties and consistent with customary practices in the residential finance industry; and

(b) The commitment must provide for the use of underwriting guidelines and mortgage instruments which will ensure that all mortgage loans originated pursuant to such commitment will result in a "recognized mortgage loan."

(3) Specific Conditions Applicable to Participations.

Where the acquisition by the plan involves a participation interest in a mortgage loan(s) (whether directly or pursuant to a commitment):

(a) The participation agreement governing such transaction must provide that: (i) The rights and interests evidenced by such participation interest not be subordinated to the rights and interests of other holders of the same participation agreement, (ii) the majority interest in the participation agreement must be owned by parties independent of and not controlled by the person selling the participation interest and servicing the underlying mortgage(s), and (iii) in the event of an inability to obtain collections on any mortgage loan(s) underlying the participation agreement, decisions regarding foreclosure options must be directed by persons other than the seller/servicer; and

(b) Such participation agreement must be in writing and must be at least as favorable to the plan as a participation agreement involving unrelated parties and consistent with customary practices in the residential finance industry.

(B) Effective June 17, 1982, the exemption provided for transactions described in Part I is available only if each of the following conditions is satisfied in addition to each of the applicable conditions described in Section (A) of this Part II:

(1) The decision to purchase or sell the mortgage loan or participation interest therein, or to issue a commitment to do so, must be made on behalf of the plan by a "qualified real estate manager" (as defined in Section (C) of Part III) as to which neither the plan, nor an employer or group of employers contributing to the plan, nor an employee organization any of whose members are covered by the plan, has the power to exercise a controlling influence over the management or policies of such "qualified real estate manager".

(2)(a) The plan shall maintain for the duration of any loan made pursuant to this exemption records necessary to enable the persons described in paragraph (b) of this subsection to determine whether the conditions of this exemption have been met, except that: (i) A prohibited transaction will not be deemed to have occurred, if due to

circumstances beyond the control of the fiduciaries of the plan, records are lost or destroyed prior to the termination of the loan, and (ii) no party-in-interest shall be subject to the civil penalty which may be assessed under section 502(i) of ERISA, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b) Notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) of this sub-section must be unconditionally available at their customary location for examination during normal business hours by: Any trustee, investment manager, participant or beneficiary of the plan, or any duly authorized employee or representative of such person or of the Department or the Internal Revenue Service.

III. Definitions

For purposes of this exemption:

(A) References to persons described in this exemption include their affiliates. an affiliate is defined as:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such person; and

(3) Any corporation or partnership of which such person is an officer, director or partner.

(B) An "established mortgage lender" means an organized business enterprise which has as one of its principal purposes in the normal course of business the originating of loans secured by real estate mortgages or deeds of trust and which has satisfied the qualification requirements of one of the following categories:

(1) Approval by the Secretary of the Department of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(2) Approval by the Federal National Mortgage Association or the Federal Home Lona Mortgage Corporation as a qualified Seller/Servicer; or

(3) A State agency or independent State Authority empowered by State law to raise capital to provide financing for residential dwelling units.

(C) A "qualified real estate manager" means a fiduciary as defined in section 3(21) of the Act who: (1) Is a financial institution or business organization, which in the normal course of business advises institutional investors regarding investments similar to those in which the plan desires to engage and which are described in part I of this exemption; and (2) acknowledges in writing to the plan that it will make decisions regarding plan investments in mortgage loans or participation interests therein in its capacity as a fiduciary of such plan.

(D) A "recognized mortgage loan" is: (1) Any mortgage loan on a "residential dwelling unit" which at the time of its origination, was eligible, through an established program, for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation (collectively, the Agencies); or (2) any Federal Housing Administration insured Government National Mortgage Association tandem project mortgage loan on a "residential dwelling unit". Effective for transactions on or after [insert the date of publication in the **Federal Register** of the final grant of the amended class exemption], compliance with the requirements of this subparagraph (D) may be determined without regard to any principal dollar amount limitation otherwise applicable an established program of the Agencies.

(E) Effective for transactions on or after [insert the date of publication in the **Federal Register** of the final grant of the amended class exemption], a "residential dwelling unit" or "unit" means non-farm property comprising one or more dwelling units, including detached houses, townhouses, manufactured housing, condominiums, units in a housing cooperative, a unit in a multi-unit subdivision (planned unit development) restricted by recorded documents which limit the use of the unit to residential purposes and provide for maintenance of common facilities, or apartment buildings.

Signed at Washington, DC, this 27th day of June 1988.

David M. Walker,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-14794 Filed 6-29-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by August 1, 1988.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0249) or Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0249) from whom copies of the form and supporting documents are available.

SUPPLEMENTARY INFORMATION:

Category: Extension of OMB Expiration Date

Title: NEH Performance Reporting Requirements

Form Number: Enclosure 2

Frequency of Collection: Varies—Occasional, Quarterly, Semi-Annually and Annual

Respondents: All NEH Grantees

Use: Provide Information on project activities

Estimated Number of Respondents: 1,250

Estimated Hours for Respondents to Provide Information: 2

This entry is not subject to 44 U.S.C. 3504(h).

Susan Metts,

Director of Administration.

[FR Doc. 88-14742 Filed 6-29-88; 8:45 am]

BILLING CODE 7536-01-M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before August 1, 1988.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202-786-0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503, (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entires are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revision
Title: Applications and Instruction Forms for the Access Category
Form Number: Not applicable
Frequency of Collection: Annual
Respondents: Humanities researchers and institutions
Use: Application for funding
Estimated Number of Respondents: 168
Estimated Hours for Respondents to Provide Information: 60 per respondent

Susan Metts,
Assistant Chairman for Administration.

[FR Doc. 88-14743 Filed 6-29-88; 8:45 am]
BILLING CODE 7536-01-M

Dance Advisory Panel (Companies Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Companies Section) to the National Council on the Arts will be held on July 18-22, 1988, from 9:00 a.m.-9:00 p.m., and on July 23, 1988, from 9:00 a.m.-5:00 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on July 23, 1988, from 3:00-5:00 p.m. for a guidelines and policy issues discussion.

The remaining sessions of this meeting on July 18-22, 1988, from 9:00 a.m.-9:00 p.m., and on July 23, 1988, from 9:00 a.m.-3:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

June 22, 1988.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-14669 Filed 6-29-88; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-400]

Carolina Power & Light Co., et al., Shearon Harris Nuclear Power Plant, Unit 1; Enivronmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from the requirements of 10 CFR 20.103(c)(2), regarding the administration of physical examinations for users of respiratory equipment, to the Carolina Power & Light Company (CP&L or the licensee), for the Shearon Harris Nuclear Power Plant, Unit 1, located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would permit the licensee to administer physical examinations for users of respiratory equipment at an interval of every 9 to 15 months, as opposed to the 12 month interval required by 10 CFR 20.103(c)(2). These examinations verify the physical capability of individuals to use respiratory protective equipment in an environment containing airborne radioactive material.

The Need for the Proposed Action

Currently, the licensee schedules physical examinations every 8 to 12 months to assure compliance with the 12-month requirement. Consequently, there are calendar years in which two examinations are scheduled. Because of the number of licensee employees requiring examinations, a two month period (e.g. June 1 to July 31) is set aside for the administration of all physical examinations. To assure compliance with the 12-month requirement, all examinations in the following year must be completed before June 1. Approval of this proposed exemption would provide greater flexibility in scheduling of examinations and preclude the need for administration of two examinations in the same calendar year.

Environmental Impacts of the Proposed Action

We have evaluated the environmental impacts related to granting the requested exemption. The administration of physical examinations for users of emergency respiratory equipment on the schedule proposed by the licensee will not, in any way, reduce the integrity of any safety system. Accordingly, post-accident radiological releases will not be greater than previously determined nor does the proposed schedule for physical examinations otherwise affect radiological plant effluents, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves the use of systems located entirely within the restricted area, as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological

environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative to granting the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the Shearon Harris Nuclear Power Plant, Unit 1, operations and would not enhance the protection of the environment.

Alternative Use of Resources

This action would involve no use of resources not previously considered in the Final Environmental Statement (operating license) for the Shearon Harris Nuclear Power Plant, Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated January 30, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Dated at Rockville, Maryland, this 23rd day of June 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Director II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-14763 Filed 6-29-88; 8:45 am]

BILLING CODE 7590-01-M

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the **Federal Register**, as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register**, on or about June 30 to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Thomas H. Wells, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192-0501, (205) 261-4378.	Same.
Alaska	Mr. Dennis Kelso, Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, (907) 465-2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 4814 South 40 Street, Phoenix, AZ 85040, (602) 255-4845, After hours: (602) 998-4662.	Same.
Arkansas	Greta J. Dicus, Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 662-2301, After hours: (501) 661-2136 or 661-2000.	Same.
California	L.M. Short, Chief, California Highway Patrol, P.O. Box 942898, Sacramento, CA 94298-0001, (916) 445-3253.	Same.
Colorado	Captain Lonnie J. Westphal, Officer in Charge, Administrative Branch Services, Colorado State Patrol, 700 Kipling Street, Denver, CO 80215, (303) 239-4560, After hours: (303) 239-4501.	Same.
Connecticut	The Honorable Leslie Carothers, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106, (203) 566-2110.	Same.
Delaware	Edward J. Steiner, Secretary, Department of Public Safety, Highway Administration Building, P.O. Box 818, Dover, DE 19903, (302) 736-4321.	Same.
Florida	Harlan Keaton, Public Health Physicist Manager, Office of Radiation Control, Department of Health and Rehabilitative Services, P.O. Box 15490, Orlando, FL 32858, (305) 297-2095.	Same.
Georgia	Tom Doyal, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Hapeville, GA 30354, (404) 761-2229.	Same.
Hawaii	James K. Ikeda, Deputy Director for Environmental Health, Department of Health, P.O. Box 3378, Honolulu, HI 96818, (808) 548-4139.	Same.
Idaho	Ernest Ranieri, Radiation Physicist Supervisor, Division of Environment, 450 W. State, 3rd Floor, Boise, ID 83720, (208) 334-5879, After hours: (208) 344-4090.	Same.
Illinois	Dr. Terry Lash, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 782-6111, After hours: (217) 785-0600.	Same.
Indiana	Larry D. Furnas, Acting Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, After hours: (317) 232-8248.	Same.
Iowa	Ellen M. Gordon, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Leon H. Mannell, P.E., Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 233-9253, Ext. 321.	Same.
Kentucky	Donald R. Hughes, Sr., Manager, Radiation Control, Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Capt. Louis Cook, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6113.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Maine	Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04330, (207) 289-2155.	Same.
Maryland	Colonel James A. Jones, Chief, Service Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 2nd Floor, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	James E. Cox, Captain, Commanding Officer, Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 337-6100.	Same.
Minnesota	John R. Kerr, Natural Disaster Planner, Minnesota Division of Emergency Services, B5 State Capitol, St. Paul, MN 55155, (612) 296-2233, After hours: (612) 649-5451.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39216, (601) 352-9100.	Same.
Missouri	Richard D. Ross, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-9779, After hours: (314) 751-2748.	Same.
Montana	Mr. Larry Lloyd, Administrator, Environmental Sciences Division, Department of Health and Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620, (406) 444-3948, After hours: (406) 442-1425.	George DeWolf, Administrator, Disaster and Emergency Services Division, P.O. Box 4789, Helena, MT 59604, (406) 444-6911.
Nebraska	Harold W. LeGrande, Superintendent, Nebraska State Patrol, P.O. Box 94907, State House, Lincoln, NE 68509, (402) 471-2406, After hours: (402) 471-4545.	Same.
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Regulatory Health Services, Nevada Division of Health, 505 East King Street, Room 202, Carson City, NV 89710, (702) 885-5394.	Same.
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Department of Safety, James H. Hayes Building, Hazen Drive, Concord, NH 03305, (603) 271-3636 (24 hours).	Same.
New Jersey	David Scott, Acting Chief, Department of Environmental Protection, Bureau of Nuclear Engineering, CN 411, Trenton, NJ 08625, (609) 530-4022.	Same.
New Mexico	Dr. Robert Kemble, Cabinet Secretary, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504-1628, (505) 827-3370, After hours: (505) 827-9126.	Same.
New York	Donald A. DeVito, Director, State Emergency Management Office, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.
North Carolina	Major Walter K. Chapman, Director, Administrative Services, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-7952, After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58502-5520, (701) 224-2348, After hours: (701) 224-2121.	Same.
Ohio	James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2825 W. Granville Road, Worthington, OH 43235-2712, (614) 889-7150.	Same.
Oklahoma	Clent Dedek, Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. King Avenue, P.O. Box 11415, Oklahoma city, OK 73136-0145, (405) 424-4011.	Same.
Oregon	William T. Dixon, Administrator, Siting and Regulation, Oregon Department of Energy, 625 Marion Street, N.E., Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	George M. Johnson, Director, Response and Recovery, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105, (717) 783-8150, After hours: (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Colombia, SC 29201, (803) 734-4632, After hours: (803) 253-6497.	Same.
South Dakota	Robert D. Gunderson, Division Director, Emergency and Disaster Services, Capitol Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	John White, Assistant Deputy Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive., Nashville, TN 37204, (615) 252-3300, After hours: 1-800-258-3300.	Same.
Texas	Dr. Robert Bernstein, Commisioner, Texas Department of Health, Bureau of Radiation Control, 1100 West 49th Street, Austin, TX 78756, (512) 458-7375.	Col. Leo Gossett, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752, (512) 465-2000.
Utah	Larry F. Anderson, Director, Bureau of Radiation Control, 288 N. 1460 West, P.O. Box 16690, Salt Lake City, UT 84116-0690, (801) 538-6734, After hours: (801) 538-6333.	Same.
Vermont	Susan C. Crampton, Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828-2657.	Same.
Virginia	Michael, M. Cline, Director of Operations, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 674-2400.	Same.
Washington	Curtis P. Eschels, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, WA 98504, (206) 459-6490.	Same.
West Virginia	Colonel W. F. Donohoe, Superintendent, Department of Public Safery, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111.	Same.
Wisconsin	BG (Ret.) Richard I. Braund, Administrator, Wisconsin Division of Emergency Government, 4802 Sheboygan Ave., Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Julius E. Haes, Jr., Chief, Radiological Health Services, Department of Health and Social Services, Hathaway Building, Cheyenne WY 82002-0710, (307) 777-6015, After hours: (307 777-7244.	Same.
District of Columbia	Norma J. Stewart, Program Manager, Pharmaceutical and Medical Devices Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW, Washington, DC 20001, (202) 727-7219, After hours: (202) 727-6161.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Puerto Rico	Santos Rohena, Jr., Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 722-1175 or (809) 725-5140.	Same.
Guam	Charles P. Crisostomo, Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, (671) 646-7579.	Same.
Trust Territory of the Pacific Islands.	R. Kent Harvey, Attorney General, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9325 or 9364.	Same.
Virgina Islands	Honorable Juan Luis, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001.	Same.
American Samoa	Mr. Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633-2304.	Same.
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Saipan, CM 96950, #9820 or #9834.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 492-0308

Dated at Rockville, MD, this 9th day of June 1988.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Governmental and Public Affairs.

[FR Doc 88-14764 Filed 6-29-88; 8:45 am]

BILLING CODE 7590-01-M

Uranium Mill Facilities; Availability and Request for Public Comment on a Draft Technical Position on Alternate Concentration Limits

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availablity of and is soliciting public comment on a draft "Technical Position on Alternate Concentration Limits for Uranium Mills." The Position provides NRC guidance on the standard format and content of applications for Alternate Concentration Limits for uranium mills and standard review procedures for such applications to meet the requirements in Criterion 5B(6) of Appendix A to 10 CFR Part 40. NRC is requesting public comment on the draft Technical Position before it is finalized.

DATE: Comments on the draft Technical Position should be submitted by August 29, 1988 to ensure that the comments are considered by NRC staff in developing the final Technical Position.

ADDRESSES: Copies of the draft Technical Position may be obtained by writing to Michael Weber at Mail Stop 5E4, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments on the draft position should be sent to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. weekdays except Federal holidays. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Micheal Weber, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-0565.

SUPPLEMENTARY INFORMATION: The NRC staff is developing guidance to assist licensees in developing applications for Alternate Concentration Limits (ACLs) at uranim mills. The ACL constitute concentration limits for hazardous constituents in groundwater that has been contaminated by seepage from uranium mill tailings impoundments. NRC staff anticipates that uranium mill licensees will request ACLs as they continue to implement groundwater monitoring and corrective action programs in accordance with NRC's requirements in 10 CFR Part 40, Appendix A. Criterion 5B(6) of Appendix A allows ACLs if: (1) The ACLs prevent substantial present and potential hazards to human health or the environment, as long as the ACLs are not exceeded, and (2) the ACLs are as low as reasonably achievable, considering practicable corrective action.

The purpose of the draft "Technical Position on Alternate Concentration Limits for Uranium Mills" is to establish the (1) NRC staff's interpretation of requirements for establishing ACLs in Criterion 5B(6) of Appendix A to 10 CFR Part 40, (2) standard format and content of applications for ACLs at uranium mills, and (3) standard NRC staff review procedures for ACL applications. The Technical Position should help licensees assemble, assess, and prepare information in the form of an application to the NRC for establishing site-specific ACLs at uranium mills. In addition, the Position describes the characteristics of an ACL application that the NRC staff would find generally acceptable under Criterion 5B(6) of Appendix A to 10 CFR Part 40. Further, the Position provides guidance to the NRC staff about the conduct of and criteria for reviews of ACL applications. This guidance helps ensure quality and uniformity of staff reviews and presents a well-defined basis from which to evaluate changes in the scope and requirements of reviews. Although the Position is intended to be used by licensees and the NRC staff, Agreement States and other interested parties may choose to use the Technical Position in assessing ACLs at uranium mills.

NRC staff is soliciting public comments to assist the staff in developing the Technical Position. After collecting and evaluating public comments, the NRC staff intends to publish the final Technical Position in November 1988.

In addition, NRC staff intends to conduct an instructional workshop on ACLs during September 1988. The purpose of the workshop is to summarize general aspects of ACLs, describe integration of ACLs with groundwater monitoring and corrective action programs, and review an example application for ACLs at a uranium mill tailings sits. Interested parties are encouraged to contact Mr. Weber at the address listed above for more details about the workshop.

Dated at Rockville, Maryland, this 23rd day of June 1988.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Acting Chief, Technical Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88-14762 Filed 6-29-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits; Program Alternatives and Reform: Public Hearing

AGENCY: Office of Personnel Management.

ACTION: Notice of public hearing.

SUMMARY: The Office of Personnel Management will hold a public hearing on reforming the Federal Employees Health Benefits (FEHB) Program.

DATES: The public hearing will be held at the U.S. Office of Personnel Management beginning at 10:00 a.m. on July 26, 1988, in the Auditorium, Ground Floor, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Reginald M. Jones, Jr., Retirement and Insurance Group, OPM, Room 4351, 1900 E Street, NW., Washington, DC 20415, telephone (202) 632-3772.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management has scheduled a hearing to receive proposals and suggestions on alternatives to the Federal Employees Health Benefits (FEHB) program, as presently structured. The current program began in 1960. Many conditions that prevailed at that time have changed dramatically. Medicare, the ratio of annuitants to active employees, the growth of alternative health care delivery systems, increased competition among carriers, and high costs have all had a major impact on the program. As a result OPM has concluded that the program as originally designed may no longer be the most effective way of providing health benefits to Federal workers. For that reason, OPM contracted with the benefits firm of Towers, Perrin, Forster & Crosby, Inc. (TPF&C) to evaluate and recommend improvements in the FEHB program. TPF&C submitted a report to OPM in April 1988, which OPM distributed to the heads of executive agencies, members of Congress, FEHB insurance carriers, and other organizations requesting copies. The report includes recommendations for administrative changes and for basic structural reforms that would require legislation.

As OPM proceeds in its efforts to reform the FEHB program, the Director encourages interested parties to present their views on the recommendations in the report and to suggest alternative structural changes which may not have been considered in the report.

The public will be given an opportunity to make oral presentations. At the discretion of the presiding official, speakers will be limited to a maximum of 7 minutes for their presentations. All requests to make oral presentations for the record should be received no later than July 15, 1988.

Requests to make oral presentations and submission of written comments should be addressed to Reginald M. Jones, Jr., at the office location and telephone number cited above.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-14731 Filed 6-29-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Allstate Municipal Income Trust II
  Shares of Beneficial Interest, $.01 Par Value (File No. 7-3562)
Comstock Partners Strategy Fund, Inc.
  Common Stock, $.001 Par Value (File No. 7-3563)
Empressa Nacional De Electricidad, S.A.
  American Despositary Shares, No Par Value (File No. 7-3564)
International Minerals and Chemical Corp.
  $3.75 Cumulative Convertible Exchangeable Preferred Stock, $1.00 Par Value (File No. 7-3565)
Prudential Intermediate Income Fund, Inc. (The)
  Common Stock, $.01 Par Value (File No. 7-3566)
ACM Government Spectrum Fund, Inc.
  Common Stock, $.01 Par Value (File No. 7-3567)
Teleconnect Co.
  Common Stock, $.07 Par Value (File No. 7-3568)
Commercial Credit Group, Inc. (Holding Company)
  Common Stock, $.01 Par Value (File No. 7-3569)
Concord Fabrics Inc. (Delaware)
  Class A Common Stock, $.50 Par Value (File No. 7-3570)
Concord Fabrics Inc. (Delaware)
  Class B Common Stock, $.50 Par Value (File No. 7-3571)
The Gap, Inc. (Delaware)
  Common Stock, $.05 Par Value (File No. 7-3572)
Loctite Corporation (Delaware)
  Common Stock, No Par Value (File No. 7-3573)
Michigan Consolidated Gas Company
  Common Stock, $1.00 Par Value (File No. 7-3574)
Midway Airlines, Inc.
  Common Stock, $.01 Par Value (File No. 7-3575)
Nova Corporation of Alberta
  Common Stock, No Par Value (File No. 7-3576)
SCOR U.S. Corp.
  Common Stock, $.30 Par Value (File No. 7-3577)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 19, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. 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 trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14726 Filed 6-29-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Columbia Pictures Entertainment, Inc.
Common Stock, $0.01 Par Value (File No. 7-3578)
Crystal Oil Company
Common Stock, $.01 Par Value (File No. 7-3579)
Universal Corporation
Common Stock, No Par Value (File No. 7-3580)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 19, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-14727 Filed 6-29-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading; Shabu Gold Mines Ltd. A/K/A Canadian Eagle Exploration, Inc.

June 27, 1988.

It appears to the Securities and Exchange Commission that there is a lack of current adequate and accurate public information concerning Shabu Gold Mines Ltd.'s a/k/a Canadian Eagle Exploration, Inc.'s financial condition and the circulation of a prospectus containing apparently false and misleading information concerning the company's ownership and assets and the omission of the material information that the Alberta Securities Commission ordered the suspension of trading, an order which remains in effect, of the company's securities on the Alberta Stock Exchange. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Shabu Gold Mines Ltd. a/k/a Canadian Eagle Exploration, Inc.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that all trading in the securities of Shabu Gold Mines Ltd. a/k/a Canadian Eagle Exploration, Inc., over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (EDT) on June 27, 1988 through 11:59 p.m. (EDT) on July 6, 1988.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-14723 Filed 6-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16452; (811-2593)]

CU Members Income Fund, Ltd.; Application

June 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: CU Members Income Fund, Ltd. (formerly Members' Investment for Income Fund, Ltd.).

Relevant 1940 Act Section: Order requesting deregistration under section 8(f) and Rule 8f-1.

Summary of Application: Applicant requests an order under section 8(f) declaring that Applicant, which registered under the 1940 Act as an open-end diversified management investment company, has ceased to be an investment company.

Filing Dates: The Application was filed on March 8, 1988, and a letter was submitted on June 9, 1988.

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 July 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant 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 attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, 5710 Mineral Point Road, Box 431, Madison, Wisconsin 53701.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney, (202) 272-2190, or Brion R. Thompson, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The 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) 258-4300).

Applicant's Representations:

1. Applicant registered under the 1940 Act as an open-end, diversified, management investment company on February 24, 1975. Applicant originally registered under the Act as Members' Investment for Income Fund, Ltd., but subsequently changed its name to CU Members Income Fund, Ltd. on February 4, 1980. Applicant's Registration Statement was declared effective on July 3, 1980 and its shares were offered exclusively to participants in the CU Retirement Benefit Plan ("Plan").

2. On May 20, 1985 the management of Fund Management CUNA Service Group, Inc. ("CSG") recommended to the Board of Directors of CSG that CSG discontinue its services as Plan Administrator because of the expense involved in providing such services. Consequently, CSG's Board of Directors delegated Board Committee the responsibility of working with the Board of Directors of the Fund to a Board Committee in order to take the necessary actions to discontinue CSG's services as Plan Administrator.

3. On July 11, 1985, the Fund's Board of Directors unanimously adopted a resolution authorizing CSG to inform the Fund's shareholders that CSG was discontinuing its services as Plan administrator.

4. On June 24, 1985, CSG's Board of Directors adopted a resolution determining that it was unreasonably expensive to continue to provide services to the Plan and CSG thereby

elected to discontinue its services as the Plan Administrator for the ICU Retirement Plan.

5. The distribution of the assets of the Fund to shareholders was made as a result of the termination of the Plan effective October 18, 1985. The distribution of the value of the Fund's shares to each shareholder was made in accordance with one of six options made available to, and selected by, each shareholder under the termination plan for the Plan. The distribution consisted of all principal and accrued earnings thereon to the date of distribution requested by the shareholder or the date of Plan termination on October 18, 1985, whichever occurred first. Copies of the correspondence sent to Fund shareholders in connection with such distribution were previously made available to the staff of the SEC prior to the termination of the Plan and the final distributions to the Fund shareholders. Further, the Chicago Regional Office of the SEC examined the Fund during 1987; the examination included a review of the final distributions to shareholders of the Fund described above.

6. On October 18, 1985, the Plan Custodian, Chase Manhattan Bank, distributed all of the Fund's assets to the Fund's shareholders through the custodial accounts of the Plan, except for the initial underwriting subscription ($100,000) plus accrued earnings thereon ($18,940.82 as of 2/29/88). The Fund will distribute these balances to CSG following the Fund's deregistration. On October 29, 1986, the Board of Directors of CSG (the sole remaining Fund shareholder) authorized the dissolution of the Fund.

7. Applicant states that it is not a party to any current or pending litigation or administrative proceedings, and that it does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs. According to the application, Applicant's Board of Directors resolved to liquidate Applicant's business on June 11, 1985, and a certificate of dissolution will be filed with the State of Maryland following the receipt of the order deregistering the Fund under the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14728 Filed 6-29-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading; Kinesis, Inc.

June 27, 1988.

It appears to the Securities and Exchange Commission that there is a lack of current adequate and accurate public information concerning Kinesis, Inc.'s financial condition, there has been a dissemination of apparently false and misleading information concerning the company's business activities, and there was an overissuance of the company's stock by a transfer agent. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Kinesis, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that all trading in the securities of Kinesis, Inc., over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (EDT) on June 27, 1988 through 11:59 p.m. (EDT) on July 6, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14724 Filed 6-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16450; 811-3033]

Liberty Cash Management Fund, Inc.; Application

June 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Liberty Cash Management Fund, Inc. ("Applicant").

Relant 1940 Act Sections: Order requested under Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order pursuant to section 8(f) of the 1940 Act and Rule 8f-1 thereunder declaring that it has ceased to be an investment company under the Act.

Filing Date: The application was filed on March 1, 1988 and amended on June 21, 1988. A second amendment, the substance of which is included herein will be filed during the notice period.

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 July 18, 1988. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant 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.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, One Bankers Trust Plaza, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

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 who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant registered under the 1940 Act on March 31, 1980, and its registration statement was filed on March 31, 1980, pursuant to section 8(b) of the 1940 Act. Applicant is an openend, diversified management investment company presently a corporation in good standing under the laws of the State of Maryland.

2. On July 14, 1987 Applicant's board of directors approved the redemption of all the shares of the Applicant. No security holder authorization was obtained in connection with the redemption.

3. Pursuant to resolutions adopted by the Applicant's board of directors, Applicant's officers were authorized to take certain steps to terminate the business of the Applicant. On August 13, 1987 Applicant redemed ("Redemption Date"), at a price of $1.00 per share, 11,272,783 shares, which represented the Applicant's remaining outstanding shares of common stock, from its securityholders and has effected, and is in the process of effecting, a winding-up of its affairs. Immediately prior to the Redemption Date, the Applicant had 11,272,783 shares of common stock with a net asset value of $1.00 per share. No securityholder authorization was obtained in connection with the redemption. Through the date of the filing of the application, Applicant has not incurred any expenses in connection with its redemption. The Applicant did not dispose of any portfolio securities in

connection with its redemption. Securities matured in their ordinary course of business through the period August 7, 1987, and the proceeds were invested in overnight Eurodollar time deposits. As of the Redemption Date, the Applicant held no assets other than cash.

4. Applicant has retained cash in the amount of $375, to permit it to repay its remaining liabilities. As of the date hereof, Applicant has liabilities of $375.00 outstanding constituting payables. Applicant had no stockholders at the time of filing this application.

5. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, for the benefit of any security holder of the Applicant.

6. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged nor does it propose to engage in any busineess activities other than those necessary for the winding up of its affairs.

7. Applicant filed a Form N-SAR for each semi-annual period for which such form was required, including the semi-annual period ended December 31, 1987. If a Form N-SAR is required for the period December 31, 1987, through the date that Applicant is deregistered, such form will be filed promptly following issuance of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14729 Filed 6-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16453; (812-6998)]

The Thai Fund, Inc.; Application

June 24, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Thai Fund, Inc.

Relevant 1940 Act Section: Exemption requested under Section 6(c) from the provisions of Section 12(d)(3) of the 1940 Act.

Summary of Application: Applicant seeks an order permitting it to purchase securities issued by Thai companies listed on the Securities Exchange of Thailand ("SET") which are engaged in securities-related businesses (the "SET-Listed Securities Companies"). Such investments will be subject to the same quantitative standards and comparable qualitative standards as those imposed on investments by registered investment companies in the securities of U.S. broker-dealers by Rule 12d3-1 under the 1940 Act.

Filing Dates: The Application was filed on February 26, 1988 and amended on June 18, 1988.

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 July 18, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant 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 attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, The Thai Fund, Inc., c/o John E. Baumgardner, Jr., Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272-2190, or Brion R. Thompson, Branch Chief (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application as amended; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copies which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant, a corporation organized under the laws of the State of Maryland, is a non-diversified, closed-end management investment company registered under the Investment Company Act of 1940 (the "1940 Act"). Applicant filed a registration statement under the Securities Act of 1933 and the 1940 Act on October 1, 1987, and filed amendments thereto on December 8, 1987, January 22, February 5, and February 15, 1988. The SEC declared the amended registration statement effective on February 17, 1988.

2. Applicant's investment objective is long-term capital appreciation through investment primarily in equity securities of Thai companies. It is the policy of Applicant to invest under normal circumstances, at the conclusion of the initial investment period, at least 80% of its net assets in equity securities of Thai companies. During defensive periods, Applicant may reduce its holdings in equity securities of Thai companies and increase its holding in bonds, short-term debt obligations, money market instruments or cash, all denominated in Baht, which could bring the amount of net assets invested in Thai equity securities below 80%. In order to meet or anticipate its operating expenses and distribution requirements during defensive periods when the value of the Baht is expected to depreciate against the dollar or when there are negative developments in the markets for Thai securities or in Thailand, Applicant may invest in non-Baht denominated investments, including obligations issued or guaranteed by the United States Government and other dollar-denominated securities and non-Baht denominated prime grade finance company or corporate commercial paper, and certificates of deposit or banker's acceptance of United States commercial banks. After the Fund's initial investment period, however, such non-Baht denominated investments are limited by the Bank of Thailand to 20% if the Fund's net assets invested through the Investment Plan.

3. Applicant's investment advisers are Morgan Stanley Asset Management Inc. ("MSAM" or "U.S. Adviser"), a Delaware corporation, and The Mutual Fund Company Limited ("Thai Adviser"), a Thai limited company (together, "Advisers"). Applicant's administrators are MSAM and The Vanguard Group, Inc., a Pennsylvania corporation, ("Vanguard", together with MSAM, "Administrators"). Each of the Advisers is a registered investment adviser under the Investment Advisers Act of 1940. Their advisory activities are governed by an investment contract (the "Investment Contract") establishing the Investment Plan and a related Technical Assistance and Seconding Agreement (the "Seconding Agreement") which, during the time the Investment Plan is in existence, together serve as investment advisory agreements between Applicant, MSAM and Thai Adviser. Under these two agreements MSAM will provide staff to the Thai Adviser to make investment decisions for the Investment Plan. During the existence of the Investment Plan, MSAM, pursuant to the MSAM Administration Agreement, has agreed to provide administrative services to Applicant, directly or through third parties such as Vanguard. Vanguard has agreed to provide

administrative service to the Fund pursuant to the Vanguard Administration Agreement between MSAM and Vanguard.

4. Thai laws permit SET-Listed Securities Companies to act as securities brokers, securities dealers, underwriters or investment advisers. Most SET-Listed Securities Companies are members of the SET, and all engage in securities-related businesses. Therefore, Applicant's proposed investment in SET-Listed Securities Companies would be subject to the prohibitions of section 12(d)(3) of the 1940 Act against registered investment companies purchasing securities of issuers engaged in securities-related businesses. With respect to the exemptive relief from section 12(d)(3) of the 1940 Act provided by Rule 12d3-1, Applicant recognizes that SET-Listed Securities Companies derive more than 15% of their gross revenues from securities-related activities for any given period, and Applicant has assumed for the purposes of this application that investment in SET-Listed Securities Companies would be subject to the conditions of Rule 12d3-1(b).

5. As of December 31, 1987, market capitalization of corporate equity securities (excluding unit trusts) ("Corporate Equity Securities") for the SET was 135.37 billion Baht, compared to 74.46 billion Baht as of December 31, 1986. In 1987, SET-Listed Securities Companies represented 22.95% of the SET's Corporate Equity Securities market, which includes major industrial, transport, service, insurance, financial and utility stocks. In addition, as of December 31, 1987, finance and securities companies comprised the SET's single largest sectoral group in terms of number of companies quoted.

Applicant's Legal Conclusions

1. Applicant has reviewed all the conditions set forth in Rule 12d3-1(b) and represents or undertakes that it will be able to satisfy all but one of the conditions. Applicant cannot satisfy the condition that any equity security acquired must be a "margin security" as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System. Because the equity securities of SET-Listed Securities Companies are not listed on a United States securities exchange or traded in the United States in the over-the-counter market, they cannot be "margin securities." Because Applicant is unable to satisfy all of the conditions of Rule 12d3-1, and thus cannot avail itself of the exemption provided by such rule, it is unable to take advantage of good investment opportunities and to increase the diversification of its portfolio, particularly its diversification within the financial sector of the Thai economy.

2. Applicant submits that the securities of SET-Listed Securities Companies that it intends to purchase have at least the degree of investor interest and depth and breadth of market as certain securities traded in the U.S. over-the-counter market which have been designated as "OTC margin stock." Applicant also undertakes to invest in only SET-Listed Securities Companies' securities that would meet the criteria concerning total market value, earning power and share distribution and would, based on these grounds, be eligible for listing on one or more of the following: The New York Stock Exchange, The American Stock Exchange or the NASDAQ National Market System. Applicant further submits that its investment in securities of SET-Listed Securities Companies would have no adverse effect on, but rather would enhance, the liquidity of its portfolio.

3. Applicant further represents that the public information available in Thailand about SET-Listed Securities Companies is at least as extensive as information available in Thailand about Thai issuers in other industries in which Applicant intends regularly to invest. Applicant submits that the disclosure required by Thai laws and regulations, while not in all respects as comprehensive as U.S. securities law, provides significant disclosure in connection with the issuance of securities which is the "substantial equivalent" of the disclosure required by the Securities Act of 1933.

4. Applicant submits that, given the significant market share of SET-Listed Securities Companies and their prominence in the financial services sector of the Thai economy, it would be able to take advantage of good investment opportunities and to increase the diversification of its portfolio were it permitted to invest in the equity and debt securities of SET-Listed Securities Companies. Applicant asserts that the granting of the requested exemptive order 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.

5. Based on the foregoing, Applicant respectfully requests an exemption from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit it to invest in equity and debt securities of SET-Listed Securities Companies, which are listed on the SET, subject to Applicant's undertakings (i) that such investments will comply with all the requirements of Rule 12d3-1 except the requirement that such equity securities be "margin securities"; (ii) that such equity securities acquired are listed on the SET; and (iii) that such debt securities acquired are determined to be investment grade by Applicant's Board of Directors.

Applicant's Conditions

Applicant agrees that if the requested order is granted, such order will be expressly conditioned on Applicant's compliance with the undertakings set forth above.

For the Commission, by the Division of Investment management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14730 Filed 6-29-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading; Transworld Ventures Corp.

June 27, 1988.

It appears to the Securities and Exchange Commission that there is a lack of current adequate and accurate public information concerning Transworld Ventures Corporation's financial condition. The registration statement of Transworld Ventures Corporation, effective January 11, 1988, apparently contains false and misleading information concerning the management and control of the company and ownership of the company's securities. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Transworld Ventures Corporation.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that all trading in the securities of Transworld Ventures Corporation, over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (EDT) on June 27, 1988 through 11:59 p.m. (EDT) on July 6, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14725 Filed 6-29-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/10-0124]

Commercial Capital, Inc.; Surrender of License

Notice is hereby given that Commercial Capital, Inc. (CCI), 200 Belle Terre Boulevard, Covington, Louisiana 70433, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). CCI was licensed by the Small Business Administration on September 6, 1962.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on June 22, 1988, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 24, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-14771 Filed 6-29-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1200]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Ad Hoc group for Telecommunications Credit Card Issuer Identifier Code Allocation and Administration, operating under Study Group C of the U.S. CCITT, will meet on August 3, 1988 at 1:30 p.m. in Room 3524, Department of State, 2201 C Street, NW., Washington, DC.

The purpose of this meeting will be to discuss:

(a) Functional administrative procedures of the subcommittee.

(b) Status report of formal assignments received/processed.

(c) Return of unrequested codes to world zone 1, and

(d) Development and approval of liaison statement to the American National Standards Institute Registration Committee (RC) for ISO 7812.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653-6102. All attendees must use the C Street entrance to the building.

Dated: June 17, 1988.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT, National Committee.

[FR Doc. 88-14776 Filed 6-29-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Louis County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in St. Louis County, Missouri.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Anderson, Federal Highway Administration, P.O. Box 1787, Jefferson City, Missouri 65102, Telephone Number 314-636-7104

Mr. James F. Roberts, Surveys and Plans Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, Missouri 65102, Telephone Number 314-751-2876.

SUPPLEMENTARY INFORMATION:

(1) The proposed highway project will provide reconstruction and partial relocation of existing Route 141 along its present corridor in western St. Louis County from south of Route HH to north of Route I-44, a length of 4.602 miles.

The proposed facility will provide a 24-foot pavement in each direction separated by concrete median barrier and raised median island. At-grade intersections will be provided at minor arterial cross streets.

Interchanges with grade separations will be provided at major arterial crossroads. Partial limited access right-of-way will be acquired.

(2) The "no build" alternative as well as the upgrading of existing facilities will be addressed.

(3) To date, a preliminary reconnaissance aerial mosaic has been furnished to local officials, legislators, and other interested parties. Presentation of the location has been made at the local level and input received. The scoping process will be initiated with Federal, State and local agencies as the study progresses. Further public hearings will also be held.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on June 14, 1988.

Robert G. Anderson,

District Engineer, Jefferson City.

[FR Doc. 88-14696 Filed 6-29-88; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Office of Hazardous Materials Transportation (OHMT), Research and Special Programs Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA and the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council will jointly conduct a public meeting to exchange views on proposals that will be considered at the 38th session of the United Nations Group of Rapporteurs on the Transport of Dangerous Goods relating to the development of international standards for the transport of dangerous goods.

DATE: July 21, 1988, 9:30 a.m.

ADDRESS: Room 3200, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC, 20590 (202) 366-0656.

SUPPLEMENTARY INFORMATION: Particular topics to be reviewed at this meeting will include U.S. proposals on the definition of Class 2 gases, the establishment of defining criteria and tests for the classification of liquid oxidizers, mixtures of Division 6.1 inhalation hazards, reclassification of

inhalation hazards and proposals received from other Rapporteurs.

This meeting will be conducted jointly with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council. Interested persons are invited to attend and participate in this meeting. Persons planning to attend are cautioned that this meeting is intended to exchange views on a number of proposals involving international standards for the transport of dangerous goods. Therefore, it is recommended that attendees be familiar with these standards.

Issued in Washington, DC, on June 27, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88-14741 Filed 6-29-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-36]

Revocation of Individual Broker's License No. 6215; Michael L. Lynch

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury, on March 10, 1987, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), revoked with prejudice the individual broker's license No. 6215 issued to Michael L. Lynch, New York, on September 12, 1979. The decision having been upheld by the United States Court of International Trade (Court No. 87-4-00640) is effective as of February 24, 1988.

Dated: June 23, 1988.

William von Raab,

Acting Commissioner of Customs.

[FR Doc. 88-14716 Filed 6-29-88; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

Renegotiation Board Interest Rate, Prompt Payment Interest Rate, Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92-41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95-563) and the Prompt Paymnent Act (Pub. L. 97-177) are required to calculate interest due on claims "* * * at a rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1988 and ending on December 31, 1988, is 9¼ per centum per annum.

Dated: June 22, 1988.

Marcus Page,

Deputy Fiscal Assistant Secretary.

[FR Doc. 88-14770 Filed 6-29-88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds: Termination of Authority: Fairmont Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to FAIRMONT INSURANCE COMPANY under the United States Code, Title 31, Sections 9304 to 9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24610, July 1, 1987.

With respect to any bonds currently in force with FAIRMONT INSURANCE COMPANY, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: June 13, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88-14750 Filed 6-29-88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 27]

Surety Companies Acceptable on Federal Bonds: Termination of Authority: Rockwood Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Rockwood Insurance Company, of Rockwood, Pennsylvania, under the United States Code, Title 31, Sections 9304-9305, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1988.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24623, July 1, 1987.

With respect to any bonds currently in force with Rockwood Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: June 27, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88-14751 Filed 6-29-88; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 126
Thursday, June 30, 1988

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).

DEPARTMENT OF ENERGY

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 27, 1988, 53 FR 24167.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 29, 1988, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Item CAG-16:

Item No., Docket No., and Company

CAG-16
RP86-94-005 and 006, Sea Robin Pipeline Company.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-14829 Filed 6-28-88 1:22 pm]

BILLING CODE 6717-02-M

FEDERAL ELECTION COMMISSION

[NO. 88-14321]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 30, 1988, 10:00 a.m.

The following items were continued from the June 23, 1988 meeting and will be added to the agenda for June 30, 1988:

Draft Advisory Opinion 1988-22—J. Miles Reid on behalf of San Joaquin Valley Republican Associates.
Draft Notice of Proposed Rulemaking: Extension of Credit and Debt Settlement by Corporate and Noncorporate Creditors (11 CFR 114.10 and Proposed 110.9).
Drug-Free Workplace Program.

Also added to the agenda for June 30, 1988:

Revised Draft Advisory Opinion 1988-25—Robert F. Bauer on behalf of General Motors Corporation ("GM").

* * * * *

DATE AND TIME: Wednesday, July 6, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concernings participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, July 7, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-26—Marc R. Jartman on behalf of UNC, Incorporated ("UNC").
FY 1988 Management Plan Reallocation.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88-14862 Filed 6-28-88; 1:24 am]

BILLING CODE 6715-01-M

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Monday, July 11, 1988 8:30 a.m. to 12:30 p.m.

PLACE: 1301 Shoreway Road, Fourth Floor, Belmont, California 94002.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 24 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: DAVID J. DORWORTH, Chief Case Analyst, National Appeals Board United States Parole Commission, (301) 492-5987.

Date: June 28, 1988.

Patrick J. Glynn,
General Counsel, U.S. Parole Commission.

[FR Doc. 88-14868 Filed 6-28-88; 1:54 pm]

BILLING CODE 4410-01-M

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Monday, July 11, 1988, 2:00 p.m., Western Daylight Time.

PLACE: 1301 Shoreway Road, Fourth Floor, Belmont, California, 94002.

STATUS: Open—Meeting.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Adoption of minutes of previous Commission meeting.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Management and Administrative Sections.
3. Review of Experimental Federal Home Detention Projects.
4. Consideration of establishment of National Community Sanction/Home Detention Program.
5. Proposal of modification of the guidelines for Category Five and Category Six Offenses.
6. Consideration of proposed budget for fiscal year 1990.
7. Consideration of proposal sanctioning crimes committed by illegal aliens.
8. Consideration of proposal to set severity rating for Stolen/Counterfeit Credit Cards.
9. Consideration of proposal barring inmates as representatives for other inmates at parole hearings.
10. Proposal for modification of 28 CFR 2.13 to reflect that under extraordinary circumstances parole hearings may be conducted by a single examiner.
11. Consideration of proposal to set severity ratings for fires set in an institution.
12. Proposal that Procedures Manual paragraph 2.11-14 be amended to clarify that it refers to prisoners out of the institution for testimony or prosecution in court.
13. Proposal that disclosure of Bureau of Prisons documents contained with the Parole Commission's file be made by the Parole Commission, if the requester wishes the BOP document in his parole file to be processed.
14. Proposal that Procedures Manual paragraph 2.51-05 be amended to comport with Department of Justice advice to the Marshals Service as to the use of subpoenas to aid in the apprehending of absconders.

AGENCY CONTACT: James Beck, Director Research Section, United States Parole Commission, (301) 492-5936.

Date: June 28, 1988.

Patrick J. Glynn,
General Counsel, U.S. Parole Commission.

[FR Doc. 88-14869 Filed 6-28-88; 1:54 pm]

BILLING CODE 4410-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wedenesday, July 6, 1988.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED

1. Marine Accident Report: Collision Between Ferries NORTH STAR and CAPE HENLOPEN on Long Island Sound, Orient Point, New York, July 9, 1987.
2. Marine Accident Report: Disappearance of U.S. Fishing Vessel NORDFJORD, Gulf of Alaska, September 19, 1987.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

June 24, 1988.

[FR Doc. 88-14836 Filed 6-28-88; 1:23 pm]

BILLING CODE 7533-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m., on Friday, July 8, 1988, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Request for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Thursday, July 7, 1988, but it will consist entirely of briefings and is not open to the public.

Agenda

Friday Session

July 8, 1988, 8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 6-7, 1988.
2. Remarks of the Postmaster General.
3. Report on Operations Support Group Programs. (Mr. Mulligan)
4. Report on Finance Group Programs. (Mr. Coppie)
5. Capital Investments:
   a. Sacramento, California, General Mail Facility and Vehicle Maintenance Facility. (Mr. Smith)
   b. Research and Development Project—Integrated Mail Handling System. (Mr. Jacobson)
6. Tentative Agenda for August 1-2, 1988, meeting in Seattle, Washington.

David F. Harris,

Secretary.

[FR Doc. 88-14827 Filed 6-28-88 10:37 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 53, No. 126
Thursday, June 30, 1988

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 COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Yale University, et al.

Correction

In notice document 88-14339 beginning on page 23780 in the issue of Friday, June 24, 1988, make the following correction:

On page 23780, in the third column, in the fifth line from the bottom, the date should read "May 23, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 70470-8021]

Electronic Data Dissemination Policies and Guidelines

Correction

In notice document 88-14159 beginning on page 23677 in the issue of Thursday, June 23, 1988, make the following corrections:

1. On page 23678, in the third column, in the fourth paragraph, in the second line, "nonpatient" should read "nonpatent".

2. On the same page, in the same column, in the fifth paragraph, in the second line, "nonpatient" should read "nonpatent".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation

Correction

In rule document 88-13009 beginning on page 21646 in the issue of Thursday, June 9, 1988, make the following correction:

970.5204-17 [Corrected]

On page 21649, in the second column, in 970.5204-17, in paragraph (b) to the clause, in the second line, "expected" should read "excepted".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 87N-0371]

Labeling for Oral and Rectal Over-the-Counter Aspirin and Aspirin-Containing Drug Products; Reye Syndrome Warning

Correction

In rule document 88-13058 beginning on page 21633 in the issue of Thursday, June 9, 1988, make the following correction:

§ 201.314 [Corrected]

On page 21637, in the first column, in § 201.314(h)(1), in the fifth line, "rate" should read "rare".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Resources Provisions

Correction

In proposed rule document 88-13807 beginning on page 23126 in the issue of Monday, June 20, 1988, make the following corrections:

1. On page 23127, in the first column, in the first paragraph, in the second line, "retroaction" should read "retroactive".

2. On the same page, in the same column, in the fourth paragraph, in the sixth line, "as" should read "an".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Miscellaneous Amendments

Correction

In rule document 88-14431 appearing on page 24068 in the issue of Monday, June 27, 1988, make the following correction:

§ 20.3 [Corrected]

In the third column, in § 20.3, the transmittal letter number was omitted. The fifth line should read "5 April 21, 1988. 53 FR 24068."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-3-87]

Income Taxes; Exclusion From Gross Income of Qualified Scholarships

Correction

In proposed rule document 88-12891 beginning on page 21688 in the issue of Thursday, June 9, 1988, make the following corrections:

1. On page 21688, in the first column, in the last line, "section 170(b)(1)(ii)" should read "section 170(b)(1)(A)(ii)".

2. On the same page, in the second column, in the second complete paragraph, in the sixth line, "section 117(b)" should read "section 117(d)".

§ 1.117-6 [Corrected]

3. On page 21691, in the third column, in § 1.117-6(c)(3)(ii)(A), in the seventh line, "1953" should read "1952".

4. On page 21693, in the third column, in § 1.117-6(f)(3)(iii), *Example (2)*, in the third line, "off" should read "of".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 3

Improvements in Veterans' Benefits

Correction

In rule document 88-13919 beginning on page 23234 in the issue of Tuesday, June 21, 1988, make the following correction:

§ 3.272 [Corrected]

On page 23236, in the first column, in § 3.272(m), in the fourth line, "§ 3.32(d)(6)" should read "§ 3.23(d)(6)".

BILLING CODE 1505-01-D

Federal Register

Thursday
June 30, 1988

Part II

Environmental Protection Agency

Proposed Guidelines for Assessing Female Reproductive Risk; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3401-4]

Proposed Guidelines for Assessing Female Reproductive Risk

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed Guidelines for Assessing Female Reproductive Risk and Request for Comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today proposing two new guidelines for assessing the human health risks of environmental pollutants. This notice proposes guidelines for assessing female reproductive risk, and invites public comment. Proposed guidelines for assessing risk relating to male reproductive toxicants appear elsewhere in today's **Federal Register**.

The Proposed Guidelines for Assessing Female Reproductive Risk are intended to guide Agency analysis of data on female reproductive toxicants according to appropriate scientific standards, and in line with the policies and procedures established in the statutes administered by the EPA. These proposed Guidelines were developed as part of an interoffice guidelines development program under the auspices of the Office of Health and Environmental Assessment in the Agency's Office of Research and Development. The current proposal incorporates comments from external and internal peer reviewers. EPA's Science Advisory Board (SAB) will review these proposed Guidelines at a meeting to be announced in a future **Federal Register**.

Comments from the public and the SAB will be reviewed and incorporated into a revised draft that will be submitted first to the Risk Assessment Forum and then to the Risk Assessment Council for review. The Risk Assessment Council will consider comments from the public, the SAB, and the Risk Assessment Forum in their recommendations on final guidelines to the EPA Administrator.

DATE: Comments must be postmarked by August 29, 1988.

ADDRESS: Comments may be mailed or delivered to: Dr. Carol Sakai, Reproductive Effects Assessment Group, Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Inspection and copies: References, support documents, and other relevant materials will be available for inspection and copying at the Public Information Reference Unit (202-382-5926), EPA Headquarters Library, 401 M Street, SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Carol Sakai, Telephone: 202-382-7303.

SUPPLEMENTARY INFORMATION: In its 1983 book *Risk Assessment in the Federal Government: Managing the Process*, the National Academy of Sciences recommended that Federal regulatory agencies establish "inference guidelines" (1) to promote consistency and technical quality in risk assessments, and (2) to ensure that the risk assessment process is maintained as a scientific effort separate from risk management. A task force within EPA accepted that recommendation and requested that Agency scientists begin to develop such guidelines.

In 1984, EPA scientists began work on risk assessment guidelines for carcinogenicity, mutagenicity, suspect developmental toxicants, chemical mixtures, and exposure assessment. Following extensive scientific and public review, these five guidelines were issued on September 24, 1986 (51 FR 33992-34054).

The guidelines proposed today continue the guidelines development process initiated in 1984. Like the guidelines issued in 1986, the new proposal sets forth principles and procedures to guide EPA scientists in the conduct of Agency risk assessments and to inform Agency decision makers and the public about these procedures. In particular, the guidelines emphasize that risk assessments will be conducted on a case-by-case basis, giving full consideration to all relevant scientific information. This case-by-case approach means that Agency experts study scientific information on each chemical under review and use the most scientifically appropriate interpretation to assess risk. The guidelines also stress that this information will be fully presented in Agency risk assessment documents, and that Agency scientists will identify the strengths and weaknesses of each assessment by describing uncertainties, assumptions, and limitations, as well as the scientific basis and rationale for each assessment.

The guidelines are formulated in part to bridge gaps in risk assessment methodology and data. By identifying these gaps and the importance of the missing information to the risk assessment process, EPA wishes to encourage research and analysis that will lead to new risk assessment methods and data.

Work on the Proposed Guidelines for Assessing Female Reproductive Risk began in the Spring of 1985. Draft guidelines were developed by Agency work groups composed of scientists from throughout the Agency, and the drafts were peer-reviewed by reproductive effects experts from universities, environmental groups, industry, and other governmental agencies.

After SAB and public comment, Agency staff will prepare summaries of the comments, analyses of major issues presented by commentors, and Agency responses to those comments for development of final guidelines.

Date: June 9, 1988.

John A. Moore,

Chairman, Risk Assessment Council.

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I. Introduction

These Guidelines provide the U.S. Environmental Protection Agency with a general approach and framework for evaluating the potential female reproductive toxicity associated with human exposure to environmental agents. The Agency's authority to regulate agents that have the potential for adverse effects on the human female reproductive system is derived from different statutes that are implemented through multiple Program Offices within the Agency. Because many different offices evaluate female reproductive toxicity, there is a need for intra-Agency consistency in assessing these types of effects. These Guidelines will help ensure a consistent approach in the Agency's health risk assessment of adverse female reproductive effects.

The female reproductive toxicity assessments prepared pursuant to these Guidelines will be utilized within the requirements and constraints of the applicable statutes to arrive at regulatory decisions concerning female reproductive toxicity. These Guidelines provide a general format for analyzing and organizing the available data for conducting health risk assessments of suspected female reproductive toxicants. The Office of Pesticide Programs and the Office of Toxic Substances within the Agency have previously issued testing guidelines (1, 2) that provide protocols designed to determine the potential of a test substance to produce reproductive toxicity in laboratory animals. These Guidelines do not change any statutory or regulatory standards for the type of data necessary for regulatory decisions, but rather provide guidance for the interpretation of studies conducted according to the testing guidelines referred to above, as well as information on other types of studies available when reviewing data on particular agents.

Risk assessment is one of two components of the regulatory decisionmaking process. Risk assessment defines the adverse health consequences of exposure to a toxic agent. The other component, risk management, combines risk assessment with the directives of the enabling regulatory legislation, together with technical, socioeconomic, political, and other considerations, to reach a decision as to whether and to what extent to regulate future exposure to the suspected toxic agent. Risk management will not be addressed in these Guidelines.

The National Research Council (3) has defined risk assessment as being composed of some or all of the following components: hazard identification, dose-response assessment, exposure assessment, and risk characterization. In general, the process of assessing the risk of female reproductive toxicity may be adapted to this format.

Hazard identification is the qualitative component of risk assessment in which the available experimental animal and human data are used to determine if the agent is likely to produce adverse female reproductive effects. The most relevant information for humans may be derived from human data, usually well-designed and well-conducted human epidemiologic studies associating adverse reproductive effects with exposure to a particular agent. Initial recognition of some reproductive toxicants has stemmed from case reports or clinical observations which were later confirmed by human or laboratory research. However, human data are not often available. Most toxicologic information is available from laboratory animal studies. If only data on laboratory animals are available, then the significance of animal data to human female reproductive toxicity should be evaluated.

Dose-response assessment describes the relationship between the dose of an agent and the occurrence of an adverse effect on the female reproductive system. This component usually entails an extrapolation from the generally high doses administered in animal studies or noted in epidemiologic studies, to the exposure levels expected from human contact to the agent in the environment. At present, there are no mathematical models developed for the dose-response analysis of adverse female reproductive effects from exposure to environmental agents. In the absence of appropriate mathematical models, uncertainty factors or margin of exposure approaches are used. Appropriate mathematical models are being sought by the Agency for performing dose-response analyses of female reproductive toxicity.

The exposure assessment component of risk assessment identifies populations exposed to the agent, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the agent. There are considerations of exposure which are discussed in these Guidelines that should be taken into account when assessing female reproductive effects. Details of other exposure considerations are discussed in a separate guidelines document (4).

In risk characterization, the results of the exposure assessment and dose-response assessment are combined to estimate the reproductive risk. As part of risk characterization, a description of the strengths and weaknesses in the hazard identification, dose-response assessment, and exposure assessment are discussed. Major assumptions, scientific judgments, uncertainties, and to the extent possible, estimates of uncertainties are presented.

In these Guidelines, evaluation of toxicologic data for determining potential adverse effects on the female reproductive system will be addressed. However, reproduction depends upon the integrity of both the male and the female reproductive systems, and can be affected by other health concerns such as genetic abnormalities, prenatal exposure to carcinogens, or adverse developmental effects. The evaluation of toxicologic data affecting the male reproductive system is addressed in the Agency's Proposed Guidelines for Assessing Male Reproductive Risk (5). Issues relating to genetic toxicology are discussed in the Agency's Guidelines for Mutagenicity Risk Assessment (6). Issues related to carcinogenesis are discussed in the Agency's Guidelines for Carcinogen Risk Assessment (7). Issues related to adverse developmental effects are addressed in the Agency's Guidelines for the Health Assessment of Suspect Developmental Toxicants (8).

In the United States, approximately 15% of couples where the wife is of childbearing age are infertile (9). It is estimated that only a portion of human fertilized oocytes survive to term (10, 11, 12, 13, 14). For successful reproduction to occur, it is critical that the inherent biological integrity of the human reproductive system be maintained. Events in the female reproductive cycle are closely interrelated; alterations in one event in the cycle can cause alterations in other events in the cycle. For example, a short or inadequate luteal phase of the menstrual cycle is associated with disorders in ovarian steroidogenesis, gonadotropin secretion, and endometrial integrity (15, 16, 17). Toxicants may interfere with luteal function by altering hypothalamic or pituitary function and by affecting ovarian response (18, 19). For these reasons, it seems prudent for the Agency to minimize exposures to agents having the potential for adversely affecting the female reproductive system.

Exposures to toxicants can have a number of different adverse female reproductive effects, including alterations in the onset of puberty, fertility, depressed libido, menstrual irregularities, and premature reproductive senescence (20, 21, 22, 23). Numerous agents, including estrogenic agents, androgenic agents, polycyclic aromatic hydrocarbons, ionizing and non-ionizing forms of radiation, cancer chemotherapeutic agents, neuroactive drugs, and heavy metals have been identified as potentially producing adverse female reproductive effects (24, 25, 26, 27). Additional information on the adverse effects of reproductive toxicants found in environmental or in occupational settings has been discussed in a number of review articles and background documents (28, 29, 30, 31, 32, 33, 34).

Agents can affect the female reproductive system during a number of susceptible periods during development. The reproductive system begins to form early in gestation, but structural and functional maturation does not occur until puberty. Exposure to toxicants early in development can lead to morphological, biochemical, physiological, and/or behavioral alterations that may affect reproductive function or performance well after the time of initial exposure. Adverse effects such as reduced fertility in the offspring may be one of the delayed consequences of *in utero* exposure to toxicants; however, other effects, such as adverse effects on behavior, alterations in reproductive cycles, or gonad toxicity are also possible (33, 36, 37, 38).

These Guidelines focus on the evaluation of toxicologic data from humans and experimental animals, and the strengths and limitations of studies currently used to develop toxicity data will be described. Guidance for the evaluation of results from currently used testing protocols, as well as other scientific information helpful in making a determination of potential female reproductive effects, is included.

II. Definitions

For the purposes of these Guidelines, the following definitions will be used.

Acyclicity. The cessation of estrous cyclicity (in rodents) or menstrual cyclicity (in humans and nonhuman primates).

Female reproductive cycle. The periodic recurrence of events in the neuroendocrine and generative system (hypothalamus, pituitary, uterus, ovaries, and accessory sexual structures) associated with estrus in lower mammals and menstruation in humans and nonhuman primates.

Female reproductive toxicity. Adverse effects observed in the female reproductive system that may result from exposure to chemical or physical agents. Female reproductive toxicity includes, but is not limited to, adverse effects observed in sexual behavior, onset of puberty, fertility, gestation, parturition, lactation, or premature reproductive senescence.

Fertility. The ability to achieve conception and to produce offspring. For litter-bearing species, the number of offspring per litter is also used as a measure of fertility. Reduced fertility is sometimes referred to as subfertility.

Infertile. Lacking fertility. Infertility may be temporary or permanent; permanent infertility is termed sterility.

Puberty. The series of events in which the generative organs become capable of reproductive ability. In humans, puberty is generally characterized by somatic growth, the development of secondary sex characteristics and the onset of the first menstrual cycle, and in rodents by the occurrence of vaginal opening and the onset of the first estrous cycle.

Reproductive senescence. The loss of reproductive capability associated with aging. In humans, generally characterized by irregularities and subsequent cessation of menstrual cycles, and in rodents by irregularities or disturbances to estrous cyclicity (e.g., constant estrus, constant diestrus, or anestrus), with eventual cessation of reproductive cycles.

III. Hazard Identification for Female Reproductive Toxicity

A. Laboratory Animal Studies of Female Reproductive Toxicants: Indices, End Points, and Their Interpretation

In the hazard identification part of the risk assessment, data are evaluated to determine whether an agent has the potential for producing an adverse female reproductive effect. Adverse effects are evaluated from indices and end points and other data on the functional or structural integrity of the female reproductive system. In these Guidelines, adverse effects on the female reproductive system will be emphasized; however, all adverse outcomes, including systemic effects, should be carefully considered and factored into the total analysis.

1. Protocol Considerations

Reproductive toxicity studies in laboratory animals generally involve continuous exposure to a test substance for one or more generations. The Office of Pesticide Programs and the Office of Toxic Substances have published guidelines describing the conduct of tests used for the evaluation of potential reproductive toxicants (1, 2). In the first parental (P_0) generation of animals, both females and males are exposed to the test substance. Males and females are exposed prior to cohabitation and throughout the cohabitation period, and females are also exposed during gestation, parturition, and lactation of the first-generation pups. One or two litters may be produced by each parental generation. Offspring are potentially exposed to the test substance *in utero* through the mother's milk, or by ingestion of maternal feed during the lactation period.

In the two-generation and three-generation tests, postnatal maturation and reproductive capacity of the offspring and the cumulative effects through generations are evaluated. In the one-generation test only the parental generation is evaluated for reproductive ability, which includes the viability and growth of the litters to weaning.

In a continuous breeding protocol, the parental generation is allowed to breed and produce offspring continuously for 14 weeks (20). Up to five litters can be produced and removed at birth, with the dams providing lactation support for the last litter. In some cases, the last litter may be allowed to grow to reproductive maturity and produce a subsequent generation. The intervals between litters and alterations in the litter size may be used to evaluate gradual changes in fertility. If effects on fertility are observed in the first generation, additional reproductive evaluations may be conducted, including fertility studies to define the affected gender and gonad toxicity. At present, a number of agents are being evaluated using this type of protocol, and its utility is undergoing validation (39).

Ideally, study designs for all reproductive toxicity evaluations should include a high dose which produces some indication of maternal or adult toxicity (i.e., a level which produces a statistically significant reduction in body weight, weight gain, or specific organ toxicity, but no more than 10% mortality), a low dose which demonstrates a no observed effect level (NOEL) for adult and offspring effects, and at least one intermediate dose level. A concurrent control group treated with the vehicle used for agent administration should be included. The route of exposure should be carefully considered and evaluated along with any available pharmacokinetic data. Ideally, test animals should be selected

based on considerations of species, strain, age, weight, and health status and be randomized to dose group in order to reduce bias and provide a basis for performing valid statistical tests. Consideration should be given to sample size, and the sensitivity and specificity of the end point used for the detection of the adverse reproductive effect (40).

In other toxicity studies, examination of the reproductive organs may provide additional female reproductive data. In the subchronic toxicity test, animals are generally exposed to an agent beginning at the postweaning stages (5 to 7 weeks of age) and continuing for a period of 90 days. At necropsy, female reproductive organs may be examined histopathologically. If available, observations on the estrous cycle may also provide useful data for the evaluation of reproductive effects.

In chronic rodent toxicity studies, animals are exposed to agents for a period of approximately 18 months to 2 years, and in some cases animals are sacrificed at 6-month intervals. Observations of female reproductive organ weights and careful histopathological examinations may provide useful data. Observations of the premature depletion of primordial oocytes or the premature onset of reproductive senescence may also provide useful information in the total evaluation of reproductive effects.

In all toxicity testing protocols, significant changes in other systemic end points should also be considered. These include significant changes in body weight, changes in relative and absolute organ weight, changes in food and water consumption, clinical pathology, gross necropsy, and histopathologic changes. Body weight changes should be evaluated for the growth period prior to mating as well as during gestation and lactation. Even in the presence of body weight decreases, adverse effects on reproductive end point parameters are of concern. Data on food and water consumption are useful when an agent is suspected of affecting efficiency of food utilization or palatability, or of having effects on water intake or excretory function. Clinical observations must be carefully evaluated for indications of adverse effects. Gross necropsy and histopathologic data may aid in determining the toxic dose levels.

2. Indices of Female Reproductive Toxicity

Indices are useful for the qualitative evaluation of female reproductive toxicity (Table 1). These indices may be calculated from data obtained from laboratory animal reproductive toxicity studies, and have been discussed in a number of publications (40, 41, 42, 43, 44).

Table 1.—Indices Used To Determine Reproductive Toxicity

	References
Male Mating Index: $\frac{\text{Number of males for which mating (seminal plug or sperm) was confirmed.}}{\text{Number of males used for mating}} \times 100$	41.
Male Fertility Index: $\frac{\text{Number of males for which pregnancy was confirmed in at least one female}}{\text{Number of males used for mating}} \times 100$	41.
Female Mating Index: $\frac{\text{Number of estrous cycles with copulations (one counted per estrous cycle)}}{\text{Number of estrous cycles required for conception (or length of time required for conception)}} \times 100$	40, 41.
Female Fertility Index: $\frac{\text{Number of females presumed pregnant (presence of seminal plug or sperm)}}{\text{Number of females cohabited with fertile males}} \times 100$	38, 39, 40, 41, 42.
Female Fecundity Index: $\frac{\text{Number of females with confirmed pregnancy}}{\text{Number of females presumed pregnant (presence of seminal plug or sperm)}} \times 100$	40.
Parturition Index: $\frac{\text{Number of parturitions}}{\text{Number of females with confirmed pregnancy}} \times 100$	40.
Gestation Index: $\frac{\text{Number of females with live born}}{\text{Number of females with confirmed pregnancy}} \times 100$	38, 39, 41.
Live Litter Size: $\frac{\text{Number of live offspring}}{\text{Number of females presumed pregnant (presence of seminal plug or sperm)}} \times 100$	41.
Live Birth Index: $\frac{\text{Mean pups born alive per litter}}{\text{Mean pups born per litter}}$ *	40, 41.
Viability Index: $\frac{\text{Mean pups alive day 4 per litter}}{\text{Mean pups born alive per litter}}$ *	39, 40, 41, 42.
Lactation Index: $\frac{\text{Mean pups alive day 21 per litter}}{\text{Mean pups alive day 4 per litter}}$ *	39, 40, 41, 42.
Weaning Index (if litter size is reduced): $\frac{\text{Mean pups alive day 21 per litter}}{\text{Mean pups kept day 4 per litter}}$ *	39, 41.
Preweaning Index: $\frac{\text{Mean pups born per litter—Mean pups weaned per litter}}{\text{Mean pups born per litter}}$ *	41.

*Historically, these indices are calculated and expressed as percent based upon pup incidence data. However, offspring response is dependent upon the environment of the litter, therefore the litter should be used as the experimental unit for statistical analysis.

Since in most current reproductive toxicity study protocols, both males and females are exposed to the agent before mating, it may be difficult to determine which sex has been specifically affected. If available, data on exposed females mated with unexposed males are important in determining effects primarily affecting the female.

a. Effects on Mating, Conception, or Fertility of Parents. The male mating index is rarely reported, but generally can be calculated for the parental, P_0, generation and at each mating (F_1 and F_2 of subsequent generations). The male mating index may provide information on the number of "sexually active" males. A decrease in the male mating index may be due to many factors; for example, an alteration in libido that may be reflected in altered endocrine balance. Mating behavior parameters are useful because they can yield information about the integrative function of the neuroendocrine-gonadal axis (43). Details of male reproductive toxicity end point parameters are discussed in the Proposed Guidelines for Assessing Male Reproductive Risk (5).

The male fertility index gives an indication of the outcome of mating which is usually confirmed either by the presence of a copulatory plug or by motile sperm in the vaginal smear. However, neither of these indicators necessarily guarantees that pregnancy will ensue. The male must provide an adequate number of intromissions and ejaculations for the female to respond

with sufficient progesterone for the initiation of pregnancy (46, 47). The copulatory plug reflects the secretions from the male accessory gland.

In determining the female mating index, evidence of copulation is characterized by the presence of a copulatory plug and/or motile sperm in the vaginal smear. For evaluation of the female mating index, information on the number of estrous cycles or the length of time required for conception is desirable. Determination of pseudopregnancy or constant estrus is important, since the occurrence of pseudopregnancy would make the female temporarily unavailable for mating. Data on the estrous cycle may provide some indication of subtle alterations in endocrine status and this is of concern, since alterations in cyclicity suggest that major controlling mechanisms for normal female reproduction have been affected (48).

The female fertility index gives a general measure of fertility of the strain and/or species, regardless of pregnancy outcomes since females that have mated (plug or sperm in vaginal lavage) are presumed to become pregnant. In some cases, if females are not pregnant after 21 days, the animals are re-exposed to proven fertile males of the same treatment group. If females do not achieve pregnancy after the second mating trial, this indicates an adverse effect on female fertility. The use of proven males in reproductive studies may be desirable because such use minimizes interpretation errors that can arise if inexperienced males are used. Information on the occurrence of pseudopregnancy, acyclicity, and/or irregular cycles may provide insight in determining the causes responsible for an animal's not achieving pregnancy.

The female fecundity index reflects the percentage of matings resulting in confirmed pregnancies. This index reflects the total number of dams that have achieved pregnancy, including those that deliver at term, abort, or have their litters fully resorbed. An accurate determination of the fecundity index requires a careful evaluation of the uterus at necropsy for the presence of implantation sites and/or resorptions. In a reproduction study with two litters per generation, calculations of this index are generally available for the second (F_b) litter.

b. Alterations in Gestation and/or Parturition. Gestation and parturition in mammals are controlled by several endocrine hormones. In rodents, prolactin is the primary hormone that controls luteal function. The secretion of placental lactogen is necessary for pregnancy maintenance and is controlled by prolactin production (49, 50, 51). Other hormones needed in pregnancy are estrogen and luteinizing hormones. Alterations in the length of gestation or parturition induced by an agent in rodents is of concern since this suggests that alteration in hormonal controlling mechanisms have been affected. In general, similar endocrine controlling mechanisms are involved in mammalian reproductive processes (52, 53, 54, 55).

The parturition index can be calculated to evaluate the development of the conceptus until the time of parturition, regardless of whether the offspring are alive or stillborn. The gestation index can be calculated to evaluate the efficiency of pregnancy resulting in at least one live offspring. This index may provide limited information, since litters with only one pup are counted the same as those with more than one pup. This index provides an indication of fetal mortality when the whole litter consists of stillborn offspring or if there are indications of 100% resorptions.

c. Offspring Survival. The live litter size represents the mean number of live pups per litter based on the total number of females that have conceived. A decrease in live litter size could result from either a decrease in numbers of oocytes ovulated, an increase in the number of pre- or postimplantation losses, or an increase in the incidence of pregnant females that do not deliver or have viable offspring. Therefore, in the evaluation of live litter size, it is important to have information on the pregnancy status of all of the dams in the study. The total number of females that conceive, including those dams that have fully resorbed litters, should be considered.

If available, information on the number of oocytes ovulated (recently formed corpora lutea) versus those implanted would be useful in evaluating pre- and early postimplantation losses. These data may provide additional information that can be used in the overall evaluation of female reproductive effects.

The live birth index varies proportionally with the number of stillborn in each litter. A decrease in this index usually reflects compound-related effects manifested primarily during the advanced stages of pregancy and resulting in observation of stillborn pups. A distinction between offspring that are stillborn (died *in utero*) and those that die shortly after birth (live born) may not always be feasible, since the viability of all offspring at birth cannot always be observed immediately after birth. Cannibalization of the pups is another phenomenon that occurs in rodents and can obscure the interpretation of this index.

The viability index is a reflection of the number of pups that survive to postnatal day 4, while the lactation index reflects the survival of offspring from day 4 until day 21 after birth. The viability index can also be used to analyze the survival of pups to different days of postnatal life, such as days 5, 7, and 12. A decrease in viability or lactation index reflects deaths occurring during the postnatal period and may reflect adverse effects induced by one or more factors: Postnatal nourishment, maternal behavioral patterns, and potential postnatal exposure to the agent transferred through the milk following possible *in utero* exposure. However, regardless of the etiology of offspring mortality, an impairment of either the viability index or the lactation index is generally considered indicative of an adverse effect.

In many reproductive studies where litter size is reduced, a weaning index may be reported instead of the lactation index. This index represents the ability of the pups kept on day 4 to survive to day 21. The overall offspring mortality can be determined if the preweaning index is reported.

In the consideration of pup survival, alterations in pup body weights should be made and carefully evaluated. A permanent weight change may be considered more severe than a transitory change, however, little is known about the long-term consequences of short-term postnatal weight changes. For example, it is possible for functional effects to occur even in offspring attaining their expected weight. Offspring body weight data from other generations and concurrent and historical controls may provide additional information for interpretation of these effects.

3. Other Female Reproductive Toxicity End Points

Adverse effects on the female reproductive system induced by toxic agents are not limited to observations of infertility, adverse pregnancy outcomes, or adverse influences on offspring survival. Rather, it has been demonstrated in a number of instances that subtle alterations in structural or functional competence of the ovaries, hypothalamus, pituitary, or alterations in feedback mechanisms may occur during critical periods of reproductive development as well as during other periods of reproductive life. These deficits in the female reproductive system may be observed at dose levels

below that which result in infertility or produce other overt effects (56, 57, 58). At present, evaluations of these other types of adverse effects on the female reproductive system are not routinely performed in testing protocols for reproductive toxicity studies; however, if these data are available, they are of value because these can provide additional information on interrelated end points and mechanisms of action. The long-term consequences of adverse female reproductive effects often are not known, and additional data on the female reproductive system may contribute valuable insight concerning potential human female reproductive toxicity.

a. Alterations to the Female Reproductive System—(1) *Alterations in the onset of puberty.* Significant alterations in the onset of puberty suggest that normal female reproductive function may have been disturbed. A change in the onset of puberty may be associated with other adverse effects in reproductive function (i.e., alterations in cyclicity, premature reproductive failure) (59, 60). Changes in the onset of puberty are of concern because this indicates that biological mechanisms for puberty onset have been affected. Mechanisms controlling puberty onset are generally considered similar for laboratory animals and humans (61). If such observations are available, these should be considered along with other female reproductive end points of toxicity.

(2) *Alterations in the female reproductive cycle.* Significant alterations in the pattern, duration, or regularity of the female reproductive cycle are of concern since they suggest that intrinsic controlling mechanisms have been altered in the female reproductive system (62). Data on vaginal cytology can provide information on the cyclic changes in endocrine milieu. If available, data on the estrous cycle before, during, and after treatment are useful in evaluating treatment-related effects, since rodents are generally observed to have altered estrous cycles before they become acyclic (i.e., constant estrus, constant diestrus, or anestrus) (63, 64). Alterations in cyclicity may be associated with subtle alterations in functional response, such as lengthening the time necessary for achieving conception; alterations in the pattern, duration, or intensity of reproductive hormones resulting in subsequent reproductive failure; and alterations in receptor binding or hormone clearance rate that affect the magnitude or quality of reproductive responsiveness (65). These data, if available, are useful in the overall evaluation for establishing the spectrum of possible adverse effects affecting female reproduction.

(3) *Oocyte toxicity.* A significant reduction in the number of primordial oocytes may indicate a potential for adverse female reproductive effects. Reductions in the primordial oocyte population are of concern because they have been reported to be associated with infertility and premature ovarian failure in test animals and humans (35, 66). However, oocyte toxicity is dependent on species, strain, and time of insult. If available, this information may be useful in supporting information on premature reproductive failure or infertility.

(4) *Premature reproductive senescence.* Premature reproductive senescence due to toxicant exposure can occur because of adverse effects to either the ovary or the hypothalamus-pituitary axis (60, 67). The observation of premature reproductive senescence is of concern because reproductive failure is associated with alterations in mechanisms of ovarian, hypothalamic-pituitary, and/or uterine function (68). If available, these data are useful in defining the spectrum of potential adverse female reproductive effects.

b. Female Reproductive Organ Toxicity. Additional information on female reproductive toxicity may be obtained from weight determinations, histopathologic evaluations, and other information on the ovaries, uterus, and pituitary gland.

(1) *Ovary.* Significant alterations in ovarian weight may be considered an indication of female reproductive organ toxicity. However, it should be noted that ovarian weight varies greatly with stages of the reproductive cycle and the number and amount of corpora lutea present. In the rat, corpora lutea from three or four previous cycles generally persist in any given cycle of observation (69, 70). The significance of alterations in ovarian weight as a toxic response can be better evaluated if accompanied by information on ovarian morphology, such as the lack of follicle-enclosed oocytes, the lack of corpora lutea, or presence of ovarian cyst(s). More subtle alterations can be evaluated if morphometric analysis of germinal cell types is available (71, 72). Evaluation of the major compartments of the ovary, epithelial capsule, stroma, and follicular cells may provide additional indications of ovarian toxicity. Other information which helps to define the mechanisms for the adverse reproductive effects includes: Hormone binding characteristics, hormone clearance rates, and short-term assays of functional responsive (e.g., *in vitro* cell assays; ovarian and/or hypothalamic-pituitary response to gonadotrophic hormones or steroids) (73).

(2) *Uterus.* An alteration in the weight of the uterus may be considered an indication of female reproductive organ toxicity. However, it should be noted that uterine weight fluctuates normally during the course of the reproductive cycle. Uterine weight increases dramatically in response to estrogen stimulation produced by the preovulatory follicle(s). This increase in uterine weight has been used as a basis for comparing relative potency of estrogenic compounds in *in vivo* assays (74). Subtle alterations in uterine histology can be detected if the cyclical nature of uterine and/or vaginal histology are not synchronous with the normal events of the estrous cycle. Before ovulation, uterine and vaginal histological observations reflect estrogen influence; following ovulation, histological observations reflect progesterone influence (75). Asynchrony of uterine histology with cellular, hormonal or biochemical events related to the estrous cycle suggests alterations in mechanisms which may adversely affect reproductive processes.

(3) *Pituitary gland.* Alterations in the weight of the pituitary gland may be considered an adverse toxicologic effect, but are not necessarily specific to producing adverse female reproductive effects since pituitary cells containing gonadotrophins represent only a portion of the many hormonal cellular types (76). Additionally, due to its small size, the pituitary gland is generally difficult to weigh accurately. However, any dramatic changes in the weight of the pituitary or other endocrine glands (e.g., thyroid) are important considerations in the overall evaluation of systemic toxicity and female reproductive toxicity because hormonal feedback control mechanisms may have been altered (67, 77). Other information which may be helpful in defining the mechanisms for pituitary weight changes includes information on functional hypothalamic-pituitary responses, gonadotrophin binding to pituitary or hypothalamic cells, gonadotrophic secretion rates, and information on hypothalamic pulsatile rhythms.

B. Human Studies

The category of "human studies" includes both epidemiologic studies and other reports of individual cases or clusters of events. All human data should be considered in risk assessments; however, greater weight

should be given to human data which have more precise measures of exposure, since they can best be used to evaluate exposure-response relationships. Other epidemiologic studies in which exposure is presumed due to occupational title or residence (e.g., some case-referent and all ecologic studies) may contribute data to qualitative risk assessments, but are of limited use for quantitative risk assessments. Finally, reports of individual cases or clusters of events may generate hypotheses of exposure-outcome associations, but require further confirmation with well-designed epidemiologic or laboratory studies. These reports give added support to associations suggested by other human or animal research, but cannot stand by themselves in risk assessments.

1. Epidemiologic Studies

Good epidemiologic research provides the most representative information for assessing human risk. As there are many different designs for epidemiologic studies, simple rules for their evaluation do not exist. The following is a description of important factors for consideration in evaluating epidemiologic data.

a. General Design Considerations. Factors that increase a study's usefulness for risk assessment include the following (31, 78, 79, 80, 81, 82, 83, 84):

(1) *The power of the study.* The power, or probability of a study to detect a true effect, is dependent on the size of the study group, the frequency of the outcome in the general population, and the level of risk to be identified. In a cohort study, common outcomes, such as recognized fetal loss, require hundreds of pregnancies in order to have a high probability of detecting a modest increase in risk (e.g., 133 in both exposed and unexposed groups to detect a twofold increase; alpha=0.05, power=80%), while less common outcomes, such as all malformations, require thousands of pregnancies to have the same probability (e.g., more than 1,200 in both exposed and unexposed groups) (78, 79, 85, 86, 87). In case-referent studies, study sizes are dependent upon the frequency of exposure within the source population.

(2) *Potential bias in data collection.* Sources of bias may include selection bias and information bias (88). Selection bias may occur when an individual's willingness to participate varies with certain characteristics relating to the exposure status or health status of that individual. In addition, selection bias may operate in the identification of subjects for study. For example: (a) Where hospital records are used, embryonic or early fetal losses may be underascertained, since women are not necessarily hospitalized for these outcomes; a more complete list of pregnancies may be obtained by interviewing the women; (b) congenital malformations are more completely ascertained using hospital records than birth certificates.

Information bias may result from misclassification of characteristics of individuals or events identified for study. Differential misclassification, i.e., when certain subgroups are more likely to have misclassified data than are others, may either increase or decrease the value of the risk estimate. Non-differential misclassification will bias the results toward a finding of "no effect." Recall bias, one type of information bias, may occur when respondents with specific exposures or outcomes recall information differently than those without those exposures or outcomes. Interview bias may result when the interviewer knows *a priori* the category of exposure (for cohort studies) or outcome (for case-referent studies) in which the respondent belongs. Use of highly structured questionnaires and/or "blinding" of the interviewer will reduce the likelihood of such bias.

Data from any source may be prone to errors or bias. Validation with an independent data source (e.g., vital or hospital records), or use of biomarkers of exposure or outcome, where possible, may indicate the amount of bias present and increase confidence in the results of the study. Those studies with a low probability of biased data should carry more weight (86, 89).

(3) *Control of other risk factors, effect modifiers, and confounders.* Other potential risk factors may include smoking, alcohol consumption, drug use, past reproductive history, and environmental and occupational exposure, etc. Such characteristics should be examined, where appropriate, for the outcome under study, and should be controlled for in the study design and/or analysis. The potential for characteristics of the subjects to be effect modifiers and/or confounders should also be considered. An effect modifier is a factor that produces different exposure-response relationships at different levels of the factor. A confounder is associated with both the exposure and outcome; if it is not controlled in the analysis, the measure of the exposure-response relationships could be misleading. Both effect modifiers and confounders need to be controlled in the analysis to improve the estimate of the effect of exposure (90). A more in-depth discussion can be found elsewhere (88, 91). The statistical techniques used to control for these factors require careful consideration in their application and interpretation (88, 90).

(4) *Statistical factors.* As in animal studies, pregnancies experienced by the same woman are not independent events. In humans, the pregnancies are sequential, with the risk factors changing from different pregnancies (31, 86, 92). In animal studies, the litter is generally used as the unit of measure to deal with this. This approach is difficult in humans since the pregnancies are sequential, with the risk factors changing for different pregnancies (85, 91, 93). If more than one pregnancy per woman is included, as is often necessary due to small study groups, the use of non-independent observations overestimates the true size of the population at risk and artificially increases the significance level (94). Some approaches to deal with these issues have been suggested (86, 92, 95).

b. Selection of Outcomes for Study. As already discussed, a number of end points can be considered in the evaluation of adverse reproductive effects. However, some of the outcomes are not easily observed in humans. These include early fetal loss, reproductive capacity of the offspring, and invasive evaluations of reproductive function. Currently, the most feasible end points for epidemiologic studies are (1) indirect measures of fertility, and (2) reproductive history studies of menstrual disorders, or some pregnancy outcomes (e.g., fetal loss, birth weight, sex ratio, congenital malformations, postnatal function, and neonatal growth and survival). Factors requiring control in the design or analysis (such as other risk factors, effect modifiers, and confounders) may vary depending on the specific outcomes selected for study.

The reproductive outcomes available for epidemiologic examination are limited by a number of factors, including the relative magnitude of the exposure, the size and demographic characteristics of the population, and the ability to observe the reproductive outcome in humans. Improved methods for identifying some outcomes such as embryonic or very early fetal loss using new human chorionic gonadotropin (hCG) assays may change the spectrum of outcomes available for study. Exposures in environmental settings are generally much lower than in occupational settings; thus, larger populations are usually necessary in environmental settings. Demographic characteristics of the population, such

as marital status, age distribution, education, and prior reproductive history are associated with the probability of whether women will attempt to have children. There may also be differences in the use of birth control, which would affect the number of outcomes available for study. Additionally, women may move in and out of areas with differing levels and types of exposures, affecting the number of exposed and comparison pregnancies for study. Women with live births are more likely to terminate employment than are those with other outcomes, such as infertility or early fetal loss. Thus, retrospective studies that do not include terminated women workers may be of limited use in risk assessment because the level of risk is likely to be underestimated.

In addition to the above-mentioned factors, reproductive end points may be recognized at any time during a continuum of events, from prior to conception until death of the offspring. Thus, a malformed stillbirth would not be included in a study of defects observed at live birth, even though the etiology could be identical (78). A shift in the patterns of outcomes could result from differences in timing or in level of exposure (96). This will be discussed further in the section on dose-response relationships (Section IV.A.).

(1) *Reproductive history studies—(a) Measure of fertility, subfertility, and infertility.* Infertility or subfertility may be thought of as a non-event: a couple is unable to have children within a specific time frame. Therefore, the epidemiologic measurement of reduced fertility is typically indirect and is accomplished by comparing birth rates or time intervals between births or pregnancies. In these evaluations, the couple's joint ability to procreate is measured. One method, the Standardized Birth Ratio (SBR), compares the number of births observed to those expected based on the person-years of observation stratified by factors such as time period, age, race, marital status, parity, etc., (97, 98, 99, 100, 101). The SBR is analogous to the Standardized Mortality Ratio (SMR), a measure frequently used in studies of occupational cohorts, and has similar limitations in interpretation (93, 102, 103).

Analysis of the time period between recognized pregnancies or live births has been suggested as another indirect measure of fertility (104, 105, 106, 107). Because the time interval between births increases with increasing parity (108), comparisons within birth order (parity) are appropriate. A statistical method (Cox regression) can stratify by birth or pregnancy order to help control for non-independence of these events in the same woman.

(b) *Pregnancy outcomes.* Pregnancy outcomes examined in studies of maternal exposures may include fetal loss, congenital malformations, birth weight, sex ratio at birth, and possibly postnatal survival, growth, and function. Epidemiologic studies that focus on one end point may possibly miss a true effect of exposure. For example, some reproductive end points can be thought of as sequential competing risks: a malformed fetus spontaneously aborted would not be observed in a study of birth with malformations (87). Studies which examine multiple end points could yield more information, but the results may be difficult to interpret. Evidence of a dose-response relationship is usually an important criterion in the assessment of a toxic exposure. However, traditional dose-response relationships may not always be observed for some end points, such as fetal loss and functional deficits (see Section IV.B).

(2) *Community studies/surveillance programs.* Epidemiologic studies may also be based on broad populations such as a community, a nationwide probability sample, or surveillance programs (such as birth defects registries). Studies have examined environmental exposures, such as toxicants in the water system, and adverse reproductive outcome (109). Unfortunately, in these studies maternal and paternal effects may be difficult to distinguish. In addition, the relatively low exposure levels (compared to occupational settings) may require very large groups for study. A number of case-referent studies have examined the relationships between broad classes of parental occupation in certain communities or countries and fetal loss (110), birth defects (111, 112), and childhood cancer (113, 114, 115, 116). In these reports, jobs are typically classified into broad categories based on the probability of exposure to certain classes or levels of exposure. Such studies are most helpful in the identification of topics for additional study. However, because of broad groupings of types or levels of exposure, such studies are not typically useful for risk assessment of a particular agent.

Surveillance programs may also exist in occupational settings. In this case, reproductive histories, etc., could be followed to monitor for reproductive effects of exposures.

2. Examinations of Clusters or Case Reports

The identification of cases or clusters of adverse female reproductive effects is generally limited to those identified by the women, or clinically by their physicians. Examples include mid to late fetal loss or congenital malformations. Identification of other effects, such as very early fetal loss or infertility, may be difficult. Identification of these effects might be thought of as identification of a non-event (e.g., lack of pregnancies or children), and thus they are much harder to recognize than are developmental effects/malformations resulting from *in utero* exposure. While case reports may have importance in the recognition of female reproductive toxicants, they may be of greatest use in suggesting topics for further investigation (76).

3. Human Clinical Evaluations Potentially Used in Epidemiologic Research or Case Reports

Numerous diagnostic methods have been developed to evaluate female reproductive dysfunction. Although these methods have rarely been used for occupational or environmental toxicologic evaluations, they may be helpful in defining biological parameters and the mechanisms related to female reproductive toxicity. If clinical observations are able to link exposures to the reproductive effect of concern, these data may aid the assessment of adverse female reproductive toxicity. The following clinical observations include end points that may be reported in case reports or epidemiologic research studies.

Reproductive dysfunction can be studied by the evaluation of irregularities of menstrual cycles. However, menstrual cyclicity is affected by many parameters such as age, nutritional status, stress, certain drugs, and the use of contraceptive measures which alter endocrine feedback. Vaginal bleeding at menstruation is a reflection of withdrawal of steroidogenic support, particularly progesterone. Vaginal bleeding can occur in early miscarriage, after withdrawal of contraceptive steroids, or after an inadequate luteal phase. The length of the menstrual cycle, particularly the follicular phase, can vary. The natural variability of length of the menstrual cycle, particularly between individuals, may make it difficult to determine significant effects in populations of women (117, 118). However, menstrual dysfunction data has been used to examine adverse

reproductive effects in women occupationally exposed to styrene (119).

Vaginal cytology may provide information on the functional state of reproductive cycles. Cytological evaluations, along with the evaluation of changes in cervical mucus viscosity, can be used to estimate the occurrence of ovulation and determine different stages of the reproductive cycle.

The endocrine status of a woman can be evaluated by the measurement of hormones in blood and urine. However, since the female reproductive endocrine milieu is changing in a cyclical pattern, single sample analysis does not provide adequate information for evaluating alterations in the reproductive function. However, from a single sample, clinically abnormal levels of gonadotropins, steroids, or other biochemical parameters can be detected.

Ovulation can be estimated by the biphasic shift in basal body temperature. Ovulation can also be detected by the serial measurement of hormones in the blood or urine and the analysis of estradiol and gonadotropins at midcycle. After ovulation, luteal phase function can be assessed by analysis of progesterone secretion and by the evaluation of endometrial histology. Tubal patency is an important end point that can be observed in the clinical evaluation of female reproductive function (120).

Early pregnancy losses can be evaluated by the presence of hCG in the blood or urine. Recently, correlations of the presence of hCG, luteinizing hormone, and progesterone have been used in the analysis of early spontaneous pregnancy loss (14). Additional research is needed to establish the utility of this technique for the evaluation of populations exposed to reproductive toxicants.

C. Pharmacokinetics

Extrapolation of data between species may be aided considerably by knowledge of the pharmacokinetic properties of an agent in the experimental species tested, and if possible, in humans. Information on pharmacokinetics (absorption, distribution, metabolism, excretion, protein binding, etc.) may be helpful in developing a more accurate comparison of species sensitivity including: predictability for humans, determination of dosimetry at target sites, understanding potential mechanisms of toxicity, and comparing pharmacokinetic profiles among various dosing regiments or routes of exposure. Analyses of pharmacokinetic properties in relation to female reproductive toxicity data are useful in determining the contributions of these parameters (half-life, intrinsic clearance, volume of distribution, etc.) to the effects observed.

D. Comparisons of Molecular Structure

Comparisons of the chemical, physical, or biological properties of an agent with those of known female reproductive toxicants may provide some indication of a potential for female reproductive toxicity. Such information may be helpful in setting priorities for testing agents or in evaluating potential toxicity when only minimal data are available. For most agents, structure/activity relationships have not yet been investigated and applied to female reproductive toxicology. However, data are available that indicate that structure (or biological) activity relationships may exist for certain classes of chemicals (e.g., estrogens and androgens). Under certain circumstances (e.g., in the case of new chemicals), this is one of several considerations used to evaluate the potential for toxicity when little or no data are available.

E. Weight-of-Evidence Determination

All of the available information discussed in previous sections, whether indicative of potential concern or not, should be evaluated and factored into an overall evaluation of potential female reproductive toxicity. The types of data may vary from agent to agent, and certain types of data may be more relevant than others in evaluating female reproductive toxicity. Primary considerations are given to those data which provide convincing evidence that an agent causes adverse effect(s) in humans. If such data are not available, then those data providing convincing evidence that an agent causes adverse effect(s) in laboratory animals are used to determine whether a chemical is a potential human female reproductive toxicant.

The qualitative assessment of female reproductive effects should include: statements concerning the quality of the data, power of the study to detect a true effect, number and types of end points examined, appropriateness of the dose selection, replication of the effects, and the number of species examined. Other relevant information includes the specificity and sensitivity of the reports to identify effects, control of confounding factors, route and pattern of exposure, and the quality of the data linking exposure to the effects. In addition, pharmacokinetic data, structure/activity considerations, and other physiological or biological factors pertinent to the overall evaluation of reproductive toxicity to the human female should be taken into account. If it is apparent that data gaps exist, then sound scientific judgment should be exercised in interpreting the available data.

A scheme for categorizing the weight of evidence has been proposed in the Proposed Guidelines for Assessing Male Reproductive Risk. Because a similar scheme is being considered for the Guidelines for Assessing Female Reproductive Risk, the Agency would welcome comments on whether a comparable scheme, adapted for females, should be included in the final Guidelines for Assessing Female Reproductive Risk.

IV. Dose-Response Assessment, Exposure Assessment, and Risk Characterization

After data on female reproductive toxicity of an agent have been collected and evaluated, it is frequently desirable to estimate the risk associated with a given level of exposure. The first step in the analysis is to establish a relationship between dose (or exposure levels) and response for a given end point. Information on dose-response relationships is then coupled with information on the nature and magnitude of human exposure to yield a qualitative and/or quantitative estimate of female reproductive toxicity. Risk characterization involves an interpretation of these estimates in light of the biological, statistical, and exposure assumptions used and the uncertainties that have arisen throughout the process of assessing risk.

A. Dose-Response Assessment

The dose-response assessment is the characterization of the relationship between dose and occurrence of an adverse effect. If quantitative human dose-effect data are available, then dose-response relationships are examined using human data. However, such data are rarely available; therefore, data from laboratory animal studies are generally used for estimating exposure levels that are unlikely to produce adverse effects in humans.

When data on several species are available, the selection of the data to be used in the dose-response assessment is based on the information on species response most relevant to humans (e.g., comparable physiological, pharmacologic, pharmacokinetic and pharmacodynamic processes) and to the adequacy of dosing, the appropriateness of the route of administration, and the end point(s) selected. For dose-response assessment, no one laboratory animal

species can be considered the best for predicting reproductive toxicologic risk to humans. However, the nonhuman primate is generally considered similar to the human in terms of physiological parameters related to menstrual disorders. In the absence of a clearly most relevant species, the most sensitive species (i.e., the species showing a toxic effect at the lowest administered dose) is adopted as a matter of science policy at EPA, since humans are generally considered as sensitive as the most sensitive animal species tested.

A dose-response relationship provides evidence that the observed effect(s) is related to treatment. However, the lack of a dose-response relationship does not necessarily lead one to conclude that there is no exposure-related effect. Information from standard reproductive toxicity protocols may not provide sufficient data to fully examine dose-response relationships. Also, studies may not always be designed to examine dose-response relationships for all relevant end points. For example, if increasing levels of exposure result in infertility, the baseline might change, resulting in fetal loss at higher exposure levels (96, 121). Ideally, dose-response relationships for individual end points as well as combinations of end points with similar mechanisms (e.g., fetal death and malformed births combined) should be examined and interpreted carefully and concurrently.

Currently, our understanding of the mechanism of female reproductive toxicity is very limited. Furthermore, few animal studies have used sufficient dose ranges or sample sizes to produce data for quantitative dose-response evaluations. Because of limitations in our scientific knowledge and data base, there are no generally accepted mathematical procedures for modeling the dose-response curves or for low-dose extrapolation for female reproductive toxicity.

The reference dose (RfD) approach has generally been used to estimate a dose that is not likely to produce an adverse reproductive effect (122). The RfD dose is a benchmark dose operationally derived from the no observed adverse effect level (NOAEL) by consistent application of uncertainty factor(s) (generally order of magnitude) and an additional modifying factor which takes into account professional judgment of the entire data base of the chemical. The NOAEL defines the highest level of exposure under the conditions of that test that were not associated with a significant increase in effect.

If there is no NOAEL available, sometimes the level associated with the lowest observed adverse effect level or LOAEL is used in the calculation. In circumstances where a LOAEL is used, an additional uncertainty factor is generally applied. In some instances, additional research is recommended to reduce the level of uncertainty.

Guidelines for the use of both uncertainty and modifying factors in deriving the reference dose have been discussed elsewhere (122). Several factors are to determine the overall size of the uncertainty factors. These include, (1) use of 10-fold factor to account for variation in sensitivities among the members of the human population, (2) use of an additional 10-fold factor to account for uncertainties in extrapolating from data in laboratory animal species to the case in humans, (3) use of an additional 10-fold factor when a LOAEL is used instead of a NOAEL, and (4) the use of an additional modifying factor to account for scientific uncertainties that may exist in the available database.

B. Exposure Assessment

The results of the dose-response assessment are combined with an estimate of human exposure in order to determine a level unlikely to cause an adverse reproductive effect. The Guidelines for Estimating Exposures have been published separately (4) and will not be discussed here. In general, the exposure assessment describes the magnitude, duration, frequency, and route of exposure. This information is developed from monitoring data and from estimates based on modeling of environmental exposures. Unique considerations relevant to female reproductive toxicity include the duration and period of exposure as related to the development or stage of reproductive life (e.g., prenatal, pre-pubescent, reproductive, or post-menopausal periods) or considerations of different physiological states (e.g., non-pregnant, pregnant, lactating).

Information on human exposure scenarios may be of two types, qualitative or quantitative. Qualitative information could be derived from data such as employment or residence histories. Quantitative information on actual exposure levels is frequently not available. Exposure at different stages of the reproductive life can result in different outcomes. Unlike laboratory studies, where exposure periods are controlled, it is difficult in human studies (especially retrospective ones) to establish linkage between specific time periods and specific exposures because of errors of recall or recordkeeping (where records are available). The increased probability of misclassification of exposure status may affect the ability of a study to recognize a true effect.

In the selection of the measurement scale of the exposure, certain assumptions about the relationship of exposure and outcomes are made and can dramatically affect the study results observed. For example, some studies classifying agent exposure as "ever-/never-exposed" may assume a permanent and irreversible effect of exposure. Such an assumption would make sense in studies of agents causing sterility, but not in the case of other reproductive effects. The appropriateness of the exposure measurement is dependent upon the outcome(s) studied, the biological mechanism(s) affected by exposure, and the half-life of the exposure. Unbiased misclassification of exposure, due to poor data or to an inappropriate exposure variable, may result in missing an effect of the agent under study.

Exposure at different stages of female development can result in different outcomes. Such age-dependent variation has been well documented in both animal and human studies. Prenatal and neonatal treatment can alter reproductive function irreversibly in a manner that may not be predicted from adult data. Agents that alter sexual differentiation in rodents during these periods may have adverse effects in humans. The susceptibility of the female to toxic insult during different portions of the reproductive life has not been well studied. Ideally, an exposure assessment should consider the probability of adverse effects on different subgroups (embryo, fetus, neonate, juvenile, young adult, older adult).

For infertility, a cumulative exposure measure assumes destruction of more primordial oocytes with greater lifetime exposure and/or increasing body burden. Humans may be exposed to different exposures at different times within the study period. Exposures during certain critical points in the reproductive process may affect the outcomes observed (123). Studies that convey an understanding of the underlying biological assumptions of exposure designation would carry more weight than those without such an understanding.

C. Risk Characterization

Risk characterization is a combination of hazard identification, dose-response assessment, exposure assessment, and the estimation of risk. Major assumptions, scientific judgments, and, to the extent possible, estimates of

uncertainties embodied in the assessments are presented. The purpose of risk characterization is to provide the risk manager with a synopsis of all the data, the assumptions and uncertainties associated with the conclusion on the estimated human risk.

Risk characterization should include:

1. The qualitative "weight-of-evidence" conclusions about the likelihood that the chemical may pose a reproductive hazard to women. The qualitative conclusion should include a discussion of the quality of the data and the nature of the toxic effect.

2. A discussion of dose-response characteristics and how this information, through the use of particular uncertainty and modifying factor(s) was used to determine the RfD.

3. Data on the shape and slope of the dose-response curve for the various reproductive toxicity end points, and information on absorption, distribution, metabolism, and structure-activity relationships. These data should be clearly discussed since they may influence the final risk management decision.

4. Estimates of exposure, the pattern and nature of the exposure, and the number and type of populations exposed, together with a discussion of assumptions used and the uncertainties involved.

5. A discussion of the sources of uncertainty, major assumptions, areas of scientific judgment, and, to the extent possible, estimates of the uncertainties embodied in the estimated risks.

The characterization of risk for a given agent relies on an RfD derived from a NOAEL or LOAEL and the application of uncertainty factor(s) to adjust for uncertainties in evaluating the data. Uncertainties generally arises from deficiencies in the same area of the available data base, for example; quality of the experimental design, suitability of the species utilized, level and pattern of exposure, information on low dose effects, information on interspecies differences and, information on human subpopulations sensitivities. Reliance on the NOAEL places substantial importance on the power of the study to detect low-dose effects. Poorly designed studies employing insensitive measures may produce higher NOAELs than those from a well-designed and well-conducted study. Risk assessments based on such data may underestimate the actual human risk. Conversely, use of a NOAEL from a study in which there were wide intervals between doses may overestimate the actual risk.

In the risk characterization process, comparison is made between the RfD and the estimated (calculated or measured) exposure dose (EED), which should consider exposure by all sources and routes of exposure (122). The risk assessment should contain a discussion of the assumptions underlying the estimation of the RfD (nature of the critical end point, nature of other toxic end points, degree of confidence in the data base, etc.), and the degree of conservatism in its derivation. The assumptions used to derive the EED should also be discussed. If the EED is less than the RfD, the need for regulatory concern is likely to be small.

An alternative measure that may be useful to some risk managers is the "margin of exposure" which is the magnitude by which the NOAEL of the critical toxic effect exceeds the estimated exposure dose (EED), where both are expressed in the same units.

NOAELs/uncertainty factors/margins of exposure are used to ensure that allowable levels are below those that can produce adverse reproductive effects in human females. Mathematical models for low-dose risk estimation in reproductive risk assessment need to be developed. One approach that has been suggested combines the use of mathematical models for low-dose estimation of risk with the application of an uncertainty factor based on a preselected level of allowable risk (124). This approach is similar to approaches proposed for carcinogenesis, but does not preclude the possibility of a threshold. Other approaches have also been suggested and new methodologies for risk characterization are currently being sought (125). However, in the interim, the Agency will continue to use uncertainty factors and margins of exposure as described above. Other appropriate methods will be applied if considered acceptable after they are developed and validated with available data.

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[FR Doc. 88–14331 Filed 6–29–88; 8:45 am]

BILLING CODE 6560-50-M.

federal register

Thursday
June 30, 1988

Part III

Environmental Protection Agency

Proposed Guidelines for Assessing Male Reproductive Risk and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3401-5]

Proposed Guidelines for Assessing Male Reproductive Risk

AGENCY: Environmental Protection Agency.

ACTION: Proposed guidelines for assessing male reproductive risk and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today proposing two new guidelines for assessing the human health risks of environmental pollutants. This notice proposes guidelines for assessing male reproductive risk, and invites public comment. Proposed guidelines for assessing risk relating to female reproductive toxicants appear elsewhere in today's **Federal Register.**

The Proposed Guidelines for Assessing Male Reproductive Risk are intended to guide Agency analysis of data on male reproductive toxicants according to appropriate scientific standards, and in line with the policies and procedures established in the statutes administered by the EPA. These proposed Guidelines were developed as part of an interoffice guidelines development program under the auspices of the Office of Health and Environmental Assessment in the Agency's Office of Research and Development. The current proposal incorporates comments from external and internal peer reviewers. EPA's Science Advisory Board (SAB) will review these proposed Guidelines at a meeting to be announced in a future **Federal Register.**

Comments from the public and the SAB will be reviewed and incorporated into a revised draft that will be submitted first to the Risk Assessment Forum and then to the Risk Assessment Council for review. The Risk Assessment Council will consider comments from the public, the SAB, and the Risk Assessment Forum in their recommendations on final guidelines to the EPA Administrator.

DATE: Comments must be postmarked by August 29, 1988.

ADDRESS: Comments may be mailed or delivered to: Dr. Harold Zenick or Dr. Eric Clegg, Reproductive Effects Assessment Group, Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Inspection and Copies: References, support documents, and other relevant materials will be available for inspection and copying at the Public Information Reference Unit (202-382-5926), EPA Headquarters Library, 401 M Street SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Harold Zenick or Dr. Eric Clegg, Telephone: 202-475-8913 or 475-8914.

SUPPLEMENTARY INFORMATION: In its 1983 book *Risk Assessment in the Federal Government: Managing the Process,* the National Academy of Sciences recommended that Federal regulatory agencies establish "inference guidelines" (1) to promote consistency and technical quality in risk assessments, and (2) to ensure that the risk assessment process is maintained as a scientific effort separate from risk management. A task force within EPA accepted that recommendation and requested that Agency scientists begin to develop such guidelines.

In 1984, EPA scientists began work on risk assessment guidelines for carcinogenicity, mutagenicity, suspect developmental toxicants, chemical mixtures, and exposure assessment. Following extensive scientific and public review, these five guidelines were issued on September 24, 1986 (51 FR 33992-34054).

The guidelines proposed today continue the guidelines development process initiated in 1984. Like the guidelines issued in 1986, the new proposal sets forth principles and procedures to guide EPA scientists in the conduct of Agency risk assessments and to inform Agency decision makers and the public about these procedures. In particular, the guidelines emphasize that risk assessments will be conducted on a case-by-case basis, giving full consideration to all relevant scientific information. This case-by-case approach means that Agency experts study scientific information on each chemical under review and use the most scientifically appropriate interpretation to assess risk. The guidelines also stress that this information will be fully presented in Agency risk assessment documents, and that Agency scientists will identify the strengths and weaknesses of each assessment by describing uncertainties, assumptions, and limitations, as well as the scientific basis and rationale for each assessment.

The guidelines are formulated in part to bridge gaps in risk assessment methodology and data. By identifying these gaps and the importance of the missing information to the risk assessment process, EPA wishes to encourage research and analysis that will lead to new risk assessment methods and data.

Work on the Proposed Guidelines for Assessing Female Reproductive Risk began in the Spring of 1985. Draft guidelines were developed by Agency work groups composed of scientists from throughout the Agency, and the drafts were peer-reviewed by reproductive effects experts from universities, environmental groups, industry, and other governmental agencies.

After SAB and public comment, Agency staff will prepare summaries of the comments, analyses of major issues presented by commentors, and Agency responses to those comments for development of final guidelines.

Date: June 9, 1988.

John A. Moore,

Chairman, Risk Assessment Council.

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I. Introduction

These Guidelines describe the procedures that the U.S. Environmental Protection Agency will follow in evaluating the potential toxicity of environmental agents to the human male reproductive system. The Agency's authority to regulate substances that have the potential to interfere adversely with the human male reproductive system is derived from statutes that are implemented through multiple offices within the Agency. The procedures outlined here will: (1) Promote consistency in the Agency's assessment of toxic effects on the male reproductive system, and (2) inform others of approaches that the Agency will use in assessing those risks.

Male reproductive toxicity risk assessments prepared pursuant to these Guidelines will be used within the requirements and constraints of the applicable statutes to arrive at regulatory decisions concerning male reproductive toxicity. These Guidelines do not change any statutory or regulatory prescribed standards for the type of data necessary for regulatory action; rather, they provide guidance for analyzing and using the available data for conducting risk assessments. Risk assessment is the component of the regulatory process that defines the potential adverse health consequences of exposure to a toxic agent.

The National Research Council (1983) of the National Academy of Sciences has defined risk assessment as comprising some or all of the following components: Hazard identification, dose-response assessment, exposure assessment, and risk characterization. In general, the process of assessing the risk of human male reproductive toxicity may be adapted to this format. To the extent possible, these Guidelines will adhere to the standards as defined for each component by the National Research Council (1983).

Hazard identification is the qualitative component of risk assessment in which all available human and experimental animal data are used to determine if an agent is likely to cause male reproductive toxicity in humans. When the data are limited to test species, the relevance of the test system to humans must be considered.

Dose-response assessment defines, in quantitative terms, the relationship between the dose of an agent and the occurrence of toxic effects in the male reproductive system. Ideally, a dose-response relationship would be established from human epidemiologic data that include the exposure levels expected from human contact with the agent in the environment. Such data are seldom available. Therefore, dose-response assessment may include extrapolations from high doses administered to experimental animals or noted in epidemiologic studies to the low exposure levels expected for human contact with the agent in the environment. Dose-response assessment also includes extrapolations to adjust for potential differences in sensitivity between and within species (National Research Council, 1983).

Exposure assessment identifies populations exposed to the agents, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the agent. Those procedures are considered separately in the Guidelines for Estimating Exposures (U.S. EPA, 1986a).

In risk characterization, the exposure assessment and the dose-response assessment are combined to estimate quantitatively the risk of human male reproductive toxicity. As part of risk characterization, the strengths and weaknesses in each component of the assessment are considered along with major assumptions, scientific judgments, and, to the extent possible, estimates of the uncertainties.

In these Guidelines, emphasis is placed on toxicity resulting from the presumed direct action of agents on the male reproductive system. Evaluation of male reproductive effects in the presence of other systemic toxicity is also discussed. Some attention is given to testing and end points that are components of mutagenicity or developmental toxicity testing (e.g., dominant lethal test protocol; effects on offspring). The nature of the reproductive process is such that these areas overlap and should be considered in male reproductive risk assessments. For male-mediated effects on the embryo/fetus/offspring, the reproductive system of the parent may be affected directly by the agent, but assessments should also consider risk conferred by the male parent to the product of the conception. For decisions involving developmental toxicity, the Guidelines for the Health Assessment of Suspect Developmental Toxicants (U.S. EPA, 1986b) should be consulted. Likewise, the Guidelines for Mutagenicity Risk Assessment (U.S. EPA, 1986c) should be consulted for additional information pertaining to germ-cell mutagenic risk. A complete male reproductive risk assessment may require using these other guidelines in conjunction with the current document. EPA Guidelines also have been prepared for assessment of risk to the female reproductive system and are published as proposed guidelines elsewhere in this issue of the **Federal Register**.

These Guidelines are focused on male reproductive function as it relates to sexual behavior, fertility, and male-mediated pregnancy outcomes, plus effects on processes that can affect those functions directly. Included are spermatogenesis and sperm maturation, secondary sex organ and accessory sex gland function, as well as the components of the endocrine system that directly support those functions.

The hazard identification segment of these Guidelines considers the test protocols and the end points that can provide information on male reproductive toxicity to the Agency, as well as other types of experimental data that may be available. Sections on epidemiology, pharmacokinetic considerations, and structure-activity relationships are included, followed by a discussion of the weight of evidence determination for qualitative risk assessment. The final segment discusses quantitative risk assessment, including dose-response assessment, exposure assessment, and risk characterization.

II. Definitions

The following terms are defined according to their usage in this document:

Accessory sex gland—A hormone-dependent gland, such as the seminal vesicle or prostate, that delivers secretory products into the excurrent duct of the male reproductive tract, where it becomes a component of semen.

Developmental toxicity—The occurrence of adverse effects on the

developing organism that may result from exposure prior to conception (either parent), during prenatal development, or postnatally to the time of sexual maturation. Adverse developmental effects may be detected at any point in the life span of the organism. The major manifestations of developmental toxicity include: (1) Death of the developing organism, (2) structural abnormality, (3) altered growth, and (4) functional deficiency (U.S. EPA, 1986b).

Epididymis—A secondary sex organ through which spermatozoa pass and in which spermatozoa acquire ability to become motile and to fertilize. The distal segment of the epididymis, the cauda epididymis, is also a site for storage of spermatozoa.

Fertility—Achieving conception within a defined period of time. For litter-bearing species, the number of offspring is also a measure of fertility.

Fertile—Having a level of fertility that is within or exceeds normal for that species.

Subfertile—Having a level of fertility that is below normal for that species, but is not infertile.

Infertile—Lacking fertility for a specified period of time. The infertile condition may be temporary; permanent infertility is termed sterility.

Lowest observed adverse effect level (LOAEL)—The lowest dose level tested at which there was a statistically or biologically significant indication of a toxic effect of concern (U.S. EPA, 1986d).

Male reproductive system—Those processes and organs in the male that are involved directly in sexual behavior and procreation. For this document, these include the testes, epididymides, vas deferens, accessory sex glands, penis, pituitary, and hypothalamus. Not all regions of the latter two organs are considered to have a role in reproductive function.

Male reproductive toxicity—The occurrence of adverse effects on the male reproductive system that may result from exposure to environmental agents. The toxicity may be expressed as alterations to the male reproductive organs and/or the related endocrine system. The manifestation of such toxicity may include alteration in sexual behavior, fertility, pregnancy outcomes, or modifications in other functions that are dependent on the integrity of the male reproductive system.

Margin of exposure (MOE)—The ratio of the NOAEL to the estimated human exposure (U.S. EPA, 1986d).

No observable adverse effect level (NOAEL)—The dose at which there was no statistically or biologically significant indication of a toxic effect of concern (U.S. EPA, 1986d).

Reference dose (RfD)—A benchmark dose operationally derived from the NOAEL by consistent application of generally order of magnitude uncertainty factors that reflect the various types of data used to estimate RfDs (U.S. EPA, 1986d).

Seminiferous epithelium—Tissue within the seminiferous tubules, including Sertoli cells, stem cells, spermatogonia, spermatocytes, and spermatids that is involved in the production of spermatozoa.

Seminiferous tubules—The structures within the testis in which spermatozoa are produced and begin transport toward the excurrent ducts.

Testis—The male gonad which contains the seminiferous tubules, wherein spermatozoa are produced, and the interstitial cells, including Leydig cells, that produce androgenic hormones.

"Time to mating"—The interval between first opportunity to mate and observation of definitive evidence of mating.

III. Background

Several documents are available that provide background for these Guidelines (e.g., U.S. EPA, 1982; U.S. EPA, 1985; Kimmel et al., 1986; Galbraith et al., 1983; Organization for Economic and Community Development [OECD], 1983). There are also a number of resources that provide general background information on the physiology, biochemistry, and toxicology of the male reproductive system (Amann, 1981; Mann and Lutwak-Mann, 1981; Zaneveld and Chatterton, 1982; Dixon, 1985; Thomas et al., 1985).

Up to 15% of the married couples in the United States are classified as clinically infertile; i.e., they are unable to achieve a viable pregnancy within a year of unprotected intercourse (MacLeod, 1971). For some of these couples, infertility is due to adverse health effects that influence the reproductive system of the males. Effects may include dysfunction in sexual behavior or impairment in those processes responsible for the production of sperm that are able to participate successfully in fertilization and the production of a healthy conceptus. Compromised sexual and reproductive competence may result from either direct toxicity to the male reproductive system or be the expression of impairment in other organs and processes. There is a wide variety of clinically documented diseases and pathologies that may interfere with reproductive function. This suggests a unique vulnerability of the male reproductive system since toxic agents, acting through a variety of direct and indirect pathways, can evoke adverse responses.

Fertility of the human male is also particularly susceptible to agents that reduce the number and/or quality of sperm produced. Compared to many other species, human males, in general, produce fewer sperm relative to the number of sperm required for fertility (Amann, 1981; Galbraith et al., 1983). The point at which the incidence of infertility in men begins to increase is considered to be approximately 20–40 x 10^6 sperm per milliliter of ejaculate. As the concentration of sperm declines below that level, the probability of a pregnancy resulting from a single ejaculation declines. If the number of normal sperm per ejaculate is sufficiently low, fertilization is unlikely and an infertile condition exists. Many men have daily production rates of normal sperm that appear to place them close to or in the subfertile or infertile categories (Amann, 1981). Insult to the human male reproductive system by a toxic agent may decrease production of normal sperm additionally and further impair fertility.

Because of the susceptibility of the human male reproductive system, it is important to evaluate effects on that system in toxicity assessment. Environmental agents have been identified that produce adverse effects on the male reproductive system of humans and test species. These effects may occur at doses as low as or lower than those causing adverse effects on other systems in the male. Prominent examples are dibromochloropropane, ethylene dibromide, and certain glycol ethers.

IV. Qualitative Male Reproductive Risk Assessment (Hazard Identification)

In this section, the conventional protocols and end points used to evaluate male reproductive toxicity are presented with evaluation of their strengths and limitations. Numerous factors are important in the conduct and evaluation of toxicity tests. Since the considerations of many of those are common to all protocols, design factors and end points are considered separately from the discussion of the overall protocol structures.

It may not be possible to assess all of the considerations necessary for risk assessment from the results of any single test, regardless of how complex the protocol. The higher dose levels that may be adequate for hazard identification may not provide optimal

separation of different toxic effects at lower doses. The test design to study reversibility of adverse effects may be different from that needed to determine time of onset of an effect or for calculation of an allowable exposure level. Ideally, it is desirable to have available results from several different types of tests when performing a risk assessment. Typically, only limited data are available. Under those conditions, the limited data will be used to the extent possible to assess risk to the male reproductive system.

A. Laboratory Testing Protocols

1. Single-Generation and Multigeneration Reproduction Tests

Guidelines for the conduct of single-generation and multigeneration reproduction tests have been published by the Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA) and by the Organization for Economic and Cooperative Development (U.S. EPA, 1982, 1985; OECD, 1983).

In a single-generation or multigeneration reproduction test, the rat is used most commonly. In a typical reproduction test, exposure is initiated when the rats are 5 to 8 weeks of age and continued for 8 to 10 weeks. Three dose levels plus a control group(s) are usually included. Enough males and females are mated to ensure 20 pregnancies for each generation. Animals producing the first generation of offspring are considered the parental (P) generation, and all subsequent generations are designated filial generations (F_1, F_2, etc.).

Both males and females are treated prior to and during mating. Cohabitation is allowed for up to 3 weeks, during which the females are monitored for evidence of mating (see section IV.B. for a discussion of the length of exposure and mating periods). Female treatment is continued during pregnancy and lactation. In the two-generation reproduction test, randomly selected first filial (F_1) offspring continue to be exposed after weaning (day 21) and then are mated at 11 to 13 weeks of age. Treatment of mated F_1 females is continued throughout pregnancy and lactation. Therefore, offspring from the P and F_1 generations (F_1 and F_2, respectively) are exposed potentially to the agent *in utero* and via milk until weaned.

The single-generation reproduction test may detect effects on the reproductive process of peripubertal and adult animals. The design of the multigeneration reproduction study similarly evaluates parental animals that have received subchronic exposure as young adults (P generation). However, F_1 and F_2 offspring may be exposed continuously *in utero* from conception and during the preweaning period prior to evaluation, allowing expression of effects due to exposure during critical developmental periods. Since the parental and subsequent filial generations have different exposure histories, reproductive effects seen in any particular generation may not be directly comparable with or predictive of those of another generation.

In single and multigeneration reproduction tests, the reproductive end points that are evaluated for the male usually include visual examination of the reproductive organs, plus testicular, epididymal, and accessory sex glands weights and histopathology. Male and female mating and fertility indices are usually presented. In addition, litters are weighed at birth and examined for number of live and dead births, gender, gross abnormalities, and growth and survival to weaning.

If effects on reproductive success are the only adverse effects observed in a study using one of these protocols, the contribution of male- and female-directed effects usually cannot be distinguished. If histopathology and/or sperm evaluations have been included, it may be possible to characterize a male-directed effect. However, identification of a male-directed effect does not exclude the possibility of a female-directed component. It may be necessary to examine data from matings of treated males with untreated females and vice versa to separate sex-specific effects.

It is possible to produce more than one litter from either P or F_1 animals. However, successive litters in any reproduction test cannot be considered as replicates in the statistical analysis because of factors such as continuing exposure of the parents, increased parental age and sexual experience, and parity of the parents.

2. Continuous Breeding Protocol

The continuous breeding protocol has been developed recently by the National Toxicology Program as a possible alternative to the multigeneration reproduction test. It is not included presently in any EPA test guidelines. This protocol has been used with mice (Lamb and Chapin, 1985); its use with rats is also being tested. The distinctive feature of this test is continuous cohabitation of a male-female pair for 14 weeks, with removal of each litter soon after the birth of all except the final litter. It is the only protocol currently in use that provides a measure of subfertility other than reduction of litter size (see section II for definitions and section IV.C.1.c for more detail) by determining the number of litters that can be produced within a defined time.

In this protocol, postpubertal males and females (11 weeks of age) are treated with one of three different dose levels in addition to controls, followed by cohabitation of mating pairs for 14 weeks. Treatment is initiated 7 days before cohabitation and continued throughout the experiment. Offspring are removed from the dam immediately after birth and examined for number of live and dead pups, litter weight, sex, and external abnormalities. Under these conditions, the normal female returns immediately to a fertile estrus. This results in the ability to produce up to five litters per pair within the 14-week cohabitation period. If the P generation remains fertile, the final litter from each pair is examined in the same way as the earlier litters. However, those final offspring may remain with the dam until weaning to study the effects on a generation that has been exposed potentially both *in utero* and during the preweaning period. Offspring may also be treated from weaning to 70 days of age and subsequently mated. As discussed for the single generation and multigeneration reproduction tests, successive litters cannot be treated as replicates.

If an adverse effect is observed on the fertility of the P generation, the treated P animals may be mated with untreated control animals (crossover matings) for 7 days to determine the affected sex. During the crossover mating period, treatment is discontinued, then resumed after 7 days. Parental animals are necropsied only if an effect on that sex has been detected.

The sequential production of litters from the same adults allows observation of the timing of onset of an adverse effect on fertility. In addition, it may improve ability to detect subfertility due to the potential for larger numbers of pregnancies and litters. With continuous treatment, a cumulative effect could increase severity of expression with subsequent litters. However, unless offspring are allowed to grow and reproduce, little or no information will be available on postnatal development or reproductive capability of a second generation. The animals used for the crossover matings are removed from treatment during the matings with untreated animals. Thus, effects that require continuous exposure and show rapid recovery may show a different pattern at necropsy than would have

been observed had necropsy immediately followed cessation of treatment.

3. Dominant Lethal Test

The dominant lethal test is intended to detect mutagenic effects in the spermatogenic process that are lethal to the embryo or fetus. A review of this test has been published recently as part of the EPA's Gene-Tox program (Green et al., 1985). Reproductive data from this test may include measurement of fertilization failure and pre- and postimplantation loss. Effects causing fertilization failure and preimplantation loss are not separated and may reflect mutagenic and/or nonmutagenic events on the sperm (see section IV.C.1.c). Postimplantation loss is usually considered to reflect germ-cell mutation.

Dominant lethal protocols may use acute dosing (1 to 5 days) followed by serial matings with one or two females per male per week for the duration of the spermatogenic process. An alternative protocol may use subchronic dosing for the duration of the spermatogenic process followed by mating(s). Females are monitored for evidence of mating, sacrificed at approximately mid-gestation, and examined for incidence of pre- and postimplantation loss (see section IV.C.1.c).

The acute exposure protocol, combined with serial mating, allows identification of the spermatogenic cell type(s) that is adversely affected by treatment. However, acute dosing may not necessarily produce adverse effects at the same dose levels as with subchronic dosing, due to factors such as bioaccumulation or induction of a detoxification mechanism.

4. Subchronic Toxicity Tests

Often, a general subchronic toxicity test has been done before a detailed reproduction study is initiated. In the subchronic toxicity test with rats, exposure is usually initiated between 6 and 8 weeks of age and continued for 90 days (see EPA Test Guidelines prepared pursuant to FIFRA and TSCA; U.S. EPA, 1982, 1985). Initiation of exposure at 8 weeks of age and exposure for approximately 90 days allows the males to reach a more mature stage of sexual development and assures an adequate length of dosing for most agents. The route of administration is often oral, but may be dermal or by inhalation. Animals are monitored for clinical signs throughout the test and are necropsied at the end of the dosing period. The end points that are usually evaluated for the male reproductive system include visual examination of the reproductive organs, plus testicular, epididymal, and accessory sex glands weights and histopathology.

This test can be useful to identify an agent as a male reproductive hazard, but usually does not provide information about the integrated function of the male reproductive system, nor does it include effects of exposure of the immature animal.

5. Chronic Toxicity Tests

Chronic toxicity or oncogenicity tests provide an opportunity to evaluate toxic effects of long-term exposure as the male ages. Exposure, which may be by oral, inhalation, or dermal routes, is initiated soon after weaning and is continued for 12 to 24 months. Due to the extended treatment period, interim sacrifices may provide important information regarding the onset and sequence of toxic events. At necropsy, the reproductive organs are examined visually, testis weights are obtained, and routine testicular histopathologic examination is done. Other relevant male reproductive organs may be evaluated similarly.

B. Design Factors That May Influence Test Results

Even when standard protocols are used for testing, there are numerous variables that can affect the interpretation of results. Three of those factors that have unique aspects with respect to the male reproductive system are discussed below.

1. Duration of Dosing

Adverse effects of an agent on the spermatogenic process may not be observed in reproductive evaluations for a substantial time after initiation of treatment. Damage that is limited to spermatogonial stem cells will not appear in the cauda epididymis or in ejaculates for 8 to 14 weeks, depending on the test species. With some agents that bioaccumulate, the full impact on a given cell type could be delayed, as could the impact on functional end points such as fertility. In such situations, examination of data from longer exposures may be useful. Adequate pharmacokinetic/pharmacodynamic data facilitate selection of dose levels and treatment duration, as well as selection of other parameters for a well-designed test of male reproductive toxic effects. Additional factors that are related to duration of dosing are presented in section V.B (Exposure Assessment).

2. Length of Mating Period

Traditionally, pairs of rats or mice are allowed to cohabit for periods ranging from several days to 3 weeks. Given a 4- to 5-day estrous cycle, each female should be in estrus four or five times during a 21-day mating period. During each estrus, the male has the opportunity to copulate multiple times, resulting in delivery of many more sperm by a male than are required for fertilization. When an unlimited number of matings are allowed in fertility testing, a large effect on sperm production is necessary before an effect on fertility can be detected.

3. Number of Females Mated to Each Male

Current EPA test guidelines prepared pursuant to FIFRA and TSCA specify use of 20 males and enough females to produce at least 20 pregnancies for each treatment group in each generation in the multigeneration reproduction test (U.S. EPA, 1982, 1985). However, 20 pregnancies are often achieved by mating two females per male and using less than 20 males per treatment group. In such cases, the statistical treatment of the data should be examined carefully. In assessing male reproductive toxicity, the male remains the unit of statistical analysis. Using the female as the statistical unit inflates the sample size and may distort data analysis and interpretation.

C. End Points for Evaluating Male Reproductive Toxicity

The following sections describe the various end points of male reproductive toxicity that can be obtained and their use in risk assessment. The first section (IV.C.1) reviews end points for which data are obtained routinely by the Agency and provides guidance for their interpretation. A subsequent section (IV.C.2) briefly examines other end points that are not available routinely, but for which data may be encountered in the review of chemicals. Following the discussion of each end point, guidance is provided as to the use of such data in hazard identification. A summary of these recommendations may be found in the section on Weight of Evidence Determination (IV.G).

Three considerations are applicable throughout the discussion of measures of male reproductive toxicity. First, a comprehensive risk assessment requires

information on a variety of end points. Ideally, the evaluation would include examination of data on the more sensitive end points (e.g., properly performed histopathology, see section IV.C.1.b) in defining the lowest dose at which effects are detected (LOAEL) and/or the highest dose at which no effects are observed (NOAEL). Positive effects on less sensitive, functional end points (e.g., fertility) are particularly useful for hazard identification and in interpreting the biological significance of effects on other end points that are not as directly associated with function. The ability to form such an association between the more sensitive end points and those that measure function directly may provide a clearer picture of the risk to human reproduction. Allowances may be necessary for species differences in susceptibility to the adverse reproductive effect.

A second issue is that alterations in these reproductive end points may be the result of direct or indirect toxicity to the male reproductive system. In either case, the agent should be considered a male reproductive hazard. Careful evaluation of the dose-response curves for the various target organs may provide insight into the likelihood of reproductive effects independent of these other toxicities. Estimating the dose levels at which these various target organ events occur has special significance in predicting the effects of anticipated human exposure.

A third issue is that although the end points discussed in these Guidelines may reflect impairment to the various components of the reproductive process, they may not effectively discriminate between nonmutagenic and mutagenic mechanisms. If the effects seen in evaluation of male reproductive end points are the result of mutagenic events (e.g., interaction with germ-cell DNA), then there is the potential for transmissible genetic damage. The Guidelines for Mutagenicity Risk Assessment (U.S. EPA, 1986c) should be consulted in conjunction with this document when a potential for genetic damage is suspected.

1. End Points Routinely Evaluated by the Agency

The Agency may obtain data on the potential male reproductive toxicity of an agent from a number of current testing protocols, including acute, subchronic, and chronic testing and reproductive and fertility tests. The end points that are often evaluated in such studies are listed in Table 1.

TABLE 1.—END POINTS THAT MAY BE EVALUATED UNDER CURRENT TESTING GUIDELINES

Body Weight.
Organ Weights: Testes, epididymides, seminal vesicles, prostate, pituitary gland.
Histopathology: Same organs.
Fertility: Mating ratio pregnancy ratio.
Pregnancy Outcomes: Litter size, pre- and postimplantation loss, number of live/dead pups, sex ratios, malformations, birth and postnatal weights, and survival.

a. *Body Weight and Organ Weight*—Body weight and organ weight are usually obtained irrespective of the study protocol. Body weights are recorded at a minimum of weekly intervals during testing, and can provide a useful index into the general health status of the animal. Interpretation of reproductive effects may be uncertain in the presence of altered body weight. For at least the testes, body weight and organ weight are independent variables in the normal adult (Robb et al., 1978). Depression in body weight or reduction in weight gain may reflect a variety of responses, including rejection of toxicant adulterated food or water because of reduced palatability, treatment-induced anorexia, or systemic toxicity. Modest depressions in adult body weight as a result of decreased palatability or depressed appetite may have little effect on reproductive function (e.g., Ribelin, 1963; Heywood and James, 1978). When body weight decline is produced by such factors, it may not be appropriate to dismiss the occurrence of male reproductive effects as simply secondary to the occurrence of a generalized toxicity. However, the factors underlying a decline in body weight or reduced weight gain often cannot be delineated. Also, the impact of such weight changes may vary depending upon the species and strain. Then the issue as to whether the observed reproductive effects are primary or secondary effects of exposure cannot be resolved. Until additional data provide the needed clarification, alteration in a reproductive measure, irrespective of body weight changes, is sufficient to identify an agent as a male reproductive hazard.

For the male, the reproductive organs that are often weighed include the testes, epididymides, pituitary gland, prostate, and seminal vesicles. Necropsy procedures for the reproductive organs other than the testes have not been standardized across laboratories. The development and application of uniform protocols might reduce some of the interstudy variability associated with these measurements.

Organ weight data may be presented as both absolute weights and as relative weights (i.e., organ weight to body weight ratios). Organ weight data may also be reported relative to brain weight since, subsequent to development, the weight of the brain remains quite stable. Evaluation of data on absolute organ weights is important, since an organ weight ratio may show no significant difference if both body weight and organ weight change in the same direction. A change in the organ weight/body weight ratio is usually the result of a disproportionate change in weight of that organ rather than a disproportionate change in body weight of exposed relative to nonexposed animals.

Testis weight varies only modestly among normal members of a given test species (Schwetz et al., 1980; Blazak et al., 1985). This relatively low inter-animal variability suggests that testis weight should be a sensitive, early marker of gonadal injury. However, this is not always the case. Damage to the testes may often be detected as a weight change only at doses higher than those required to produce significant effects in other measures of gonadal status (Foote et al., 1986a, b; Berndtson, 1977). This contradiction may arise from several factors, including the delay before cell deaths are reflected in a weight decrease and reactions to injury that may mask a decrease in testis weight (e.g., edema and inflammation, cellular infiltration, and Leydig cell hyperplasia).

Pituitary and accessory sex gland weights can provide valuable insight into the androgen status of the animal. However, the pituitary contains regions that are responsible for the regulation of a variety of physiologic functions separate from reproduction. Thus, changes in pituitary weight do not necessarily reflect reproductive impairment. If weight changes are observed, histopathologic evaluations may be useful in identifying the regions of the pituitary that are altered.

Optimal evaluation of data on the pituitary and accessory sex glands requires information on the technique that was used in removal and dissection of extraneous tissue. Separation of the seminal vesicles and prostate is difficult in rodents. Moreover, studies may report accessory sex gland weights with or without expression of the secreted fluids. Weights without fluids show less variability than weights in the presence of the secreted fluid. Access to data on accessory sex gland weights, with and

without the fluids, would facilitate comparisons across different data sets.

Changes in absolute or relative reproductive organ weights provide sufficient evidence for classifying an agent as a probable human male reproductive hazard (see section on Weight of Evidence Determination, IV.G), and provide an important basis for obtaining additional information on the reproductive toxicity of that agent. However, since changes in organ weights may only be apparent after substantial injury, reliance on more sensitive measures (e.g., properly performed histopathology, see section IV.C.1.b) may be necessary to better define a NOAEL/LOAEL. Also, significant changes in other important end points that are related to reproductive function may not be reflected in organ weight data. Thus, the absence of an organ weight effect does not provide a basis for assuming the absence of a reproductive effect (Foote et al., 1986a, b).

b. *Histopathological Evaluations*—Histopathological evaluations have a prominent role in reproductive risk assessment. Current EPA test guidelines prepared pursuant to FIFRA and TSCA (U.S. EPA, 1982, 1985) recommend that the reproductive organs be preserved for possible histopathological evaluation in the general toxicity testing and multigeneration breeding protocols. Those organs include the testes, epididymides, prostate, seminal vesicles, and pituitary. Histological evaluations are especially useful in multigeneration studies if the parental (P) males appear infertile, and may include examination of the spermatogenic cycle; i.e., pattern of spermatogenesis.

Histological analysis of spermatogenesis is facilitated by proper fixation and embedding of testicular tissue. Approaches that use formalin fixation combined with paraffin embedding of the testis result in artifacts in control as well as treated tissue (e.g., shrinkage, vacuoles, clumping of nuclear material) that can mask effects and impair interpretation. Detection and identification of degenerating or missing cell types is often difficult with such preparations. A description of the background level of lesions in control tissue, whether preparation, induced or otherwise, can facilitate interpreting the nature and extent of the lesions observed in tissues obtained from exposed animals. Reviews of fixation and embedding techniques for testes have been published recently (Chapin et al., 1984; Lamb and Chapin, 1985).

Familiarity with the cytoarchitecture of the testis and the kinetics of spermatogenesis of each test species can assist in the identification of less prominent lesions that may accompany lower-dose exposures. References are provided in current EPA test guidelines prepared pursuant to FIFRA and TSCA (U.S. EPA, 1982, 1985) that describe in detail the morphology of spermatogenesis (Clermont and Perry, 1957; Oakberg, 1956; Roosen-Runge, 1962). Of particular value is the description of the various cellular associations for each stage of the spermatogenic cycle. In addition to the evaluation of the morphological integrity of the spermatogenic process, other histological analyses can be applied to tissue sections. Some examples include counting the number of affected tubules, quantifying tubular and interstitial cell areas, and calculating the ratios between various cell types (e.g., spermatocyte/Sertoli cell ratio). Reviews describing these approaches have been published (Berndtson, 1977; Mori and Christensen, 1980).

The basic cytoarchitecture of other reproductive organs (e.g., pituitary and accessory glands) has been described as well as the histopathologic alterations that may accompany certain disease states (Bloom and Fawcett, 1975). Less is known about structural changes in these tissues associated with exposure to environmental or occupational agents. Systematic strategies, similar to those for the testes, need to be developed. Again, interpretation can be facilitated by a description of the nature and degree of lesions present in the tissues obtained from nonexposed animals.

The degree to which histopathological effects are quantified is usually limited to classifying animals, within dose groups, as either affected or not affected. Little effort has been made to quantify the extent of injury, and uniform procedures for such classifications do not exist. The application of thorough evaluation procedures would be complemented by more uniform strategies for quantifying the extent of histopathological damage per individual. In the absence of a standardized scoring system, the evaluation of histopathological data would be facilitated by the presentation of the assessment criteria and the manner in which the level of lesions in exposed individuals would be judged to be in excess of controls.

If properly obtained (i.e., proper preparation and analysis of tissue), data from histopathological evaluations provide a relatively sensitive tool that is suitable not only for hazard identification and the detection of low-dose effects, but also for providing insight into site(s) and mechanism(s) of action for that reproductive organ. When similar targets/mechanisms exist in humans, the basis for interspecies extrapolation is strengthened. Depending upon the experimental design, information can also be obtained that may allow prediction of the eventual extent of injury and degree of recovery in that species and humans (Russell, 1983).

The presence of histopathological damage in excess of the level seen in control tissue of test animals provides sufficient evidence for considering an agent to be a probable human male reproductive toxicant (see section IV.G) and may be used to establish a NOAEL/LOAEL. Equivalent information from humans could be sufficient to consider an agent to be a known human male reproductive toxicant if adequate control observations were available. Although thorough histopathological evaluations that fail to reveal any treatment-related effects may be quite convincing, consideration should be directed to the possible presence of reproductive effects that are not detected histologically (e.g., genetic damage to the germ cell, decreased sperm motility, increase in abnormal sperm forms), but may influence reproductive function.

c. *Fertility and Pregnancy Outcomes*—Breeding studies are a major source of data on reproductive toxicants. Evaluations of fertility and the resulting pregnancy outcomes provide measures of the functional consequences of reproductive injury. A variety of measures can be obtained from fertility studies that may include the following: mating ratio (number of animals with seminal plugs or sperm in a vaginal lavage/number cohabited), pregnancy ratio (number pregnant/number with confirmed matings), pre- and postimplantation loss, litter size, number of live and dead offspring, sex ratio, malformations, birth weight, neonatal weight, and survival. Postnatal evaluations of surviving offspring may provide assessment of growth and development, including evaluation of the reproductive capacity of the progeny. A discussion of the evaluation of birth and postnatal outcomes may be found in the Guidelines for the Health Assessment of Suspect Developmental Toxicants (U.S. EPA, 1986b).

As described in Laboratory Testing Protocols (section IV.A), current EPA guidelines on fertility testing prepared pursuant to FIFRA and TSCA (U.S. EPA, 1982, 1985) entail the cohabitation of

treated males with treated females. Therefore, the relative influences of the male and female parents on changes in fertility or other reproductive outcomes (e.g., reduced survival) may not be readily discriminated. Assignment of at least some of the responsibility for a toxic reproductive effect to the male may be possible with other data showing adverse effects (e.g., decreased reproductive organ weights and/or histopathological observations). However, such observations do not rule out an additional female component. Data on mating performance could also clarify effects on fertility by indicating whether or not the males were behaviorally competent.

If evaluation of mating success is included, useful data may include confirmation of the day of insemination (i.e., seminal plugs or sperm-positive vaginal lavages), plus analysis of the length of time required for each animal to achieve mating (time to mating). The data presented routinely from the majority of breeding tests affirm the occurrence of matings, but do not report the length of time required or any difficulties in achieving normal insemination. However, most laboratories conducting multigeneration studies obtain information on the time required for mating to be achieved from initiation of cohabitation as part of their animal breeding records. Although evidence of mating is not necessarily synonymous with successful impregnation, data on time to mating could provide a more complete picture of reproductive competence.

Evaluations of time to mating might also help discriminate between the presence of subfertility and infertility. Exposure to a reproductive toxicant may not produce a total absence of fertility (i.e., sterility), but rather a condition of subfertility seen as an increased time to conception. (Subfertility may also be reflected as a reduction in litter size in litter-bearing species.) The assessment of time to mating in reproductive studies might indicate the potential for an important human reproductive problem, i.e., increased time to conception.

Data are available on the variability associated with some of these functional reproductive measures which allow evaluation of the power and group size requirements (Schwetz et al., 1980). Coefficients of variation (standard deviation/mean) range from approximately 10% for neonatal survival (to day 21) to 20% for fertility ratios. The background variability associated with rates of mating success may be reduced if sexually experienced males were mated to females which had been determined to be in proestrus by vaginal cytology.

Aside from considerations that pertain to individual end points, there are risk assessment issues regarding the relationship of male toxicity to effects on offspring within a given generation, and the relationships of reproductive outcomes across generations. A review of 20 "positive" multigeneration studies has provided some preliminary observations on these issues (Christian, 1986):

1. The presence of toxicity in the adult males, reproductive or otherwise, was not a prerequisite for the occurrence of effects on offspring.

2. Approximately one-half of the studies were classified as "positive-increasing." In these cases, the second generation (F_1) animals exhibited effects that were more severe than those in the first (P) generation at equivalent doses or that occurred at lower doses.

3. Increasing toxicity with succeeding generations is consistent for chemicals that bioaccumulate. However, exposure of sequential generations involves different developmental stages (e.g., P vs F_1 adults) that might also contribute to differential effects across generations.

4. F_1 adults that exhibited impaired reproductive ability most often were derived from litters that had exhibited one or more adverse reproductive outcomes at birth.

Increasing vulnerability of subsequent generations is not always observed; effects may be static or decreasing. Qualitative predictions of the increased risk of the filial generations could be strengthened by knowledge of the nature of the reproductive effects in the adult, the likelihood of bioaccumulation of the agent, and the potential for increased sensitivity resulting from exposure during critical periods of development (Gray, 1988).

In some cases, the severity of effects may be less across generations. When that occurs, one explanation may be that the animals in the F and F_2 generations represent "survivors" who are (become) more resistant to the agent than the average of the P generation. If such selection exists, then subsequent filial generations may show a reduced toxic response. Thus, significant adverse effects in any generation should be considered cause for concern regardless of results in other generations.

Dominant lethal assays, in which the female is sacrificed in mid- to late pregnancy, may also produce reproductive data. End points obtained from dominant lethal tests may include mating and fertility ratios and estimates of preimplantation loss (number of corpora lutea—number of implantation sites/number of corpora lutea) and postimplantation loss (number of implantation sites—number of live pups/number of implantation sites). The occurrence of pre- and/or postimplantation loss is often considered to provide sufficient evidence that the agent has gained access to the male reproductive organs and has induced mutagenic damage to the male germ cell (U.S. EPA, 1986c).

A genotoxic basis for a substantial portion of postimplantation loss is widely accepted. However, current methods of assessing preimplantation loss provide little distinction between contributions of mutagenic events that cause embryo/fetal death and nonmutagenic factors that result in failure of fertilization or early embryo mortality (e.g., inadequate numbers of normal sperm, failure in sperm transport or ovum penetration, etc.). Such a distinction is important since cytotoxic effects on spermatogenic cells do not imply the potential for transmissible genetic damage that is associated with mutagenic events. The interpretation of an increase in preimplantation loss may require additional data on the agent's mutagenic and/or spermatotoxic potential if genotoxicity is to be factored into the risk assessment. Approaches are being developed that may prove useful in distinguishing these events (Goldstein, 1984). Guidance for the use of such genotoxic data in risk assessment is provided by the Guidelines for Mutagenicity Risk Assessment (U.S. EPA, 1986c).

Data on fertility potential and associated reproductive outcomes provide the most comprehensive and direct insight into reproductive capability. As noted previously, most protocols cohabit exposed males with exposed females, complicating the delineation of gender-specific influences. Conclusions may need to be restricted to noting that the "couple" is at reproductive risk when there is the potential for both parents to be exposed. However, if the protocol entails "male-only" exposure, then substantial weight can be placed on results that demonstrate that an agent acted on the males to impair those outcomes. Such agents would be classified as probable/known male reproductive toxicants, depending on whether the data were derived from a test species or humans (see section IV.G).

Less weight can be given to results demonstrating no treatment-related effect on fertility since fertility assessments in test animals are limited by their insensitivity as measures of

reproductive injury. Normal males of most test species produce sperm in numbers that greatly exceed the minimum requirements for fertility, as evaluated in current protocols that allow multiple matings (Amann, 1981). For example, in some strains of rats and mice, sperm production can be reduced by 90% without compromising fertility (Meistrich, 1982; Robaire et al., 1984). However, less severe reductions can have dramatic consequences in human males who function nearer to the threshold for the number of normal sperm needed to ensure reproductive competence (see Background, section III). This difference between test species and humans means that data that fail to demonstrate an effect on reproductive ability in a study using a test species would not be adequate for concluding that the test agent poses no reproductive hazard in humans.

The insensitivity of fertility measures also cautions against sole reliance on such data in setting LOAEL/NOAELs. In such instances, data from additional reproductive end points may provide clarification and should be examined. In the absence of such data, the LOAEL/NOAEL may need to be adjusted accordingly (e.g., application of an uncertainty factor, see section V.A.3).

2. Supplemental End Points of Male Reproductive Toxicity

Data may be available on other measures of male reproductive toxicity, including sperm and endocrine measures, biochemical markers, and evaluations of sexual behavior and paternally-mediated effects on offspring. The availability of such data, when combined with the more routine measures (e.g., organ weights, histopathology, or fertility), may strengthen the evidence in estimating the reproductive risk for an agent.

a. *Sperm Evaluations*—A major strength in conducting sperm evaluations in test animals is that similar data can be obtained in humans, enhancing the ability to confirm effects seen in test species and vice versa. A thorough assessment would include measures of sperm count, sperm motility, and sperm morphology. Brief descriptions of these measures are provided below. The use of the various sperm measures in male reproductive risk assessment is then presented in section IV.C.2.a.(2).

(1) *Spermatogenic end points*—(a) *Sperm count*—Measures of sperm count have been the most frequently reported semen variable in the literature on humans (Wyrobek et al., 1983a). Sperm counts from test species may be derived from ejaculated, epididymal, or testicular samples. Human sperm counts are usually derived from ejaculates, but may also be obtained from testicular biopsies. With ejaculates, both sperm concentration (number of sperm/mL of ejaculate) and total sperm per ejaculate (sperm concentration x volume) should be evaluated.

Ejaculates provide the only source of sperm readily obtained from the human male. However, ejaculated sperm counts from any species are influenced by several variables, including the length of abstinence and the ability to obtain the entire ejaculate. Some of the intra- and inter-individual variability may be reduced if repeated ejaculates are collected at regular intervals from the same male. Such a longitudinal study design may have greater detection sensitivity and/or require a smaller number of subjects (Wyrobek et al., 1984). In addition, if a pre-exposure baseline can be obtained for each male (test animal or human studies), then changes during exposure and/or recovery can be better defined.

Epididymal sperm evaluations with test species usually use sperm from only the cauda portion of the epididymis. It has been customary to express sperm count on the basis of the weight of the cauda epididymis. However, since sperm contribute to epididymal weight, expression of the data as a ratio may actually mask true declines in sperm number. The inclusion of data on absolute sperm counts may provide further clarification. As was true for ejaculated sperm counts, epididymal sperm counts are also influenced by sexual activity (Amann, 1981; Hurtt and Zenick, 1986).

Sperm production data may be derived from the enumeration of elongated spermatid nuclei obtained by homogenization of testes in a detergent-containing medium. The elongated spermatid counts are a measure of sperm production by the stem cells and their ensuing survival through the proliferative and differentiating stages of spermatogenesis (Meistrich, 1982). If assessment is conducted at a time when the effect of a lesion would be reflected in spermatid count, then spermatid count may serve as a surrogate for histologic analysis of sperm production (i.e., specific cell types in seminiferous tubule cross-sections). This is especially true if the capability to perform such histopathological analyses is not available.

The variability associated with spermatid counts across test animals is less than that seen with epididymal sperm count (Blazak et al., 1985). Thus, the ability to detect a decrease in testicular sperm production may be enhanced by use of spermatid counts. However, spermatid enumerations only reflect the integrity of spermatogenic processes within the testes until sperm have been transported out of the testes Post-testicular effects or toxicity expressed as alterations in motility, viability, fragility, and other properties of sperm can be determined only from epididymal or ejaculated samples.

(b) *Sperm morphology*—Sperm morphology refers to structural aspects of sperm. In the majority of studies with test animals, only head shape is evaluated. Additional information may be gained from assessment of midpiece and tail morphology. Because of the observed correlation between an agent's mutagenicity and its ability to induce abnormal sperm forms, sperm morphology has been one of the most frequently reported sperm variables in animal toxicologic studies (Wyrobek, 1983b).

The traditional approach to characterizing morphology has relied upon a subjective categorization of sperm shape from examination of stained slides at the light microscopic level. Such an approach may be adequate for mice and rats with their distinctly angular head shapes. However, the heterogeneity of structure in human sperm makes it difficult for the morphologist to clearly define the limits of normality. More systematic, quantitative, and automated approaches have been offered that can be used with humans and test species (Wyrobek, 1984; Katz et al., 1982).

Sperm morphology profiles are stable and characteristic of a normal individual (and a strain within a species) over time. It is one of the least variable sperm measures in normal individuals, which may enhance its use in the detection of spermatotoxic events (Zenick and Clegg, 1986). However, the reproductive implications of abnormal sperm morphology need to be more fully delineated. The majority of studies in test species and humans have suggested that abnormally shaped sperm may not reach the oviduct and/or participate in fertilization (Redi et al., 1984; Nestor and Handel, 1984). The implication is that the greater the number of abnormal sperm in the ejaculate, the greater the probability of reduced fertility.

An increase in abnormal sperm morphology has been considered supportive evidence that the agent has gained access to the germ cells (U.S. EPA, 1986c). Exposure of males to toxic agents may lead to sperm abnormalities in their progeny (Hugenholtz and Bruce, 1983; Wyrobek and Bruce, 1978). However, transmissible germ-cell

mutations could exist in the absence of any warning indicator such as abnormal sperm morphology. The relationship between these morphological alterations and other karyotypic changes remains uncertain (de Boer et al., 1976).

(c) *Sperm motility*—The biochemical environments in the testes and epididymides are highly regulated to assure the proper development and maturation of the sperm and the acquisition of critical functional characteristics. With chemical exposures, perturbation of this balance may occur, producing alterations in sperm properties such as motility. However, few toxicologic studies have examined motility as an end point (Wyrobek et al., 1983 a, b).

Motility estimates may be obtained on ejaculated, vas deferens, or cauda epididymal samples. Motility is influenced by a number of variables, including abstinence, the elapsed time between obtaining the sample and evaluation of motility, and the medium used to dilute the sample.

Historically, motility has been measured using subjective, microscopic evaluations. Estimates of percent motile sperm can be made, and some rating of the quality of motility can be offered (i.e., the degree to which sperm show progressive, linear motility). However, these techniques are subject to bias and show a high intra- and inter-observer variability. Frequently, a permanent record is not obtained for subsequent referral or validation. Approaches have been introduced which use automated image-analysis (Gledhill, 1984) in conjunction with photomicrographic or videomicrographic techniques (e.g., Katz and Overstreet, 1981). These strategies are more objective, provide a permanent record, and allow additional data to be obtained on the sperm, including swimming speeds and swimming patterns. Efforts are needed to validate these automated techniques as they apply to predicting reproductive toxicity as well as determining the relationship of these more detailed end points to fertility.

(d) *In vitro measures of sperm function*—Two of the tests of sperm function that can be clinically useful are the sperm-cervical mucus penetration test and the *in vitro* fertilization test using zona pellucida-free hamster ova. These tests may provide additional insight into the functional competence of the sperm. The diagnostic information obtained may identify subfertile men whose semen appears to be normal by other routine criteria. However, it is not feasible to routinely implement these tests for screening purposes in human populations or with test species. The techniques, which have not been standardized, are highly specialized and not readily established in every laboratory. An adequate normative data base does not exist for these tests (Overstreet, 1984). Their more appropriate application may be in elucidating mechanisms of action of previously identified reproductive toxicants.

(2) *Use of sperm evaluations in risk assessment*—Limited data are available that have examined the independent and interdependent relationships between the various spermatogenic indices. Thus, it is not clear how the expression of toxicity in one sperm measure may influence the eventual expression of other sperm parameters. The quantitative relationships of these measures to fertility are also not well characterized for any species. However, extreme modifications of these parameters (e.g., very low sperm counts) have been associated with clinically observed fertility. Thus, certain qualitative and quantitative standards must be met to ensure fertility, but the lower limits that still result in fertility have not been adequately delineated. For instance, the distributions of sperm counts for fertile and infertile men overlap (Meistrich and Brown, 1983). Additional research is needed to better understand the biological consequence of spermatogenic alterations. Since the fertility potential of humans is far less than that of test species (see section III. Background) and may be more susceptible to toxicologic damage, a conservative view should be taken. Statistically significant and biologically meaningful effects on sperm measures observed in test species or humans (e.g., decreases in sperm count or motility, increases in abnormal forms) provide sufficient evidence to consider an agent as a probable (test species) or known (human) male reproductive toxicant (see section IV.G).

b. *Endocrine Evaluations*—Measurement of the hormones asssociated with reproductive function in the male offers useful supplemental information in assessing potential reproductive toxicants. Recent reviews that discuss the use of endocrine measures in male reproductive toxicology have been published by Sever and Hessol (1984) and Heywood and James (1985).

Toxic agents can damage the endocrine function of any part of the hypothalamic-pituitary-gonadal axis. In addition to a direct effect on the endocrine system, an indirect effect on endocrine parameters may be caused by toxic effects on the Leydig cells or cells in the seminiferous tubules. Traditionally, the primary hormones that have been measured are luteinizing hormone (LH), follicle stimulating hormone (FSH), and testosterone. Other useful measures that may be available include prolactin, inhibin, and androgen binding protein levels. In addition, challenge tests with exogenous agents (e.g., gonadotropin releasing hormone [GnRH], LH, or human chorionic gonadotropin [hCG]) may provide insight into the functional responsiveness of the pituitary or Leydig cells.

Decreased serum testosterone level, accompanied by decreases in serum LH and/or FSH, imply that treatment affected function at the level of the hypothalamus, pituitary, or other central nervous system target. Conversely, adverse effects on the spermatogenic process or on Leydig cell function may be reflected secondarily as an effect on the gonadotropin pattern. Generally, elevated plasma FSH levels are considered to be indicative of damage to the seminiferous epithelium, while elevated LH levels are usually considered to be indicative of Leydig cell dysfunction.

Interpretation is facilitated if information is available on a battery of hormones. However, in evaluating such data, it is important to consider that the serum hormones such as FSH, LH, prolactin, and androgens exhibit cyclic variations within a 24-hour period (Mann and Lutwak-Mann, 1981). Thus, marked variation may be observed if time of sampling has not been rigorously controlled. Excessive variation associated with such measures may compromise ability to detect treatment-related effects. Results based on multiple, sequential blood samples from individuals are likely to have smaller variance than single time point samples.

The results from most studies do not include endocrine data. However, other data that are usually available may suggest a reproductive endocrine effect. Significant effects on Leydig cell histopathology or pituitary or accessory sex gland weight may suggest disruption of the endocrine system. In those instances, additional testing for endocrine effects may be indicated. Significant alterations in circulating levels of testosterone, LH, or FSH may be indicative of existing gonadal injury. When significant endocrine alterations are observed, they should be considered cause for concern, particularly if they are likely to affect spermatogenesis, sperm maturation, mating ability, or fertility. Such data are sufficient for identification of an agent as a probable (test species data) or known (human

data) human male reproductive toxicant (see section IV.G). However, because of the insensitivity of hormone measures as routinely obtained, endocrine data failing to indicate treatment-related effects are not adequate to dismiss an agent as a male reproductive toxicant. This insensitivity also suggests that reproductive toxicity may be present at lower doses than indicated by endocrine data. Adjustment of the LOAEL/NOAELs to compensate for such a possibility may be indicated (e.g., application of an uncertainty factor, see section V.A.3).

c. *Biochemical Markers of Toxicity to the Testes and Other Reproductive Organs*—Currently, the ability to monitor toxic effects on biochemical function in spermatozoa, developing germ cells, Sertoli cells, or endocrine cells is limited, although a number of potential chemical markers are available (Mann and Lutwak-Mann, 1981). Experimental data on sperm and testicular markers do not necessarily allow one to distinguish whether an alteration is the cause or the result of cellular dysfunction. Moreover, data relating these initial events to more functional outcomes are very limited. Currently, the utility of measuring specific biochemical markers as end points of reproductive toxicity, although promising, remains to be validated. However, the results of such tests may suggest the presence of an effect that should be investigated further. Another valuable role for chemical markers may be in delineating the target/mechanism of action for a given agent. Such data may be of use in the design of subsequent tests, interspecies extrapolation, and in estimating the potential for reversibility.

d. *Paternally Mediated Postnatal Outcomes*—The concept is well-accepted that exposure of a female to toxic chemicals during gestation or lactation may produce death, structural defects, growth retardation, and postnatal functional deficits (e.g., behavioral changes) in her offspring. The probability of similar outcomes resulting from paternal-only exposure is less certain. However, sufficient data now exist with a variety of agents to support the principle that male-only exposure can produce deleterious effects in the offspring. Agents for which adverse effects in test species have been reported include lead (behavioral deficits, Brady et al., 1975), urethane (structural anomalies and tumors, Nomura, 1982), cyclophosphamide (behavioral deficits, Adams et al., 1981; malformations and growth retardation, Trasler et al., 1985, 1986, 1987), marijuana (decreased reproductive performance in offspring, Dalterio et al., 1984), and opiates (growth retardation, Friedler and Wheeling, 1979). A number of studies have reported associations between a variety of paternal occupations and the occurrence of birth defects or childhood cancer (e.g., Fedrick, 1976; Polednak and Janerich, 1983; Peters et al., 1981; Hemminki et al., 1981). However, others have failed to observe such relationships (e.g., Papier, 1985; Hemminki et al., 1980; Zack et al., 1980).

These effects may be the result of direct damage to the sperm. However, xenobiotics present in seminal plasma or bound to the fertilizing sperm could be introduced into the female genital tract and might also interfere with fertilization and/or early developmental events. With human exposure, the possibility also exists that the father could simply serve as a vehicle for transporting the toxic agent from the work environment to the home (e.g., on work clothes) wherein exposures to the mother or offspring could occur. Further work is needed clarify the extent to which paternal exposures may be associated with adverse effects on offspring.

e. *Sexual Behavior*—In humans, libido and sexual potency have importance beyond procreation. These behaviors, reflecting complex neural, endocrine, and gonadal interactions, are susceptible to disruption by a variety of toxicities, diseases, and pathologies. Interference with sexual behavior by environmental agents represents a potentially significant human reproductive problem that has not been adequately investigated. Most data are derived from clinical reports in which the detection of exposure-effect associations is less likely.

Data on sexual behavior are usually not obtained in epidemiologic studies of populations that were occupationally or environmentally exposed to toxic agents. Measures such as fertility rates or increased time to conception may serve as indirect indices (see Human Studies, section IV.D) of sexual behavior dysfunction. However, toxicity to other reproductive system sites could also underlie alterations in these end points. More attention needs to be directed to obtaining human data on this important and perhaps highly susceptible component of human reproductive success.

In the absence of human data, the perturbation of sexual behavior in animals may suggest the potential for effects on humans. Consistent with this position are data with central nervous system-active agents that have been shown to disrupt sexual behavior in both animals and humans (Waller et al., 1985; Rubin and Henson, 1979).

Although the functional components of sexual performance can be quantified in most test species, no direct evaluation of this behavior is done in most breeding studies. Rather, the presence of copulatory plugs or sperm-positive vaginal lavages have been taken as indirect evidence of successful mating. These markers do not demonstrate that male performance resulted necessarily in adequate sexual stimulation of the female. The degree of sexual preparedness of the female partner can strongly influence the site of semen deposition and subsequent transport in the genital tract of female rats (Adler and Toner, 1986). Failure of the female to achieve sufficient stimulation may adversely influence these processes, thereby reducing the probability of successful impregnation. Such a "mating" failure would be reflected in the calculated fertility index as reduced fertility and could erroneously be attributed to a spermatotoxic effect. As previously discussed (section IV.B.2), there are other aspects of current breeding protocols that also may bias the estimate of the fertility potential of a given male.

Direct evaluation of sexual behavior is not warranted for all suspected reproductive toxicants. Some likely candidates may be agents reported to exert neurotoxic effects that may also cause impairment in copulatory behavior. Chemicals possessing or suspected to possess androgenic or estrogenic properties (or antagonistic properties) also merit consideration as potentially causing adverse effects on sexual behavior separate from effects on the reproductive organs.

D. Human Studies

The category of "human studies" includes both epidemiologic studies and other reports of individual cases or clusters of events. All relevant human data should be considered in risk assessments; however, greater weight should be given to human data that have more precise measures of exposure, since they can best evaluate exposure-response relationships (see section IV.G). Other epidemiologic studies in which exposure is presumed due to occupational title or residence (e.g., some case-referent and all ecologic studies) may contribute data to qualitative risk assessments, but are of limited use for quantitative risk assessments. Finally, reports of individual cases or clusters of events

may generate hypotheses of exposure-outcome associations, but require further confirmation with well-designed epidemiologic or laboratory studies. These reports give added support to associations suggested by other humans or animal research, but cannot stand by themselves in risk assessments.

1. Epidemiologic Studies

Good epidemiologic studies provide the most relevant information for assessing human risk. As there are many different designs for epidemiologic studies, simple rules for their evaluation do not exist.

a. *General Design Considerations*—The factors that increase a study's usefulness for risk assessment have been noted in a number of publications (Kimmel et al., 1986; Bloom, 1981; Sever and Hessol, 1984; Hatch and Kline, 1981; Selevan, 1980; Axelson, 1985; Tilley et al., 1985; Wilcox, 1983). Some of the more prominent factors are as follows:

(1) *The power of the study*—The power, or ability of a study to detect a true effect, is dependent on the size of the study group, the frequency of the outcome in the general population, and the level of risk to be identified. In a cohort study, common outcomes, such as recognized fetal loss, require hundreds of pregnancies in order to have a high probability of detecting a modest increase in risk (e.g., 133 pregnancies in both exposed and unexposed groups to detect a twofold increase in fetal loss; alpha=0.05, power=80%), while less common outcomes, such as all malformations, require thousands of pregnancies to have the same probability (e.g., more than 1,200 pregnancies in both exposed and unexposed groups) (Bloom, 1981; Selevan, 1981; Selevan, 1985; Sever and Hessol, 1984; Stein et al., 1985). Semen evaluation may require fewer subjects depending on the sperm parameters evaluated, especially when each man is used as his own control (Wyrobeck, 1982; Wyrobeck, 1984). In case-referent studies, study sizes are dependent upon the frequency of exposure within the source population.

(2) *Potential bias in data collection*—Sources of bias may include selection bias and information bias (Rothman, 1986). Selection bias may occur when an individual's willingness to participate varies with certain characteristics relating to the exposure status or health status of that individual. In addition, selection bias may operate in the identification of subjects for study. For example: (a) where hospital records are used, embryonic or early fetal loss may be underascertained, since women are not necessarily hospitalized for these outcomes; a more complete list of pregnancies may be obtained by interviewing the women; (b) congenital malformations are more completely ascertained using hospital records than birth certificates.

Information bias may result from misclassification of characteristics of individuals or events identified for study. Differential misclassification, i.e., when certain subgroups are more likely to have misclassified data than are others, may either increase or decrease the value to the risk estimate. Non-differential misclassification will bias the results toward a finding of "no effect." Recall bias, one type of information bias, may occur when respondents with specific exposures or outcomes recall information differently than those without the exposures or outcomes. Interview bias may result when the interviewer knows *a priori* the category of exposure (for cohort studies) or outcome (for case-referent studies) in which the respondent belongs. Use of highly structured questionnaires and/or "blinding" of the interviewer will reduce the likelihood of such bias.

When data are collected by interview or questionnaire, the appropriate respondent depends upon the type of data or study. A comparison of husband-wife interviews on reproduction found the wives' responses to be considerably more complete and valid than those of the husbands (Selevan, 1980; Selevan et al., 1982). Therefore, data on male workers' exposures and factors relating to semen quality (e.g., fever within the past 2 to 3 months) should be obtained from the workers themselves, while data on their reproductive outcomes should be obtained from their wives.

Data from any source may be prone to errors or bias. Validation with an independent data source (e.g., vital or hospital records), or use of biomarkers of exposure or outcome, where possible, may indicate the amount of bias present and increase confidence in the results of the study. Those studies with a low probability of biased data should carry more weight (Selevan, 1985; Stein and Hatch, in press).

(3) *Control of other risk factors, effect modifiers, and confounders*—Other potential risk factors may include smoking, alcohol consumption, drug use, past reproductive history, and environmental and occupational exposure, etc. Such characteristics should be examined, where appropriate, for the outcome under study, and should be controlled for in the study design and/or analysis. The potential for characteristics of the subjects to be effect modifiers and/or confounders should also be considered. An effect modifier is a factor that produces different exposure-response relationships at different levels of the factors. A confounder is associated with both the exposure and outcome; if it is not controlled in the analysis, the measure of the exposure-response relationships could be misleading. Both effect modifiers and confounders need to be controlled in the analysis to improve the estimate of the effects of exposure (Kleinbaum et al., 1982). A more in-depth discussion may be found elsewhere (Rothman, 1986; Epidemiology Workgroup, 1981). The statistical techniques used to control for these factors require careful consideration in their application and interpretation (Rothman, 1986; Kleinbaum et al., 1982).

(4) *Statistical factors*—As in animal studies, pregnancies experienced by the same woman are not independent events. In humans, the pregnancies are sequential, with the risk factors changing from different pregnancies (Kimmel et al, 1986; Kissling, 1981; Selevan, 1985). In animal studies, the litter is generally used as the unit of measure to deal with this. This approach is difficult in humans since the pregnancies are sequential, with the risk factors changing for different pregnancies (Epidemiology Workgroup, 1981; McMichael, 1976; Selevan, 1981). If more than one pregnancy per woman is included, as is often necessary due to small study groups, the use of nonindependent observations overestimates the true size of the population at risk and artificially increases the significance level (Stiratelli et al., 1984). Some approaches to deal with these issues have been suggested (Kissling, 1981; Selevan, 1985; Stiratelli et al., 1984).

b. *Selection of Outcomes for Study*—As already discussed, a number of end points can be considered in the evaluation of adverse reproductive effects. However, some of the outcomes are not easily observed in humans. These include early fetal loss, reproductive capacity of the offspring, and invasive evaluations of reproductive function (e.g., testicular biopsies). Currently, the most feasible end points for epidemiologic studies are (1) semen evaluations, (2) indirect measures of fertility/infertility, and (3) reproductive history studies of some pregnancy outcomes (e.g., fetal loss, birth weight, sex ratio, congenital malformations, postnatal function, and neonatal growth and survival). Factors requiring control in the design or analysis (such as other risk factors, effect modifiers, and confounders) may

vary depending on the specific outcomes selected for study.

The reproductive outcomes available for epidemiologic examination are limited by a number of factors, including the relative magnitude of the exposure, the size and demographic characteristics of the population, and the ability to observed the reproductive outcome in humans. Improved methods for identifying some outcomes such as embryonic or very early fetal loss using new human chorionic gonadotropin (hCG) assays may change the spectrum of outcomes available for study (Wilcox et al., 1985). Other end points require invasive techniques to obtain samples (e.g., histopathology), or have high intra- and/or inter-individual variability (e.g., serum hormone levels, sperm count). Exposures in environmental settings are generally much lower than in occupational settings; thus, larger populations are usually necessary in environmental settings (Lemasters and Selevan, 1984). Demographic characteristics of the population, such as marital status, age distribution, education, and prior reproductive history are associated with the probability of whether couples will attempt to have children. There may also be differences in the use of birth control, which would affect the number of outcomes available for study. Additionally, men may move in and out of areas with differing levels and types of exposures, affecting the number of exposed and comparison pregnancies for study.

In addition to the above-mentioned factors, these reproductive end points may be envisioned as effects recognized at various points in the continuum of reproductive endpoints, starting preconceptionally through death of the offspring. Thus, a malformed stillbirth would not be included in a study of defects observed at live birth, even though the etiology could be identical (Bloom, 1981). A shift in the patterns of outcomes could result from differences in timing or in level of exposure (Selevan and Lemasters, 1987). This will be discussed further in the section on Dose-Response Assessment (section V.A).

(1) *Semen evaluations*—The use of semen analysis in risk assessment was discussed in section IV.C.2. Most epidemiologic studies of semen characteristics have been conducted in occupational groups and patients receiving drug therapy. Obtaining specimens with a higher level of participation in the workforce has been difficult, since social and cultural mores concerning sex and reproduction may affect cooperation of the study groups. Increased participation may occur in men who are planning to have children, or who are concerned either about pre-existing reproductive problems or about possible ill effects of their exposures. Unless controlled, such biased participation may yield unrepresentative estimates of risk associated with exposure, resulting in data that are less useful for risk assessment. Response rates are typically less than 70% in such studies, and may be even lower in the comparison group (Egnatz et al., 1980; Lantz et al., 1981; Lipshultz et al., 1980; Meyer, 1981; Milby and Whorton, 1980; Milby et al., 1981; Rosenberg et al., 1985). Some of the low response rates may be due to the inclusion of vasectomized men in the total population, although this could vary widely by population (Milby and Whorton, 1980). Participation in the comparison group may be biased toward those with pre-existing reproductive problems. The response rate may be substantially improved with proper education and payment of subjects (Ratcliffe et al., 1986, 1987).

Several factors may influence the semen evaluation, including the period of abstinence preceding collection of the sample, health status, and social habits (alcohol, drugs, smoking, etc.). Data on these factors may be collected by interview, subject to the limitations described below for pregnancy outcome studies.

(2) *Reproductive history studies*—(a) *Measures of fertility*—Infertility or subfertility may be thought of as a non-event: A couple is unable to have children within a specific time frame. Therefore, the epidemiologic measurement of reduced fertility is typically indirect, and is accomplished by comparing birth rates or time intervals between births or pregnancies. In these evaluations, the couple's joint ability to procreate is estimated. One method, the Standardized Birth Ratio (SBR; also referred to as the Standardized Fertility Ratio), compares the number of births observed to those expected based on the person-years of observation stratified by factors such as time period, age, race, marital status, parity, contraceptive use, etc. (Wong et al., 1979; Levine et al., 1980, 1981, 1983; Levine, 1983; Starr et al., 1986). The SBR is analogous to the Standardized Mortality Ratio (SMR), a measure frequently used in studies of occupational cohorts, and has similar limitations in interpretation (Gaffey, 1976; McMichael, 1976; Tsai and Wen, 1986).

Analysis of the time period between recognized pregnancies or live births has been suggested as another indirect measure of fertility (Baird and Wilcox, 1985; Baird et al., 1986). Because the time interval between births increases with increasing parity (Leridon, 1977), comparisons within birth order (parity) are more appropriate. A statistical method (Cox regression) can stratify by birth or pregnancy order to help control for non-independence of these events in the same woman.

Fertility may also be affected by alterations in sexual behavior. However, limited data are available linking toxic exposures to these alterations in humans. Moreover, such data are not easily obtained in epidemiology studies (see section IV.C.2.e)

(b) *Pregnancy outcomes*—Pregnancy outcomes examined in human studies of paternal exposures may include fetal loss, congenital malformations, birth weight, sex ratio at birth, and possibly postnatal survival, growth, and function. Epidemiologic studies that focus on only one type of pregnancy outcome may miss a true effect of exposure. For example, some reproductive end points can be thought of as a continuum of adverse effects; a malformed fetus spontaneously aborted would not be observed in a study of births with malformations (Stein et al., 1975). Studies which examine multiple end points could yield more information, but the results may be difficult to interpret. Evidence of a dose-response relationship is usually an important criterion in the assessment of a toxic exposure. However, traditional dose-response relationships may not always be observed for some end points such as fetal loss and functional deficits (Wilson, 1973; Selevan and Lemasters, 1987) (see Exposure Assessment, section V.B).

c. *Community Studies/Surveillance Programs*—Epidemiologic studies may also be based on broad populations: A community, a nationwide probability sample, or surveillance programs (such as birth defects registries). A number of case-referent studies have examined the relationship between broad classes of parental occupation in certain communities or countries and fetal loss (Silverman et al., 1985), birth defects (Hemminki et al., 1980; Kwa and Fine, 1980: Papier, 1985), and childhood cancer (Fabia and Thuy, 1974; Hakulinen et al., 1976: Hemminki et al., 1981; Kwa and Fine, 1980; Peters et al., 1981; Zack et al., 1980). In these reports, jobs are typically classified into broad categories based on the probability of exposure to certain classes or levels of

exposure (e.g., Kwa and Fine, 1980). Such studies are most helpful in the identification of topics for additional study. However, because of the broad groupings of types or levels of exposure, such studies are not typically useful for risk assessment of a particular agent.

Surveillance programs may also exist in occupational settings. In this case, reproductive histories and/or semen evaluations could be followed to monitor for reproductive effects of exposures. Both could yield useful data for risk assessment; however, a semen evaluation program would be costly to maintain.

2. Examination of Clusters or Case Reports

The identification of cases or clusters of adverse male reproductive outcomes may be limited due to cultural norms that may inhibit the reporting of impaired fertility in men. Identification is also limited by the decreased likelihood of recognizing adverse pregnancy outcomes as a result of paternal exposure as opposed to identification through maternal exposure. Identification of decreased fertility might be thought of as identification of a non-event (e.g., lack of pregnancies or children) and thus may be much harder to recognize than a developmental effect/malformations resulting from *in utero* exposure. Thus far, only one human male reproductive toxicant, dibromochloropropane (DBCP), has been identified after observation of a cluster of male infertility through an atypically high level of communication among the workers' wives (Biava et al., 1978; Whorton et al., 1977, 1979; Whorton and Milby, 1980). While case reports could potentially have importance in the recognition of male reproductive toxicants, they are of greater value in suggesting areas of further investigation.

E. Pharmacokinetic Considerations

Inter- and intraspecies differences in the absorption, metabolism, and elimination of xenobiotics may greatly influence the response of an individual to a toxic agent. Several factors specific to the male reproductive system may influence the pharmacokinetics of a potential direct-acting gonadal toxicant including: (1) The existence of a blood-testis barrier that may restrict access of compounds to the adluminal compartment of the seminiferous tubule; and (2) the metabolic capabilities (including DNA repair) of the reproductive tissues that determine the eventual disposition of the agent.

The blood-testis barrier is formed by tight junctions between Sertoli cells, and divides the seminiferous epithelium into basal and adluminal compartments (Setchell, 1978). The former contains the spermatogonia and primary spermatocytes to the preleptotene stage, whereas more advanced germ cells are located on the adluminal side. This selectively permeable barrier is most effective in limiting the access of large, hydrophilic molecules in the intertubular lymph to cells on the adluminal side.

The reproductive organs appear to have a wide range of metabolic capabilities directed at both steroid and xenobiotic metabolism. These properties have been best characterized for the testes (e.g., Mukhtar et al., 1978). The distribution of enzymes in the testes differs between the interstitial and germ-cell compartments. Aryl hydrocarbon hydroxylase activity and cytochrome P-450 levels in interstitial tissue are approximately twice as high as those in the seminiferous tubules (Mukhtar et al., 1978). On the other hand, activities of some of the detoxifying enzymes in the seminiferous epithelium, such as epoxide hydrase and glutathione transferase, are nearly double those in the interstitial compartment (Mukhtar et al., 1978). High levels of glutathione transferase are seen in the neonatal testis (day 6, rat) suggesting an early capacity to detoxify electrophilic agents.

The majority of pharmacokinetic studies have incompletely characterized the distribution of toxic agents and their subsequent metabolic fate within the reproductive organs. Generalizations based upon hepatic metabolism are not necessarily adequate to predict the fate of the agent in the testis. The metabolic profile for a given agent may differ between the liver and the testis (Lee and Nagayama, 1980). Detailed interspecies comparisons of the metabolic capabilities of the testis also have not been conducted. If data are to be used effectively in interspecies comparisons and extrapolations for this target system, more attention should be directed to the pharmacokinetic/pharmacodynamic properties of the reproductive organs.

F. Structure-Activity Relationships

Structure-activity relationships have not been well studied in reproductive toxicology. Data are available that suggest structure-activity relationships for certain classes of chemicals (e.g., glycol ethers, phthalate esters, and short-chain, halogenated hydrocarbon pesticides). Yet, for other agents, nothing in their structure would have caused identification as a potential male reproductive toxicant (e.g., chlordecone). Bernstein (1984) reviewed the literature and offered a set of classifications relating structure to reported male reproductive activity. Although limited in scope and in need of rigorous validation, such schemes do provide hypotheses that can be tested. Comparison of the chemical or physical properties of an agent with those of known male reproductive toxicants may provide some indication of a potential for reproductive toxicity. Such information may be helpful in setting priorities for testing of agents or for the evaluation of potential toxicity when only minimal data are available.

G. Weight of Evidence Determination

A comprehensive risk assessment ideally includes information on a variety of end points that provide insight into the full spectrum of potential reproductive responses. Included should be measures that are sensitive enough to detect low-dose effects (e.g., properly performed histopathological evaluations) as well as measures of reproductive function (e.g., fertility). The weight of the evidence determination is a cumulative, qualitative evaluation of the entire body of evidence to determine the degree of confidence that an agent could be a hazard to humans.

The scheme for determination of the weight of evidence in male reproductive risk assessment is presented in Table 2.

TABLE 2. WEIGHT-OF-EVIDENCE CATEGORIES FOR MALE REPRODUCTIVE RISK ASSESSMENT

Known Positive
- A convincing body of evidence exists that an agent causes an adverse effect on the male reproductive system in humans.

Probable Positive
- A convincing body of evidence exists that an agent causes an adverse effect on the male reproductive system in nonhuman mammals.

Possible Positive
- A. Evidence from human or other mammalian studies show statistically significant adverse effects, but the quality of the studies is questionable.
- B. Studies with acceptable quality produce inconsistent and conflicting results such that the possibility of adverse effects cannot be discounted.
- C. Other data exist from which biologically meaningful adverse effects are plausibly indicated.

Known Negative
- A convincing body of evidence exists that an agent does not cause an adverse effect on the male reproductive system in humans.

Probable Negative
- A convincing body of evidence exists that an agent does not cause an adverse effect on the male reproductive system in nonhuman mammals.

Possible Negative
- Studies with acceptable quality produce no adverse effects, but important aspects of the male reproductive system have not been evaluated.

No Data or Inadequate Data
- A. No data are available.
- B. Negative data are available from studies for which the confidence in quality is questionable.
- C. Results are available for which the predictive value of the test system or end point has not been established.

With this approach, an agent may be categorized as having results that tend to either implicate (positive results) or absolve (negative results) it as a male reproductive toxicant. The criteria should be substantially more stringent to place an agent in a particular negative category than in the equivalent positive category. For example, positive results from a *single* study based on a *single* end point may be sufficient to place an agent into a known positive or probable positive category. However, negative results from an adequate array of end points, and from more than one study, may be necessary to place an agent into one of the equivalent negative categories. A study of exceptionally high quality and scope would be required to classify an agent as a probable or known negative based on that study alone.

The wording for each category allows flexibility by the user in assigning criteria. Data of equivalent quality from human exposures are given more weight than data from exposures of test species. While a single study of high quality could be sufficient to achieve a relatively high level of confidence, replication increases the confidence that may be placed in such results.

The phrase "convincing body of evidence" (see Table 2) allows the risk assessor to weigh the evidence from different studies and arrive at an overall judgment as to the likelihood that the agent has toxic effects. The criteria for what constitutes a convincing body of evidence should be somewhat flexible. Some important considerations are as follows:

- Data are available from an *in vivo* study(ies) of acceptable quality with humans or other mammalian species that are believed to be predictive of human responses.
- When multiple studies are available, results are reproducible.
- When multiple studies are available, the lines of evidence from independent study types are reinforcing.
- Sufficient information is available to reconcile discordant data.
- Route(s), level, duration, and frequency of exposure are appropriate.
- An adequate array of end points has been examined.
- The resolving power and statistical treatment of the study(ies) are appropriate.
- Data exhibit a dose-response relationship.
- Results are statistically significant and biologically plausible.

Because many human males have sperm counts that place them near or in the subfertile or infertile categories (see section I. Introduction), a conservative stance should be taken with respect to the weight given to individual end points. Any statistically significant deviation from baseline levels for an *in vivo* effect warrants closer examination. To determine whether such a deviation constitutes an *adverse* effect requires an understanding of its role within a complex system and the determination of whether a "true effect" has been observed. Application of the above criteria can facilitate such determinations.

The greatest weight for male reproductive hazard identification should be placed on effects on sexual behavior, fertility and/or pregnancy outcomes, or other end points that are directly related to reproductive function such as sperm measures, reproductive histopathology, reproductive organ weight(s), and reproductive endocrinology. Agents producing effects on those end points can be assigned to known positive (human data) or probable positive (test species data) categories if study quality was adequate.

Less confidence should be placed in results from other measures such as *in vitro* tests, data from nonmammalian species or structure-activity relationship evaluation, but positive results may trigger follow-up studies to determine the likelihood and extent to which function might be affected. Positive results from these types of studies would be assigned to the possible positive category, while negative results would be assigned to the inadequate data category.

The absence of effects with mammalian test species on the end points that are evaluated routinely (i.e., fertility, histopathology, and organ weights) may constitute sufficient evidence to place a low level of concern on the potential male reproductive toxicity of a chemical (i.e., possible or probable negative categories). However, in such cases, careful consideration should be given to the sensitivity of the end point(s) and to the quality of the data on these end points as detailed previously. Consideration should also be given to the possibility of adverse effects that may not be reflected in these routine measures (e.g., germ-cell mutation or alterations in sperm measures such as motility or morphology).

V. Quantitative Male Reproductive Risk Assessment

Quantitative male reproductive risk assessment includes dose-response and exposure assessments. Then, in the final phase of a risk assessment, the results of the qualitative evaluation (hazard identification) and the quantitative evaluations are combined to estimate the risk of male reproductive toxicity (risk characterization). In risk characterization, a summary of the strengths and weaknesses of the hazard identification, dose-response, and exposure assessment should be included. Major assumptions, scientific judgments, and, to the extent possible, estimates of the uncertainties in the assessment should be presented.

A. Dose-Response Assessment

Dose-response assessment is the characterization of the relationship between exposure and the incidence of a given effect in the exposed species plus estimation of the potential effect in humans (NRC, 1983). Evidence for a dose-response relationship is an important criterion in a risk assessment of male reproductive toxicity. A dose-response assessment should include: (a) characterization of the dose-response behavior of the end point(s) selected, and (b) application of uncertainty factors to estimate the risk to humans at a given level of exposure.

1. Dose-Response Characterization

Current EPA guidelines for laboratory studies prepared pursuant to FIFRA and TSCA recommend that at least three dose levels and a concurrent control be used in reproductive studies (U.S. EPA, 1982; 1985). As described in those guidelines, the objectives to be achieved in the selection of the doses are: (1) The highest dose should induce toxicity but not mortality; (2) the intermediate dose level(s) should produce minimal, observable toxic effects; and (3) the lowest dose should not produce any observed evidence of toxicity. If the

criteria listed above are met, the risk assessor has the basis for developing a dose-response assessment. Thus, the highest dose level that produces no male reproductive effects may be considered a NOAEL. If the lowest dose employed does produce significant, but evidence of minimal male reproductive toxicity, that dose may be considered a LOAEL. When only a LOAEL is available, it may be appropriate to apply an additional uncertainty factor. Reliance on such dose-response data in developing the dose-response assessment requires additional scientific judgment as to the accuracy and adequacy of the data. When possible, the slope of the dose-response curve should be considered along with the adequacy of the exposure levels tested, the sensitivity of the end points reported, and the appropriateness of the experimental design to determine the confidence in the data, and ultimately the confidence in the LOAEL/NOAEL.

Dose-response assessments in epidemiologic studies are often limited by inability to obtain quantitative exposure data for the study members. The likelihood of obtaining meaningful exposure data is increased in workplace studies where industrial hygiene data may be available or in studies where valid biomarkers of exposure have been used. When quantitative data are not available, broad classes of exposure may be used in a less detailed dose-response assessment (e.g., residential history). However, a lower level of confidence should be placed on the accuracy of such data.

Dose-response evaluations should also consider the effects that competing risks (end points) may have on outcomes observed at different exposure levels. For example, a given toxicant may interfere with cell function in such a manner that, at a low dose level, increased abnormal sperm morphology is observed. At higher doses cell death may occur to those cells which would be expressed as a decrease in sperm counts. Such a decrease could be accompanied by a decreased proportion of abnormal sperm. Thus, the dose-response relationships for individual end points, as well as the combination of end points, must be examined in data interpretation.

2. Thresholds

In quantitative risk assessment, the existence of a threshold is usually assumed for noncarcinogenic/nonmutagenic health effects. The assumption of a threshold suggests that the application of adequate uncertainty factors to a NOAEL will result in an acceptable exposure level for all humans. In the absence of a threshold, it is assumed that some finite risk exists at any level of exposure, with risk decreasing as exposure decreases. In the absence of detailed data on the response(s) at low levels of exposure and associated mechanistic information, a threshold is assumed for nonmutagenic male reproductive effects. It is plausible that certain biological processes (e.g., blood-testis barrier selectivity, metabolic and repair capabilities of the germ cells) may impede the attainment or maintenance of effective concentrations of the agent at the target site following exposure to low dose levels.

3. Uncertainty Factors

Mathematical models for the extrapolation from high to low dose levels have not been developed adequately for application to the male reproductive system. Currently, uncertainty factors are applied to a NOAEL or LOAEL to estimate an exposure level for humans at or below which there should be no adverse reproductive effects (i.e., the reference dose, RfD).

The total uncertainty factor usually ranges from 10 to 1,000 depending on the number of adjustments needed. Uncertainty factors (often 10-fold each) are used for (1) situations in which the LOAEL must be used because a NOAEL was not established, (2) interspecies extrapolation, and (3) intraspecies adjustment for variable sensitivity among individuals. In addition, adjustments may be appropriate for length of exposure (acute to subchronic) and/or to correct for inadequacy of the NOAEL or LOAEL (including consideration of background variability in the measurements, insensitivity of the end point, and protection against effects of more prolonged exposure). Based on experimentally-derived interspecies extrapolation factors for chemotherapeutic and hormonal agents (Meistrich, 1986), an uncertainty factor of 10 is not unduly conservative for the interspecies correction.

B. Exposure Assessment

The Guidelines for Estimating Exposures (U.S. EPA, 1986c) are published separately and should be consulted for the details related to conducting the exposure component of a risk assessment. In general, the exposure assessment describes the size of the exposed population and the magnitude, duration, frequency, and route of expected human exposure. This information is based on monitoring data or modeling of environmental exposures. Often quantitative estimates of exposures may not be available (e.g., workplace or environmental measurements). In such instances, data such as employment or residential histories also may be used in characterizing exposure in a qualitative sense. The potential use of biomarkers as indicators of exposure is an area of active interest.

Studies of occupational populations may provide valuable information on the potential environmental health risks for certain agents. Exposures in environmentally exposed human populations tend to be lower (but of longer duration) than those in studies of occupationally exposed populations, and therefore require more observations to assure sufficient statistical power. Also, reconstruction of exposures is more difficult in an environmental study than in those done in workplace settings where industrial hygiene monitoring may provide more detailed exposure data.

The nature of the exposure may be defined at a particular point in time or may reflect cumulative exposure. Each model makes an assumption about the underlying relationship between exposure and outcome. For example, a cumulative exposure measure assumes that lifetime exposure is important, with a greater probability of effect with greater total exposure or body burden; a dichotomous exposure measure (ever exposed versus never exposed) assumes an irreversible effect of exposure: and models that define exposure only at a specific time may assume that only the present exposure is important (Selevan and Lemasters, 1987). The appropriate exposure model depends upon the biological processes affected. Thus, a cumulative or dichotomous exposure model may be appropriate if injury occurs in cells that cannot be replaced or repaired (e.g., Sertoli cells); on the other hand, a concurrent exposure model may be appropriate for cells that are being generated continually (e.g., spermatids).

The relationship between time and/or duration of exposure and observation of reproductive effects has particular significance for short-term exposures. Spermatogenesis is a temporally synchronized process. In humans, germ cells that were spermatozoa, spermatids, spermatocytes, or spermatogonia at the time of the acute exposure will require 1 to 2, 3 to 5, 5 to 8, or 8 to 12 weeks, respectively, to appear in the ejaculate. That timing may vary somewhat depending on degree of sexual activity. It is possible that an end point may be examined too early or too late to detect an effect if only a

particular cell type was affected during a relatively brief exposure to an agent. The absence of an effect when observations were made too late suggests either a reversible effect or no effect. However, an effect that is reversible at lower exposures might become irreversible with higher or longer exposures, or exposure of a more susceptible individual. Thus, the failure to detect transient effects due to improper timing of observations may be important. If information is available on the type of effect expected from that class of agents, it may be possible to evaluate whether the timing of end point measurement relative to the timing of the short-term exposure was appropriate. Thus, some guidance can be provided if test animal data are available to identify the most sensitive cell type and/or the mechanism(s) of action for a given agent.

Compared to acute exposures, the link between exposure and outcome may be more apparent with relatively constant subchronic or longer exposures that are of sufficient duration to cover all phases of spermatogenesis (in humans, approximately 70 to 100 days). Assessments may be made at any time after this point as long as exposure remains constant. Time required to attain steady-state levels should also be considered. Again, application of models of exposure (e.g., dichotomous, concurrent, or cumulative) would depend upon the suspected target/mechanism of action.

The reversibility of an adverse effect on the male reproductive system can be affected by the degree and duration of exposure. The degree of stem cell loss is inversely related to the degree of restoration of sperm production, since repopulation of the germinal epithelium is dependent upon the stem cells. For agents that bioaccumulate, increasing duration of exposure may also increase the extent of damage to the stem cell population. Damage to other spermatogenic cell types will produce a reduction in number of sperm produced, but recovery should occur when the toxic agent is removed. Less is known about the effects of toxicity on the Sertoli cells. Temporary impairment of Sertoli cell function may produce long-lasting effects on spermatogenesis. Destruction of Sertoli cells is an irreversible effect, since replication ceases after puberty. Since Sertoli cells are essential for support of the spermatogenic process, loss of those cells should result in a permanent reduction of spermatogenic capability.

When recovery is possible, the duration of the recovery period is determined by the time for regeneration (for stem cells) and repopulation of the affected spermatogenic cell type(s) and appearance of those cells as sperm in the ejaculate. The time required for these events to occur also varies with the species, the pharmacokinetic properties of the agent, the extent to which the stem cell population has been destroyed, and the degree of sublethal toxicity inflicted on the stem cells and/or Sertoli cells. When the stem cell population has been partially destroyed, humans require longer to reach the same degree of recovery than mice (Meistrich and Samuels, 1985).

Exposure at different stages of male development can also result in different outcomes. Such age-dependent variation has been well documented in both animal and human studies. Prenatal and neonatal treatment can irreversibly alter reproductive function in a manner that may not be predicted from adult data. Moreover, chemicals that alter sexual differentiation in rodents during these periods may have similar effects in humans, since the mechanisms underlying these developmental processes appear to be somewhat similar in all mammalian species (Gray, 1988).

The susceptibility of the aged male to chemical insult has not been well studied. Although procreative competence may not be a pivotal health concern with elderly individuals, other biological functions maintained by the gonads (e.g., androgen production) are of concern (Walker, 1986). An exposure assessment should characterize the probability of exposure of these different subgroups (embryo/fetus, neonate, juvenile, young adult, older adult) to the extent possible. A risk assessment should factor in the susceptibility of different age groups to the extent possible.

C. Risk Characterization

Risk characterization is the process of summarizing the information derived from the dose-response and exposure assessments to estimate the degree of risk that an agent may present under various conditions of human exposure. The characterization of risk for a given agent relies on a RfD derived by application of uncertainty factors to a NOAEL or LOAEL to adjust for uncertainties in evaluating the data. Uncertainty may exist as to the quality of the experimental design, suitability of the species used, level and pattern of exposure (acute, subchronic, chronic, intermittent), low-dose extrapolation, interspecies extrapolation, and the susceptibility of special subgroups. Reliance on the NOAEL also places substantial importance on the power of the study to detect low dose effects. A poorly designed study, employing insensitive measures, may produce a higher NOAEL than that from a well-designed and well-conducted study, and, as such, may underestimate the actual human risk. Conversely, use of a NOAEL from a study in which there were wide intervals between doses may overestimate the actual risk. Overall exposure levels (estimated exposure dose; EED) that exceed the RfD should be cause for concern. If the EED is less than the RfD, regulatory concern may be lessened (U.S. EPA, 1987).

In a related approach, a comparison may be made between the NOAEL and the EED. The ratio of the NOAEL to the EED is the margin of exposure (MOE). The uncertainties associated with the data and determination of the MOE are then evaluated to determine whether or not the MOE is sufficiently large to protect exposed individuals.

Inherent in the risk characterization process is a summary of the statistical and biological strengths and weaknesses of the data, as well as a statement of the major assumptions and the uncertainties associated with the hazard identification, dose response, and exposure assessment components of the risk assessment. Included should be a discussion of the assumptions underlying the estimations of the NOAEL or LOAEL and the RfD or MOE, and an indication of the degree of conservatism in those estimations. Assumptions used to derive the EED should also be discussed.

The level of confidence in the hazard identification should be stated to the extent possible, including placement of the agent into the appropriate weight-of-evidence category. A profile that integrates both human and test species data and incorporates both sensitive end points (e.g., properly performed and fully evaluated histopathology) and functional correlates (e.g., fertility) allows more confidence in a risk assessment for a given agent.

The ability to describe the nature of the potential human exposure is important to predict when certain outcomes can be anticipated and the likelihood of perseverance or reversibility of the effect. An important part of this effort is a description of the nature of the exposed population. For example, the consequences of exposure to the developing individual versus the adult can differ markedly and again can influence whether the effects are transient or permanent. Other considerations relative to human exposures might include potential for

exposures to other agents, concurrent disease, and nutritional status.

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[FR Doc. 88-14332 Filed 6-29-88; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
June 30, 1988

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840, 842, and 843

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840, 842 and 843

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior is amending its regulations to define "abandoned site," to specify the inspection frequency for abandoned sites, and to allow regulatory authorities to refrain from issuing additional notices of violation or cessation orders for abandoned sites under certain limited circumstances.

An abandoned site, which must meet the criteria set out in the rule, is an incompletely reclaimed surface coal mining and reclamation operation where mining and reclamation activities have ceased and that has been abandoned. The rule requires regulatory authorities to inspect abandoned sites as necessary to monitor for changes in environmental conditions or operational status. The rule will enable regulatory authorities to reduce the number of unproductive inspections, as well as duplicative notices and orders, and thus concentrate resources on inspection and enforcement activities that are more likely to secure compliance with the Act.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Art Abbs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-5351 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Rule and Response to Comments
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), in section 517, 30 U.S.C. 1267, requires OSMRE and State regulatory authorities to inspect surface coal mining and reclamation operations. To implement this requirement, on March 13, 1979, OSMRE promulgated rules at 30 CFR Part 840 for State regulatory authority inspection and enforcement (44 FR 15294 and 15445), and at 30 CFR Part 842 for Federal inspections (44 FR 15297 and 15456). These 1979 rules applied to permitted and unpermitted permanent program surface coal mining and reclamation operations. They required regulatory authorities to inspect all operations on an average of not less than one partial inspection per month and one complete inspection per calendar quarter.

The 1979 rules were revised by OSMRE on August 16, 1982 (47 FR 35620), to define "inactive surface coal mining and reclamation operation," and to reduce the partial inspection frequency for inactive operations to those "necessary to ensure effective enforcement of the approved State program," while retaining the prior frequency for complete inspections. This approach was adopted because OSMRE had found that inactive minesites presented inspection and enforcement problems that differed from those of active sites, both in kind and degree. (47 FR 35627 and proposed rule at 46 FR 58466 (December 1, 1981)). In the 1982 rulemaking, OSMRE declined to modify the inspection frequency for abandoned sites, concluding that "[t]he fact that a mine has been abandoned does not mean that it is in compliance or that there is no one against whom enforcement action can be taken. Thus a reduction in inspection frequency would be inappropriate." 47 FR 35627. As a result, a significant number of abandoned sites continued to be considered active, and to receive monthly partial inspections, of which one per quarter must be a complete inspection.

OSMRE has reevaluated its previous position on abandoned sites as a result of its experience in implementing the 1982 rules. Thus, on August 28, 1987 (52 FR 32758), OSMRE proposed a rule that defined "abandoned site" and required regulatory authorities to inspect such sites as necessary to monitor environmental conditions or changes of status at the site. OSMRE also proposed to allow regulatory authorities to refrain from issuing additional notices of violation or cessation orders at abandoned sites provided the abatement of any newly observed violation could be required as part of the abatement of a notice or order already issued.

The comment period for the proposed rule initially was scheduled to end on November 6, 1987. On October 28, 1987 (52 FR 41471), at the request of commenters, the comment period was extended to November 30, 1987. Comments were received from ten persons, representing public interest groups, industry, and the States. No public hearing was requested and none was held.

II. Discussion of Rule and Response to Comments

Introduction

This section of the preamble describes the final rule, explains how it differs from the proposal, and summarizes and responds to public comments. After an over-view of the rule, the general comments on the rule are discussed, and then the rule and specific comments are discussed by individual section. Because §§ 840.11 and 842.11 contain similar provisions for State and Federal programs, respectively, they are cited as § 840.11/842.11 and discussed together.

While the rule in some instances uses the term "the Office" to identify OSMRE in its capacity as regulatory authority, to simplify the discussion this preamble uses the term "regulatory authority" generally in referring to both OSMRE and the States.

A number of commenters suggested alternative criteria for the § 840.11(g)/842.11(e) definition of "abandoned site." Those alternatives which are similar to the criteria in the rule are discussed with the corresponding section of the rule. Criteria which have no particular counterpart in the rule are discussed with § 840.11(g)(4)/842.11(e)(4), under the heading *Alternative Criteria.*

A number of minor stylistic changes were made to improve the grammar and punctuation of the proposed rule. These changes do not affect the substance of the rule, and are not discussed further. Other changes, which do affect the substance of the rule, are discussed in the subsequent section-by-section analysis.

Overview of Rule

This rule amends the existing OSMRE inspection regulations at 30 CFR 840.11/842.11 by adding a definition of the term "abandoned site" and allowing a different inspection frequency for these sites. For a site to qualify as abandoned under the definition, the regulatory authority must make a written finding concerning its status. Generally, the regulatory authority must find that surface coal mining and reclamation activities at the site have ceased, and that certain enforcement measures either have been or are being taken. Once this finding is made, the regulatory authority may inspect the site at a frequency as necessary to monitor for changes of environmental conditions or operational status at the site. Before it may reduce the inspection frequency at an abandoned site, the regulatory

authority must evaluate the environmental conditions and operational status of the site, and document in writing both the inspection frequency necessary to comply with the rule and the reasons for selecting that frequency.

In addition, this rule adds to the Federal enforcement regulations in 30 CFR Part 843 a new § 843.22 which authorizes OSMRE to refrain from issuing a notice of violation or cessation order for a violation at an abandoned site if abatement of the violation is required under any previously issued notice or order.

Overview of Basis, Purpose, and Legal Authority

A significant purpose of the Surface Mining Control and Reclamation Act of 1977 (the Act) is to "protect society and the environment from the adverse effects of surface coal mining operations * * *." Section 102(a), 30 U.S.C. 1202(a). OSMRE believes a rigid inspection frequency requirement for abandoned sites is inconsistent with this purpose because it causes regulatory authorities to allocate their inspection resources in a manner which no longer is effective to enforce the Act's environmental performance standards.

The time inspectors spend at abandoned sites detracts from the time they can spend at other sites working with operators to abate present violations and to prevent future violations, thus improving the quality of inspections. The inspection frequency established by this rule will allow more effective use of inspector's time, while maintaining the protection afforded to society and the environment at abandoned sites.

In conducting inspections under the previous regulations, OSMRE has found that inspectors normally cite all significant violations soon after a site is abandoned. The persons responsible for abating these violations typically are financially insolvent or cannot be located. In such instances, even when diligent efforts are made to enforce the Act, no one is available to abate violations or to perform or pay for the needed reclamation. Continuing regular partial and complete inspection of these sites serves no useful purpose and wastes finite resources. To illustrate the extent of this waste, OSMRE has conducted approximately 2,900 inspections each year at 236 abandoned sites in Tennessee. This effort comprises approximately 32 percent of the inspections in that State; however, few of these inspections resulted in abatement of violations or completion of reclamation.

Environmental conditions at most abandoned sites will not significantly degrade beyond that which has been observed in prior inspections. While these sites do not comply with the Act, many become reasonably well stabilized through natural settlement and revegetation processes because of their age or because they were partially reclaimed prior to being abandoned. In approximately 6,000 inspections conducted at abandoned sites in Tennessee, OSMRE inspectors observed no condition which posed an imminent danger to the public health or safety, or an imminent environmental harm to land, air or water resources.

OSMRE can find nothing in the Act or its legislative history which suggests that the Congress expected regulatory authorities to continue to inspect abandoned sites with uncompromising frequency after diligent inspection and enforcement measures have proven ineffective to abate violations and secure reclamation.

While section 517(c) of the Act appears to direct regulatory authorities to inspect all sites at the same set frequency, its stated goal is to "enforce the requirements of and carry out the purposes of [the] Act." Inspection of abandoned sites as frequently as other sites does nothing to achieve, but on the contrary frustrates, this goal.

Among the mechanisms provided by the Act to achieve the stated goals of section 517(c) are penalties under section 518, performance bonds under sections 509 and 519, citizen suits under section 520, and enforcement under section 521. Each of these mechanisms implicitly has as its underlying premise the existence of a person against whom an action can be taken, or of a bond that can provide the funds, to abate violations and secure reclamation. If no such person can be found after diligent effort, or the regulatory authority otherwise is taking appropriate action to ensure that abatement occurs, and any permit has been revoked and any bond is being forfeited, issuance of multiple notices of violation and cessation orders generated by the fixed inspection frequency requirement and the subsequent assessment of uncollectible penalties are not productive tools to "enforce the requirements of and carry out [the] purposes of the Act." Under these circumstances, inspections performed at a frequency determined by the particular characteristics of the site are a far more reasonable and realistic alternative. The U.S. Court of Appeals for the District of Columbia Circuit, in *NWF v. Hodel*, No. 84-5743, slip op. at 41 (D.C. Cir. January 29, 1988), has noted that "courts should avoid reading statutes in a manner that renders passages functionless." OSMRE believes that regulatory agencies should do likewise, and that the interpretation of section 517(c) embodied in this rule is a reasonable application of that judicial precept.

Section 201(c)(2) of the Act, 30 U.S.C. 1211(c)(2), requires the Secretary of Interior to publish and promulgate such rules and regulations as may be necessary to carry out its purposes and provisions.

Since regular partial and complete inspections of abandoned sites are a counterproductive use of limited enforcement resources, and since fewer inspections of such sites are not likely to result in increased environmental harm or otherwise to effect compliance with the Act, this rule is a necessary and reasonable interpretation of the purposes and provisions of the Act.

General Comments

General comments on the proposed rule are discussed here. Specific comments are discussed in the subsequent section-by-section analysis.

Support for Rule

Most commenters supported a reduced inspection frequency for abandoned sites as a means to achieve more productive use of limited inspection and enforcement resources. One commenter said that the rule was contrary to the Act, but at the same time appeared to support a reduced frequency if a more stringent definition of "abandoned site" were adopted.

One State commenter welcomed the relief the rule would provide from "the mandate to conduct inspections month after month on abandoned sites which didn't change from one time to the next." This commenter had found that continued enforcement action at the inspector level did nothing to increase the reclamation of abandoned sites.

Misdirected Comment

One commenter accurately cited the proposed rule, but then limited his comments to issues concerning termination of operator liability upon bond release, for which OSMRE proposed a different rule on June 26, 1987 (52 FR 24092). OSMRE will address these comments, as well as other comments on the June 26 proposal, in a separate final rule.

Administrative Record

The preamble to the proposed rule stated that numerous inspections of abandoned sites in Tennessee have not revealed any imminent harm situations

(52 FR 32759). One commenter asked OSMRE to place the data supporting this statement in the administrative record for the rule. These data, which also are publicly available in OSMRE's Knoxville, Tennessee, Field Office, have been placed in the administrative record, and are part of the basis and purpose for this rule.

Responsibility for Initial Program Sites

One commenter said that under this rule OSMRE would be responsible for determining whether initial regulatory program sites which have not achieved permanent program status qualified as abandoned. Citing section 502(e) of the Act, 30 U.S.C. 1252(e), the commenter concluded that OSMRE is the regulatory authority for all operations that were left unreclaimed during the initial program.

OSMRE disagrees in part with the commenter. By its own terms, section 502(e) governs the inspection of initial program sites in a State only "until the State program has been approved pursuant to [the] Act * * *." While OSMRE retains jurisdiction over a limited number of initial program sites, such as those in Federal program states and on Federal lands in States without cooperative agreements, responsibility for the majority of them was transferred to the States when their permanent programs were approved. This rule applies only to sites covered by Parts 840 and 842.

Section-by-Section Analysis

Section 840.11/842.11 Inspections by State regulatory authority/Federal inspections and monitoring.

OSMRE is amending its existing State inspection rules at 30 CFR 840.11 by adding new paragraphs (g) and (h) and the Federal program counterpart at 30 CFR 842.11 by adding new paragraphs (e) and (f). This rule adds to the previous inspection requirements a definition of the term "abandoned site," and allows a reduced inspection frequency for abandoned sites. For a site to qualify as abandoned under the definition, the regulatory authority must make a written finding concerning its status. Generally, the regulatory authority must find that surface coal mining and reclamation activities at the site have ceased, and that specified enforcement measures have been taken.

After finding that a site is abandoned, the regulatory authority must inspect the site as necessary to monitor for changes of environmental conditions or operational status at the site. Before the regulatory authority may inspect the site at this reduced frequency, however, it first must evaluate the environmental conditions and operational status of the site, and document in writing both the inspection frequency necessary to comply with the rule and the reasons for selecting that frequency.

Section 840.11(g)/840.11(e).

Section 840.11(g)/842.11(e) defines the term "abandoned site" in terms of specific criteria set out in paragraphs (g)(1)/(e)(1) to (g)(4)/(e)(4). The second paragraph is the same as proposed. The first, third and fourth were revised in response to public comment.

The introductory paragraph of § 840.11(g)/842.11(e) also was revised to eliminate an inconsistency. The proposed rule required the regulatory authority to find in writing "that *all* of the following criteria apply * * *." 52 FR 32760 (emphasis added). However, paragraph (4) applied only conditionally "[w]here the site was permitted and bonded * * *." So while paragraphs (1) to (3) applied to unpermitted or unbonded sites, arguably paragraph (4) did not.

To eliminate this inconsistency, the phrase "all of the following criteria apply" was deleted from the final rule. The revised language requires the regulatory authority to find in writing that the site meets the criteria of paragraphs (1) to (3) in all cases, and that it meets the criterion of paragraph (4) only under the specified conditions.

Written Finding

One commenter said that the requirement for a written finding on all four criteria in the definition of "abandoned site" imposed an unnecessary burden on the regulatory authority. The commenter suggested alternative language which did not include a written finding.

OSMRE disagrees with the commenter's suggestion. A written finding is needed to verify that the regulatory authority has rigorously evaluated whether a potential abandoned site meets the criteria of the rule. It also is needed to document that the regulatory authority's decision is not arbitrary and capricious, and to provide a suitable record for oversight or other review.

OSMRE intends that the written finding prepared by the regulatory authority when classifying a site as abandoned will be brief but thorough. The finding should succinctly describe the site in terms of the criteria in the rule, setting out verifiable facts which support the required conclusions. In addition to a written narrative, the finding may include photographs or other appropriate tangible evidence. Supporting documents or other evidence should be clearly cited, and copies attached if not otherwise readily available.

Section 840.11(g)(1)/842.11(e)(1).

This section of the rule requires the regulatory authority to find in writing that all surface coal mining and reclamation activities at the site have ceased.

Unlikely to Resume

The proposed rule included the additional criterion that activities "are unlikely to resume." 52 FR 52760 and 61. Several commenters said that this criterion was speculative, subjective, and would be difficult to document, and recommended that OSMRE delete it. OSMRE agrees. The criterion that operations are unlikely to resume originally was intended, in part, to clarify that the rule would not apply to sites where operations temporarily were suspended under 30 CFR 816.131 and 817.131. However, even without the criterion it is clear that such sites do not qualify as abandoned. To avoid the problems noted by the commenters, this criterion was deleted from the rule. One of these commenters also said that the "unlikely to resume" criterion failed to set minimum standards to guide State regulatory discretion. OSMRE has concluded that, because this criterion required the regulatory authority to predict uncertain future events, it would not be possible to set appropriate minimum standards, and therefore has deleted the criterion as impracticable.

Need for Affidavits

Several commenters questioned the need for affidavits to document that a site is abandoned. Affidavits were suggested in the preamble to the proposed rule (52 FR 32759) as one possible basis for the regulatory authority's written finding under § 840.11(g)(1)/842.11(e)(1). Affidavits were not required by the proposed rule, and are not required by this final rule. However, affidavits may be utilized under this final rule if deemed appropriate by the regulatory authority.

Section 840.11(g)(2)/842.11(e)(2).

As the second criterion for abandoned status, § 840.11(g)(2)/842.11(e)(2) requires that the regulatory authority have issued at least one notice of violation or the initial program equivalent for the operation, and either is unable to serve the notice despite diligent efforts to do so, or the notice has progressed to a failure-to-abate cessation order (FTACO) or the initial

program equivalent. OSMRE is promulgating this section of the definition as proposed.

Inability to Serve Notice

Several commenters said that basing abandoned status on the inability of the regulatory authority to serve a notice of violation was inconsistent with the service requirements of 30 CFR 843.14. These commenters said that under § 843.14(a) service is complete upon mailing the notice to the violator's last known address, and cannot be deemed incomplete because of a refusal to accept. One commenter also said that terminating subsequent enforcement because the permittee refused to accept the notice of violation was inconsistent with the mandatory enforcement provisions of section 521 of the Act and its implementing regulations.

Under § 843.14(a) service can be made either by tendering a copy of a notice of violation or order to certain individuals at the site of the operation, or by sending a copy by certified mail or by hand to the permittee or his designated agent. Service is complete upon tender of the notice, or of the mail, and is not rendered incomplete because of a refusal to accept. Where service is by certified mail, for which the signature of the addressee ordinarily is required as a condition of delivery, § 843.14(a) is not satisfied merely by sending the notice. The post office must locate the addressee and attempt to tender the notice for signature. If the notice is returned as "unclaimed" or "address unknown" or "left no forwarding address" OSMRE believes that the agency issuing the citation should make every reasonable effort to determine whether the mail truly was undeliverable or was refused. If the mail was unclaimed, the agency should make and record repeated attempts to find the correct address.

The criterion of § 840.11(g)(2)(i))/842.11(e)(2)(i) does not reduce the effectiveness of § 843.13(a) and enable violators to frustrate enforcement by refusing service; it merely recognizes that under certain limited circumstances, service becomes impossible. Circumstances may exist where a responsible party, because of death, relocation, or disappearance, cannot be found, and it is not possible for the regulatory authority to tender the notice, or for the post office to tender the mail. Thus, despite diligent efforts, service is impossible. Under such circumstances, and assuming that the additional critieria of the rule are met, it is reasonable for the regulatory authority to find that the site is abandoned. Only those circumstances where the regulatory authority was unable to find a responsible party to either accept or refuse the notice will satisfy the criterion of § 840.11(g)(2)(i)/842.11(e)(2)(i). An inability to service the notice which results from a refusal to accept will not satisfy the criterion.

Abatement of Violation

One commenter suggested that OSMRE revise proposed § 840.11(g)(2)/842.11(e)(2) to specify that the violation identified in the notice or cessation order remains unabated. OSMRE has not adopted this suggestion. The failure to abate is implied in the complete definition. Should abatement occur, a site would no longer meet the definition of an abandoned site. This is reasonable because the abatement would indicate the availability of a responsible person to perform reclamation.

Unnecessary Criteria

One commenter said that the criterion of § 840.11(g)(2)/842.11(e)(2), in conjunction with the criterion of § 840.11(g)(1)/842.11(e)(1) that activities at the site have ceased, was sufficient to determine that a site was abandoned, and that the additional criteria were unnecessary. OSMRE disagrees. The criterion of paragraph (g)(2)/(e)(2) concerns enforcement at the inspector level; the criteria of paragraphs (g)(3)/(e)(3) and (g)(4)/(e)(4) concern alternative enforcement activities which are performed in addition to actions taken by inspectors. Before a site is classified as abandoned, the regulatory authority must demonstrate that it is considering the full range of enforcement available to it under the regulatory program to compel abatement of violations and reclamation of the site.

Section 840.11(g)(3)/842.11(e)(3).

Section 840.11(g)(3)/842.11(e)(3) contains two separate criteria for classifying a site as abandoned. The regulatory authority must find that: (1) It is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and (2) it is taking action pursuant to section 518(e), 518(f), 521(a)(4) or 521(c) of the Act or their regulatory program counterparts to ensure that abatement of the site occurs or that there will not be a recurrence of the failure-to-abate. As an exception to the second criterion, where appropriate the regulatory authority may evaluate the circumstances and explain in writing why it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs for the site.

This section of the proposed rule was revised explicitly to require the regulatory authority to meet the permit blocking requirements of 30 CFR 773.15(b) for abandoned sites. Based on a statement in the preamble to the proposed rule (52 FR 32759) that alternative enforcement under this section "in all cases must include blocking new permits," specific language was added to § 840.11(g)(3)(i)/842.11(e)(3)(i) of the final rule. To satisfy this criterion, the regulatory authority must show that any persons who own or control the site are classified as violators in the system of records used by the regulatory authority to match permit applicants with violators of the Act.

This section of the proposed rule also was revised in response to a comment. Instead of the specific references to the penalty and enforcement provisions of the Act which appears in § 840.11(g)(3)(ii)/842.11(e)(3)(ii) of the final rule, proposed § 840.11(g)(3)/842.11(e)(3) more generally would have required that "[t]he regulatory authority is pursuing alternative enforcement measures provided under the regulatory program * * *." 52 FR 52760 and 61. The basis for this revision is explained in the subsequent response to the comment.

Alternative Enforcement Obligations

One commenter said that proposed § 840.11(g)(3)/842.11(e)(3) abridged the alternative enforcement obligations of OSMRE and State regulatory authorities which are required by the Act, regulations, and various court orders. The commenter was concerned that OSMRE would be creating standards for what constitutes "appropriate action" for alternative enforcement under existing rules in contravention of the Administrative Procedure Act. The commenter suggested that OSMRE substitute language requiring the regulatory authority to have taken appropriate action pursuant to section 518(e), 518(f), 521(a)(4) or 521(c) of the Act, as required by 30 CFR 845.15(b)(2) and 840.13(a).

OSMRE disagrees that the proposed criterion in any way would have abridged alternative enforcement obligations. The preamble to the proposed rule explicitly referenced the alternative enforcement provisions of 30 CFR 845.15(b)(2) as applying to this criterion. (52 FR 32759). Since the applicable language of § 845.15(b)(2) is essentially the same as that suggested by the commenter for inclusion in the rule, the suggested language merely

states directly a requirement that indirectly was included in the proposed rule. Nevertheless, to prevent misinterpretation, OSMRE has added most of the commenter's suggested language to the definition in place of the more general proposed requirement.

The suggested reference to §§ 845.15(b)(2) and 840.13(a) is not included in the final rule for several reasons. The revised language of this criterion essentially duplicates the applicable portion of § 845.15(b)(2) and the consistency requirement of § 840.13(a); thus a reference to these regulations would be redundant. Also, a reference to § 845.15(b)(2) would limit the coverage of this criterion to only those sites for which an FTACO had been issued and was unabated for 30 days, excluding any sites for which the regulatory authority was unable to serve a notice of violation and thus did not issue an FTACO. The requirement of this criterion for alternative enforcement does not depend on the issuance of an FTACO, but, as provided by § 840.11(g)(2)/842.11(e)(2), includes any site where the regulatory authority has issued at least one notice of violation or the initial program equivalent.

Exception to Alternative Enforcement

Like the proposed rule, § 840.11(g)(3)(ii)/842.11(e)(3)(ii) authorizes the regulatory authority to find that a site is abandoned without pursuing alternative enforcement "where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling reclamation or recovering any reclamation costs * * *" One commenter said that this exception required the regulatory authority to make arguable assumptions, and recommended that OSMRE delete it. Another commenter said that the exception would abridge established alternative enforcement obligations of OSMRE and the States, and also recommended that OSMRE delete it.

OSMRE disagrees. The purpose of this exception is to minimize the expenditure of enforcement resources on sites which clearly have little or no enforcement potential. It does not require the regulatory authority to make arguable assumptions, but rather to set out in writing facts that would lead a reasonable person to conclude that further pursuit of alternative enforcement offered little or no likelihood of success.

The exception is not intended to, and does not, abridge Federal or State alternative enforcement obligations established under the Act, regulations, and court orders. OSMRE intends that the regulatory authority will apply the exception in a manner consistent with these existing obligations.

OSMRE has retained this exception in the rule because without it many sites arbitrarily would be excluded from abandoned status. It is not always possible to implement alternative enforcement for a site. In some instances the permittee and other responsible persons may have no net worth, for example, or the permittee may not be incorporated, so that individual civil penalties do not apply, or it may be impossible to prove knowing and willful violations. By requiring the regulatory authority to demonstrate in writing the futility of pursuing alternative enforcement, the rule incorporates reasonable safeguards against abuse.

Relevance of Criterion

One commenter said that including a criterion based on alternative enforcement had no rational connection to determining abandoned status.

OSMRE disagrees. The rule is intended to reduce inspections, but not alternative enforcement. A basic premise of the rule is to allow the inspection frequency to be reduced for an abandoned site only when the regulatory authority is pursuing alternative enforcement with regard to the site in a manner consistent with its alternative enforcement obligations. Such a tradeoff correctly focuses the regulatory authority on the activities which will be the most productive in compelling compliance with the Act.

Nationwide Applicability

One commenter questioned the nationwide applicability of the alternative enforcement measures under § 845.15(b)(2) referred to in the proposed rule.

The question concerning the applicability of § 845.15(b)(2) was mooted by the specific references to sections 518(e), 518(f), 521(a)(4), and 521(c) of the Act that were added to this criterion in the final rule. All State and Federal programs must contain the same or similar enforcement procedures and enforcement sanctions no less stringent than those set forth in this criterion.

Reopening Old Enforcement Cases

The same commenter said that to meet this proposed criterion the regulatory authority should not have to reopen old enforcement cases previously closed prior to the adoption of an alternative enforcement regulation.

Although the final rule now includes direct references to the Act and its regulatory program counterparts, rather than the proposed general reference to alternative enforcement, the question of how this criterion applies to "closed enforcement cases" remains pertinent.

This criterion requires that, to classify a site as abandoned for purposes of reducing the inspection frequency, "the regulatory authority * * * is taking action pursuant to sections 518(e), 518(f), 521(a) or 521(c) of the Act or their regulatory program counterparts * * *." Previous compliance with these provisions satisfies this criterion, in which case the regulatory authority need only explain the written finding how compliance already has been achieved.

Absent previous compliance, however, the regulatory authority may have to take further enforcement action, regardless of whether the case was considered closed, *if* it wishes to classify the site as abandoned. As an alternative, in appropriate cases the regulatory authority may satisfy this criterion by explaining in writing why further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs.

Reclamation of Abandoned Sites

One commenter, characterizing abandoned sites as "a thorn in the side of legitimate operators," encouraged OSMRE to take whatever steps are necessary to reclaim them. The commenter said that the resources which currently are wasted on the reinspection of abandoned sites would be better spent in an effort to collect delinquent penalties. To promote the reclamation of these sites, the commenter recommended that OSMRE revise § 840.11(g)(3)/842.11(e)(3) to state explicitly that OSMRE will concentrate its efforts on trying to require responsible parties to reclaim them whenever possible.

The intent of both the proposed and final rules is to ensure that responsible parties reclaim abandoned sites. While the commenter's specific language was not adopted, the final rule requires the regulatory authority to take certain steps to "ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate * * *." This language meets the commenter's concern that responsible parties be required to satisfy their reclamation obligations.

OSMRE emphasizes that this rule does not diminish the obligation of responsible parties to reclaim any site which is in violation of the Act. While classification of a site as abandoned will allow the regulatory authority to eliminate unproductive inspections, it

will not diminish any existing abatement or reclamation requirement.

Permit Blocking

The preamble to the proposed rule stated that the alternative enforcement options pursued by the regulatory authority under this criterion in all cases must include blocking new permits. (52 FR 32759). One commenter expressed concern that the regulatory authority would continue to block new permits for related entities after alternative enforcement methods had failed. The commenter asked OSMRE to identify the point at which an operation ceased to be "related," to explain what would happen if the violator no longer was in business, and to clarify the relationship OSMRE considers adequate for permit blocking.

OSMRE proposed a rule defining the terms "ownership" and "control" on April 5, 1985 (50 FR 13724) and, because of the intense public interest, reopened the comment period for the proposed rule several times. OSMRE currently is drafting the final rule defining these terms. When promulgated, that rule will govern how the regulatory authority is to apply permit blocking under § 773.15(b) to owners or controllers of abandoned sites.

As noted in the introduction to this section, the final rule was revised to require explicitly in § 840.11(g)(3)(i)/842.11(e)(3)(i) that the regulatory authority is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operators, will be precluded from receiving future permits while violations continue at the site. Section 510(c) of the Act and § 773.15(b) require the regulatory authority to block the issuance of a new permit where an applicant has an ownership or control relationship with a violator. The requirement for compliance with the permit blocking requirements of the Act is not subject to the exception of § 840.11(g)(3)(ii)/842.11(e)(3)(ii), which is consistent with the proposal to require permit blocking "in all cases." The intent of this rule is to ensure that future permit blocking will occur before any site may be classified as abandoned. This is an ongoing requirement which continues to apply after a site is classified as abandoned for as long as any violation at the site remains unabated.

Section 840.11(g)(4)/842.11(e)(4).

Section 840.11(g)(4)/842.11(e)(4) of the abandoned site definition requires the regulatory authority to make a finding concerning the current permit and bond status of the abandoned site. While this section of the proposed rule would have applied where the site was "permitted *and* bonded" (52 FR 32760, 32761. (emphasis added)), the final rule was revised to apply where the site was "permitted *or* bonded." (Emphasis added.) The disjunctive "or" was adopted because for some sites either or both of these conditions may not apply or have applied. Where the site was not permitted or was not bonded, the regulatory authority may simply document that fact in its written finding to satisfy the corresponding portion of this criterion. The verb tense has also been modified to "is, or was," to reflect that the permit or bond may or may not exist at the time of the determination that the site is abandoned.

In response to a comment, this section was revised to include permitted sites for which permit revocation proceedings have been initiated and are being diligently pursued. The revision makes the requirement for permit revocation consistent with the corresponding requirement for bond forfeiture. OSMRE believes that for purposes of this rule the initiation and diligent pursuit of permit revocation will serve the same purpose as the actual revocation itself. Such action demonstrates that the regulatory authority is responsibly fulfilling its obligations with regard to the site. Also in response to a comment, this section was revised to require the regulatory authority to have initiated forfeiture proceedings for any outstanding bond. OSMRE concludes that the initiation of forfeiture proceedings is an inescapable component of diligent pursuit.

Finally, OSMRE emphasizes that as long as any violation at an abandoned site remains unabated, neither permit revocation nor collection of the bond in any way relieves the regulatory authority from the continuing obligation to inspect the site as necessary to comply with this rule.

Initial Program Sites

One commenter said that forefeiture of the performance bond could not be the basis for a reduction of inspection frequency at initial program operations because a bond was not required for those operations. Moreover, the commenter asserted that the criterion is invalid for initial program sites because the obligation to comply with initial program standards was not linked to State bonding of those operations.

OSMRE agrees that this criterion is not relevant for unbonded initial program sites. As noted in the introduction to this section, the final rule was revised to reflect the lack of a bond for these sites. OSMRE believes that the lack of a bond, or the lack of a permit, should not prevent the regulatory authority from finding that a site is abandoned. The purpose of this criterion is to ensure that the regulatory authority is diligently taking all available steps to compel abatement and secure reclamation of the site.

Where there is no bond or permit for a site, however, the options of forfeiture and revocation are not available to the regulatory authority, and thus they have no relevance to abandoned status.

On the other hand, if an initial program bond exists for a site, the regulatory authority should be diligently pursuing its forfeiture regardless of whether such a bond was required by the initial program. Requiring such action is consistent with the purpose of this rule to allow a reduction in inspection frequency only where all available action is being taken to compel compliance. Such a requirement is appropriate in these circumstances, and, contrary to the commenter's assertion, is not intended to diminish any person's obligations to comply with initial program standards.

Tennessee Sites

Another commenter was concerned that under this criterion previously bonded interim program sites in Tennessee might not qualify as abandoned. The commenter said that the Tennessee initial program was unique in that initial program operations had been permitted and bonded by the State regulatory authority.

Since OSMRE does not require performance bonds for initial program operations under the current Tennessee Federal program, however, the State has returned these bonds to the operators. Thus, although these initial program sites originally were bonded, the criterion should not apply because there no longer are any bonds to forfeit.

OSMRE agrees that this criterion should to apply to initial program sites in Tennessee where the bond was returned to the operators, and will interpret the rule accordingly. The rule will apply only to those permits and bonds against which the regulatory authority is empowered to take action.

Exclusive Criterion.

One commenter said that any site where the bond had been or was being forfeited should qualify as abandoned, regardless of whether the other criteria of the rule applied to the site. OSMRE disagrees. A reduced inspection frequency is not justified for an abandoned site merely because the operator has left the site and forfeited

the bond. The other criteria are needed to ensure that the regulatory authority has taken all appropriate action to have violations abated and the site reclaimed.

Permit Revocation

One commenter recommended that the rule include diligent pursuit of permit revocation as equivalent to ultimate revocation. As explained above, OSMRE agrees that for purposes of this rule the two are equivalent and has revised the final rule accordingly.

Diligent Pursuit

One commenter, noting that the process leading to bond forfeiture can be lengthy and arduous, asked OSMRE to clarify what was meant by the phrase "diligently pursuing forfeiture." The commenter also asked whether the definition of "abandoned site" would apply to sites where the bond was forefeited but not yet collected.

OSMRE recognizes that bond forfeiture often is a slow process, which varies among regulatory authorities and with the type of bond and the parties involved. To satisfy the requirement for diligent pursuit of bond forfeiture, and of permit revocation as well, the regulatory authority must have taken the initial steps required by the regulatory program, and any subsequent steps, in a timely manner if sufficient time has elapsed to do so. Section 840.11(g)(4)/842.11(e)(4) does not require the regulatory authority either to complete forfeiture or to collect the bond before a site is classified as abandoned. As long as the regulatory authority establishes that forfeiture proceedings have been initiated and are being pursued diligently, this criterion is satisfied.

Another commenter said that OSMRE must set minimum standards on what will qualify as diligent pursuit of bond forfeiture. It appeared that the commenter was concerned over delays that might occur between final enforcement action and the initiation of bond forfeiture proceedings. OSMRE disagrees that putting minimum standards for diligent pursuit in the rule is either necessary or desirable, whether for bond forfeiture or for permit revocation.

As with bond forfeiture proceedings, discussed previously, permit revocation proceedings can vary. Minimum standards that would account for this variation would unduly complicate the definition of "abandoned site," thus making implementation of this rule unnecessarily difficult. The regulations governing forfeiture and revocation, and not this definition, are the appropriate place for any minimum standards.

However, OSMRE recognizes the commenter's concern over prompt initiation of bond forfeiture proceedings, and has revised the final rule to accommodate it. The final rule requires the regulatory authority to initiate forfeiture proceedings whenever applicable as a prerequisite to finding that a site is abandoned.

OSMRE has concluded that this requirement is the best way to ensure that the regulatory authority is diligently pursuing forfeiture of the bond.

Alternative Criteria

Several commenters said that a site should not have to meet all of the criteria of the definition to qualify as abandoned. Some commenters said that one or another of the criteria was sufficient, while others suggested various alternative combinations. OSMRE disagrees that any of these alternatives would be superior to this rule in ensuring compliance with the Act for abandoned sites.

The criteria OSMRE has adopted for the definition of "abandoned site" are intended to achieve two major objectives: First, to establish that regular monthly and complete inspections of abandoned sites are no longer effective to achieve compliance with the purposes and provisions of the Act; and second, to ensure that all other enforcement options available to the regulatory authority are being pursued to secure abatement of any violations and, ultimately, reclamation of the site.

The criteria of the definition cover ascending levels of enforcement. If abatement or reclamation are not achieved through enforcement at the inspector level, the regulatory authority is required to consider, and in appropriate circumstances, to take the additional enforcement steps of permit blocking, alternative enforcement, permit revocation, and bond forfeiture.

Only when all of these available steps are being exhausted is it reasonable to conclude that a reduced inspection frequency will not affect compliance with the purposes and provisions of the Act. The enforcement mechanisms covered by these criteria already are in place in existing regulatory programs. Therefore, applying the criteria to abandoned sites will not impose an unreasonable burden on regulatory authorities.

Another commenter suggested imposition of a mandatory, six-month, inspection frequency for abandoned sites, but only if the definition of "abandoned site" included the following substitute criteria:

1. The surface coal mining operation currently is subject to a failure-to-abate cessation order (FTACO) which:

(a) Has been issued against the permittee, operator and all persons with an ownership or control interest in the operation;

(b) Includes citations for all outstanding violations on the site;

(c) Has been outstanding for more than thirty days; and

(d) For which the requirements for alternative enforcement in 30 CFR 845.15(b)(2) have been satisfied.

2. If the operation was permitted and/or bonded, the permit has been revoked or has expired and the regulatory authority has initiated and diligently is pursuing bond forfeiture; and

3. A determination has been made after a complete inspection that the site has stabilized and that no offsite damage from fill instability, erosion, slides or other offsite damage to land or water resources is occurring or is likely to occur in the six month period before another inspection is required.

OSMRE disagrees that these alternatives are an improvement on the criteria of this rule, or that they would result in any measurable difference in enforcement, abatement or reclamation at abandoned sites. Like these alternatives, § 840.11(g)(2)/842.11(e)(2) of the rule requires that the regulatory authority has issued an FTACO before a site is classified as abandoned—unless the regulatory authority is unable to serve the underlying notice of violation (NOV) despite diligent efforts to do so. For sites where the service of an NOV is impossible, the mandatory issuance of a cessation order for failing to perform the abatement specified in the unserved notice is a pointless exercise.

Likewise, the requirement that, before a site may be classified as abandoned, an FTACO must have been issued against all persons potentially responsible for an abandoned site, where typically no responsible person can be located, would effectively impose an impractical obligation which does not currently exist. Neither the Act nor the rules require listing on an FTACO of the name of every responsible person, such as officers and directors.

This rule is not intended indirectly to impose enforcement obligations that do not currently exist. The commenter's concern that all responsible parties be held accountable for abandoned sites will be satisfied by § 840.11(g)(3)/842.11(e)(3) regarding alternative enforcement.

OSMRE has not accepted the suggested alternative of requiring the FTACO to include all citations for all

violations before a site is classified as abandoned. As explained earlier, one purpose of the rule is to establish when monthly partial and quarterly complete inspections are no longer effective in achieving compliance with the Act. In conjunction with the other criteria of this rule, one unabated FTACO documents the inability to compel reclamation at the site. Thus it demonstrates the futility of maintaining the frequency of regular partial and complete inspections, regardless of the number of violations set forth in the FTACO.

Additionally, requiring the regulatory authority to cite all outstanding violations as a condition precedent to finding the site abandoned is not included in this rule because the abandoned status of a site will not preclude the issuance of additional citations, and alternative enforcement is also proceeding.

The alternative of requiring that the FTACO has been outstanding for more than thirty days was offered by the commenter without explanation, and OSMRE cannot see how it would improve enforcement at abandoned sites. The passage of an arbitrary period of time such as thirty days after the issuance of an FTACO has no relevance in determining whether or not a site is abandoned and inspections "as necessary" are warranted. The commenter may have intended that the 30-day waiting period be included to correspond to the 30-day period in § 845.15(b)(2), after which time an alternative enforcement obligation is triggered under the Federal rules. If this was the commenter's concern, it is expressly addressed by inclusion in § 840.11(g)(3)/842.11(e)(3) of the requirement that the regulatory authority is taking alternative enforcement action.

Section 840.11(h)/842.11(f).

Section 840.11(h)/842.11(f) establishes an "as necessary" inspection frequency for abandoned sites, and for each site requires the regulatory authority to select a specific inspection frequency to comply with this rule and to document in writing the reasons for selecting the specific inspection frequency. Paragraph (h)(1) requires the regulatory authority to inspect each abandoned site as necessary to monitor for changes of environmental conditions or operational status at the site.

Paragraph (h)(2) requires the regulatory authority to document the inspection frequency for each site. Before ceasing to perform inspections at an abandoned site at the frequency required by the previous regulations, the regulatory authority must evaluate the environmental conditions and operational status of the site, and document in writing both the necessary inspection frequency and the reasons for selecting that frequency. This explicit documentation requirement was added to the language of the proposed rule in response to a comment.

Under this rule the inspection frequency for abandoned sites may, depending on the nature of the site, vary from never to as often as was required under the previous regulations. Some sites may be so stable and so operationally defunct as to make further inspections completely unnecessary. Other sites may have environmental characteristics or operational features that warrant frequent inspections. The rule does not specify either "partial" or "complete" inspections, but instead requires the regulatory authority to inspect each abandoned site as thoroughly as is necessary to comply with the specified inspection criteria.

OSMRE experience indicates that the majority of sites will require inspection only at a minimum frequency. In primacy states, the state regulatory authorities, with all of the pertinent site-specific information at hand, are best qualified and responsible for determining the necessary frequency for each abandoned site. Placing this responsibility upon the states is consistent with congressional intent to have primary regulatory authority rest with the States.

The written record prepared by the regulatory authority to document compliance with this requirement should be brief but thorough, and may include narrative discussion, photographs, or other appropriate tangible evidence. It should describe in general terms the environmental conditions and operational status of the site to the extent they are likely to affect the need for inspection, both at present and in the future. It should identify any potential latent hazards to on- or off-site conditions affecting public health and safety. And it should be made available to and reviewed by the inspector prior to future inspections of the abandoned site.

For administrative convenience, the regulatory authority might choose to establish one or more categories of sites with similar characteristics, and evaluate and document the necessary inspection frequency for each category as a whole. The regulatory authority would then need to document only why a given abandoned site fell into a particular category.

The frequency with which an abandoned site is inspected under this rule may increase or decrease as new information becomes available or changes in the characteristics of the site occur. The regulatory authority is required to inspect abandoned sites "as necessary" and, if significant new information or changes at a site develop, the regulatory authority may reevaluate the site and modify the inspection frequency. The requirements of existing §§ 841.11(e) and 842.11(d) apply to inspections performed under this rule, particularly with respect to the filing of prompt inspection reports.

Minimum Inspection Frequency

One commenter characterized the proposed rule as an attempt to eliminate any mandatory inspection frequency for abandoned sites in contravention of the inspection requirements of section 517(c) of the Act. The commenter said that in contrast to the regulations that specify a reduced inspection frequency for inactive sites, the proposed rule lacked safeguards against abuse and eliminated entirely, rather than merely reduced, mandatory inspections. The commenter urged OSMRE to withdraw the proposal or, at a minimum, to substitute the commenter's "more carefully crafted and precise rule" which included alternative criteria for defining "abandoned site," and a minimum inspection frequency of every six months.

This final rule includes neither the commenter's suggested criteria nor the six month inspection frequency. However, OSMRE appreciates the commenter's concern over the potential for misinterpretation of the proposed rule and has revised the final rule accordingly. The reasons for rejecting a fixed, six-month, inspection frequency and for the related changes in the final rule are presented below. For the text and a discussion of the commenter's alternative criteria for defining "abandoned site," see the preceding discussion of § 840.11(g)(4)/842.11(e)(4) under the heading *Alternative Criteria.*

OSMRE did not adopt a six month inspection frequency, or any other fix frequency, for abandoned sites because to do so would merely substitute one inflexible frequency for another, and thus fail to achieve the goal of eliminating unnecessary and counterproductive inspections. Each abandoned site is unique, both in terms of its physical environment and the problems it presents. An arbitrary, fixed, inspection frequency cannot account for these unique characteristics. A fixed frequency is just as likely to yield too few inspections, or too many, as it is to yield a suitable number.

The commenter's concern that the rule would eliminate mandatory inspections appears to derive from the lack of an explicit provision in the proposed rule requiring the regulatory authority to document the frequency at which it would inspect each abandoned site. While this requirement was implicit in the proposed rule, OSMRE has revised the final rule explicitly to require the regulatory authority to evaluate the environmental conditions and operational status of the site, and based on those considerations to document in writing not only the inspection frequency necessary to comply with the rule, but also the reasons for selecting that frequency. The regulatory authority has to adopt and implement a specific inspection frequency carefully tailored to the unique characteristics of such sites. Thus, the rule maintains the regulatory authority's responsibility for administering its regulatory program with respect to abandoned sites.

Quoting the legislative history of the Act, the commenter said that the inspection frequency requirement of section 517 "was intended to monitor 'the impacts of such operations including the effectiveness of reclamation activities.' " *Citing* H.R. Rep. No. 95-492, 95th Cong., 1st Sess. 109 (1977) (emphasis added by commenter). OSMRE believes that reducing the number of inspections at abandoned Cites in accordance with this rule conforms fully with this legislative intent. The rule requires the regulatory authority to inspect abandoned sites as necessary to monitor for changes of environmental conditions or operational status at the site. This is precisely what the Congress intended to achieve. It is implicit in the quoted statement of the Congress that there is occurring at the site some change, whether as a result of mining or reclamation or natural process, that would necessitate regular monitoring at the frequency specified by section 517. When mining and reclamation activities at a site have ceased, however, and the regulatory authority is exercising all available enforcement options, inspections at the frequency set by section 517 are a senseless waste of manpower which the Congress clearly could not have intended.

The commenter also was concerned that the unreclaimed status of abandoned sites might lead to more severe impacts and to new violations which would have to be monitored to avert site deterioration and an imminent harm situation, and to assure that pending enforcement actions accurately reflected site conditions. The commenter concluded that visual observation of a minesite does not detect latent problems in areas such as hollow fill or backfill stability which occur over time and which only subsequent inspections could reveal.

OSMRE believes that a reduced inspection frequency for abandoned sites does not pose a significant risk of increased environmental harm. Sites will not be classified as abandoned unless no one is available to perform reclamation or the regulatory authority is taking all appropriate actions to have the sites reclaimed. Thus, in the event a site deteriorates, typically nothing more can be done to reclaim the site than already is occurring. Increasing the inspection frequency might cause the regulatory authority to be informed of a danger more quickly, but will not likely provide a new remedy.

In addition, the data available to OSMRE, especially as it pertains to abandoned sites in Tennessee, indicate that most abandoned sites are stable. Sites with violations of substantive performance standards do not necessarily deteriorate to imminent harm situations because many performance standards are unrelated to the potential for imminent harm or decreased public safety. Through experience with local conditions, the regulatory authority is best qualified to identify sites with such potential. This rule requires the regulatory authority to do so, and to inspect abandoned sites as frequently as is necessary to avoid the problems the commenter has identified. Also, the existing provisions in 30 CFR 840.15 and 842.14, giving private citizens the right to request inspections, will enable persons who live in the vicinity of abandoned sites to alert the regulatory authority to any potentially hazardous developments.

To address the commenter's concern that pending enforcement actions accurately reflect site conditions, the final rule requires that the regulatory authority inspect each abandoned site as necessary to monitor for changes in environmental conditions. However, as indicated above, the issuance of further notices of violation or cessation orders for abandoned sites is likely to be futile. Generally alternative enforcement is the only potentially viable means to achieve reclamation, even if abandoned sites deteriorate. To remedy environmental problems, regulatory authorities may be limited practically to trying to expedite alternative enforcement activities.

The inspection requirements of this rule strike a reasonable balance between a fixed frequency and the permissive interpretation to which the commenter found the proposed rule susceptible. OSMRE believes that by explicitly requiring the regulatory authority to selet and justify a specific inspection frequency for each abandoned site, the rule provides the reasonable procedural safeguards the commenter seeks.

Pre-Classification Inspection

The same commenter also said that before classifying a site as abandoned, the regulatory authority should perform a complete inspection to determine that the site is stable and that no offsite damage from fill instability, erosion, slides or other sources is occurring, or is likely to occur, to land or water resources prior to the next inspection. The commenter said that the condition of the site is germane to future enforcement action, and that a report, including narrative description and appropriate photographs, is needed to document that all violations have been cited and to avoid defenses in enforcement litigation.

The mere fact that the abandoned operation may be causing damage offsite will not preclude a site from being classified as abandoned. However, the inspection frequency specified for particular sites should account for the likelihood that environmental conditions may deteriorate at the site. Moreover, regardless of the specific frequency selected by the regulatory authority, inspections should be performed to update the documentation of site conditions when required to support ongoing alternative enforcement actions. OSMRE has noted elsewhere in this preamble that the written documents required to classify sites as abandoned may include photographs, as well as narrative and other forms of tangible evidence.

OSMRE agrees with the commenter that prior to classifying a site as abandoned the regulatory authority should evaluate and document the site conditions. However, OSMRE believes that the language added to the final rule, while not explicitly requiring a pre-classification inspection, adequately addresses the commenter's concerns. Section 840.11(h)(2)/842.11(f)(2) requires the regulatory authority to evaluate the environmental conditions and operational status of the site, and to document in writing the reasons for selecting a particular inspection frequency. If previous inspection reports contain adequate information for the regulatory authority to evaluate the site, an additional inspection would serve no useful purpose. If the information is

lacking, however, the rule requires the regulatory authority to inspect the site as necessary to obtain it. Thus, the rule meets the commenter's concerns without requiring the regulatory authority to perform any unproductive pre-classification inspections.

Oversight

Several commenters wanted to know how the inspection of abandoned sites would be addressed in annual evaluation reports for State regulatory programs. One commenter, characterizing the "as necessary" inspection frequency as vague, asked how OSMRE would determine whether a State was performing a sufficient number of inspections.

The final rule requires the regulatory authority to document in writing the inspection frequency necessary to comply with the rule for each abandoned site, and the reasons for selecting the frequency. In oversight, OSMRE will then review the regulatory authority's determination and monitor its compliance with that determination. This requirement answers these commenters' concerns about vagueness in the "as necessary" inspection frequency of the rule. The documentation required by § 840.11 (g) and (h) and 842.11 (e) and (f), will provide an ample written record for OSMRE to review in overseeing State compliance with the rule.

Section 843.22 Enforcement actions at abandoned sites.

This rule adds to 30 CFR Part 843—*Federal Enforcement* a new § 843.22, which authorizes OSMRE to refrain from issuing a notice of violation of cessation order for a violation at an abandoned site, as defined in § 842.11 of this rule, if abatement of the violation is required under any previously issued notice or order. This may involve modification of required abatement measures in existing notices or orders. (Note that while Part 843 of the existing regulations ends with section number 843.20, the intervening section number 843.21 previously was assigned to proposed procedures on improperly or erroneously issued State permits. 51 FR 25822 (July 16, 1986).

The purpose of § 843.22 is to save the regulatory authority the time and expense involved in issuing additional notices or orders and assessing uncollectible penalties for violations which already are covered by existing citations. Such duplication does not improve enforcement, secure the abatement of violations or ensure reclamation of the site. While the rule authorizes the regulatory authority to refrain from issuing notices or orders under the specified circumstances, it does not prevent the regulatory authority from issuing any notice or order that might serve the purposes of furthering compliance.

The language of new § 843.22 derives from the preamble to the proposed rule, in which OSMRE proposed not to require further enforcement actions while a site remained in abandoned status, as long as abatement of any newly observed violation could be required as part of the abatement of a notice of violation or cessation order already issued. 52 FR 32760 (August 28, 1987). For example, if a notice of violation was issued for a general reclamation failure, such as a failure to restore the site to a condition capable of supporting pre-mining or higher or better uses, then abatement of a later more specific violation could be subsumed within the abatement of the original violation. The preamble to the proposed rule solicited comments on this enforcement approach.

Request for Clarification

One commenter asked OSMRE to clarify what would happen when a former violation (1) was more specific than, or (2) was derived from a performance standard not related to, a later violation.

In both cases § 843.22 would not apply if abatement of the later violation could not be subsumed by abatement of the earlier violation. Even though a later violation was based on an unrelated performance standard, the regulatory authority could refrain from issuing a new notice or order as long as abatement of the new violation could, and would, be required under a previously issued notice or order.

The final rule does not affect the existing requirement that the regulatory authority issue a new notice or order whenever a later violation would not be corrected by the abatement of a previously cited violation. This requirement applies even though, as one commenter pointed out, the additional enforcement action for a more serious violation would be unlikely to secure compliance where an operator could not or would not comply with lesser requirements.

III. Procedural Matters

Effect in Federal Program States and on Indian Lands

Sections 842.11 and 843.22 of this rule apply through cross-referencing in States with Federal regulatory programs. These States include Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. Sections 841.11 and 843.22 of the rule also apply through cross-referencing on Indian Lands, as approved in 30 CFR 750.18(a).

Federal Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3507, and assigned Clearance No. 1029–0051. Such information is needed to obtain the benefit of having to perform fewer inspections at abandoned sites. Although this rule adds the requirement for regulatory authorities to document the reasons for choosing a particular inspection frequency for each abandoned site, OSMRE expects a net reduction in information collection burden hours because of the smaller number of inspection reports that will likely have to be filed as a result of this rule.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this is not a major rule under the criteria of Executive Order 12291 (February 17, 1981), and that it 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. This rule will reduce the costs incurred by OSMRE and the State regulatory authorities in inspecting abandoned sites. Therefore, this rule should not add to the cost of operating a mine in compliance with an approved regulatory program.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) of this rule and has made a finding that it will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSMRE administrative record at the address previously specified (see "**ADDRESSES**").

Authors

The principal authors of this rule are Daniel Stocker and Sandi Olsen, Division of Regulatory Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone 202–343–4550 (Commercial or FTS).

List of Subjects

30 CFR Part 840

Intergovernmental relations, Reporting and recordkeeping, requirements, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 840, 842 and 843 are amended as set forth below.

Dated: May 12, 1988.

James E. Cason,

Deputy Assistant Secretary for Land and Minerals Management.

PART 840—STATE REGULATORY AUTHORITY: INSPECTION AND ENFORCEMENT

1. The authority citation for Part 840 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., and Pub. L. 100-34, unless otherwise noted.

2. Section 840.11 is amended by adding paragraphs (g) and (h) to read as follows:

§ 840.11 Inspections by State regulatory authority.

* * * * *

(g) Abandoned site means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that.

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The regulatory authority or the Office has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The regulatory authority:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to section 518(e), 518(f), 521(a)(4) or 521(c) of the Act or their regulatory program counterparts to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted or bonded:

(i) The permit has expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently; and

(ii) The regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond.

(h)(1) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the regulatory authority shall inspect each abandoned site as necessary to monitor for changes of environmental conditions or operational status at the site.

(2) Before ceasing to perform inspections at the frequency required by paragraphs (a) and (b) of this section at an abandoned site, the regulatory authority shall:

(i) Evaluate the environmental conditions and operational status of the site; and

(ii) Document in writing the inspection frequency necessary to comply with paragraph (h)(1) of this section, and the reasons for selecting that frequency.

PART 842—FEDERAL INSPECTIONS AND MONITORING

3. The authority citation for Part 842 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., and Pub. L. 100-34, unless otherwise noted.

4. Section 842.11 is amended by adding the following new paragraphs (e) and (f) to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(e) Abandoned site means a surface coal mining and reclamation operation for which the Office has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The Office has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The Office:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to sections 518(e), 518(f), 521(a)(4) or 521(c) of the Act or their regulatory program counterparts to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted or bonded:

(i) The permit has expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently; and

(ii) The Office has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond.

(f) (1) In lieu of the inspection frequency established in paragraph (c) of this section, the Office shall inspect each abandoned site as necessary to monitor for changes of environmental conditions or operational status at the site.

(2) Before ceasing to perform inspections at the frequency required by paragraph (c) of this section at an abandoned site, the regulatory authority shall:

(i) Evaluate the environmental conditions and operational status of the site; and

(ii) Document in writing the inspection frequency necessary to comply with paragraph (f)(1) of this section, and the reasons for selecting that frequency.

PART 843—FEDERAL ENFORCEMENT

5. The authority citation for Part 843 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., and Pub. L. 100-34, unless otherwise noted.

6. Part 843 is amended by adding a new § 843.22 to read as follows:

§ 843.22 Enforcement actions at abandoned sites.

The Office may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in § 842.11(e) of this chapter, if abatement of the violation is required under any previously issued notice or order.

[FR Doc. 88-14737 Filed 6-29-88; 8:45 am]

BILLING CODE 4310-05-M

federal register

Thursday
June 30, 1988

Part V

Department of Education

34 CFR Part 612

Drug Prevention Programs in Higher Education; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 612

Drug Prevention Programs in Higher Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the implementation of Drug Prevention Programs in Higher Education. These programs support activities of drug abuse education and prevention for higher education students.

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 Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Donald R. Fischer, Drug Prevention Programs, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, ROB-3, Stop 3331, 7th and D Streets, SW., Washington, DC 20202-3331. Telephone: (202) 732-5766.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the President signed into law the Anti-Drug Abuse Act of 1986. Subtitle B of Title IV of this Act, the Drug-Free Schools and Communities Act of 1986, provides for strong Federal leadership in establishing effective drug and alcohol abuse education and prevention programs. Sections 4131 (a) and (d) authorize contracts and grants to institutions of higher education to develop, implement, operate, and improve programs of drug abuse education and prevention, including rehabilitation referral, for students enrolled in institutions of higher education.

On March 7, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for the Drug Prevention Programs in Higher Education in the **Federal Register** (53 FR 7312).

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted comments on the proposed regulations. An analysis of the comment and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Public Comment

In the NPRM the Secretary invited comments on the proposed regulations. The only substantive comment the Secretary received suggested a change in the definition of eligible institutions that the Secretary is not legally authorized to make under the applicable statutory authority. Except for minor editorial and technical revisions, the Secretary has made no changes in these regulations since publication of the NPRM.

Effective July 1, 1988, this program will be reauthorized by section 5131 of the Drug-Free Schools and Communities Act, title V of the Elementary and Secondary Education Act of 1965 as contained in title I of the August P. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Act of 1988 (Pub. L. 100-297). Because there are no substantive differences between the current and the reauthorized program statutes, the Secretary does not anticipate any amendments to these regulations based on Pub. L. 100-297. It is anticipated that these regulations will become effective after the effective date of Pub. L. 100-297. For this reason, the citation following each section of these final regulations has been changed to the appropriate U.S. Code citation for Pub. L. 100-297.

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.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department 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 612

Colleges and universities, Drug abuse, Grant programs—education, Reporting and recordkeeping requirements.

Dated: June 7, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.183 Drug Prevention Programs in Higher Education)

The Secretary amends Title 34 of the Code of Federal Regulations Chapter VI by adding a new Part 612 to read as follows:

PART 612—DRUG PREVENTION PROGRAMS IN HIGHER EDUCATION

Subpart A—General

Sec.
612.1 What are the Drug Prevention Programs in Higher Education?
612.2 Who is eligible to receive an award?
612.3 [Reserved]
612.4 What regulations apply?
612.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

612.21 What types of competitions does the Secretary conduct?
612.22 How does the Secretary evaluate an application?
612.23 What selection criteria does the Secretary use?
612.24 What additional factors does the Secretary consider?
612.25 What other information may the Secretary request?

Subpart D—What Conditions Must Be Met by a Grantee?

612.31 What shall a grantee ensure with regard to project materials?
612.32 What must an Institution-wide Program project include?

Authority: 20 U.S.C. 3211, unless otherwise noted.

Subpart A—General

§ 612.1 What are the Drug Prevention Programs in Higher Education?

The Drug Prevention Programs in Higher Education include the Institution-wide Program competitions, the Special Focus Program competitions, and the Analysis and Dissemination Program competitions. Awards under these competitions provide assistance to institutions of higher education (IHEs) and consortia of IHEs to develop, implement, operate, and improve programs of drug abuse education and prevention, including rehabilitation referral, for students enrolled in IHEs.

(Authority: 20 U.S.C. 3211)

§ 612.2 Who is eligible to receive an award?

(a) IHEs and consortia of IHEs are eligible to receive awards under these competitions.

(b) An applicant may receive no more than one award in any competition in any fiscal year.

(c) If an applicant has received an award in a competition, the applicant may not receive a new award in that competition in a subsequent year until—

(1) The Secretary determines that the applicant will satisfactorily complete the project previously supported; and

(2) The applicant has submitted every report that it must submit in connection with the prior project.

(d) In the case of Analysis and Dissemination Program competitions conducted under § 612.21(d), eligibility is limited to current or former recipients of an award under—

(1) An Institution-wide Program competition (see § 612.21(b)); or

(2) A Special Focus Program competition (see § 612.21(c)).

(Authority: 20 U.S.C. 3211)

§ 612.3 [Reserved]

§ 612.4 What regulations apply?

The following regulations apply to the Drug Prevention Programs in Higher Education:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 612.

(Authority: 20 U.S.C. 3211)

§ 612.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Fiscal Year
Grant
Private
Project
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Drug-Free Schools and Communities Act of 1986.

"Consortium," as used in this part, means a group of private or public institutions of higher education.

"Drug abuse education and prevention" means prevention, early intervention, rehabilitation referral, and education related to the abuse of alcohol and the use and abuse of controlled, illegal, addictive, or harmful substances.

"Illicit drug use" means the use of illegal drugs and the abuse of other drugs and alcohol.

"Institution of higher education" means an educational institution in any State which—

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which requires the understanding and application of basic engineering, scientific, or mathematical principles or knowledge if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribed the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981, and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

"Limited enrollment," as used in this part, means a total fall enrollment of no more than 1,000 full-time and part-time students.

(Authority: 20 U.S.C. 3211)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 612.21 What types of competitions does the Secretary conduct?

(a) *General.* The Secretary conducts the competitions described in paragraphs (b), (c), and (d) of this section.

(b) *Institution-wide Program competitions.* (1) In these competitions, the Secretary supports projects to develop, implement, operate, and improve programs of drug abuse education and prevention, including rehabilitation referral, for students in IHEs.

(2) These projects are for comprehensive, institution-wide programs designed to prevent or eliminate students' use of illegal drugs and abuse of other drugs and alcohol, including activities whose direct or indirect purpose is to train students, faculty, and staff in drug abuse education and prevention.

(c) *Special Focus Program competitions*—(1) *General.* In these competitions, the Secretary supports projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs.

(2) *Approaches and problem areas.* The Secretary may conduct competitions based on the following individual approaches or problem areas:

(i) The formulation of promising new approaches to individuals and institutional leadership and responsibility.

(ii) The development and implementation of programs conducted in conjunction with national student networks or organizations.

(iii) The development, implementation, operation, or improvement of programs that concentrate on the following individual items or combination of these:

(A) Specific types of drug use or alcohol abuse.

(B) Specific approaches to the prevention of drug use or alcohol abuse.

(C) Particular student activities or elements of campus life.

(d) *Analysis and Dissemination Program competitions.* In these competitions, the Secretary supports projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-wide Program competitions and Special Focus Program competitions.

(Authority: 20 U.S.C. 3211)

§ 612.22 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application on the basis of the applicable selection criteria in § 612.23.

(b) The Secretary awards up to 100 points for the selection criteria, including a reserved 15 points to be distributed in accordance with paragraph (c) of this section. The maximum possible points for each criterion in a competition, exclusive of the reserved points, is indicated in parentheses in § 612.23(c) following the title of that criterion appearing in the list of criteria applicable to the competition.

(c) The Secretary distributes the reserved 15 points among the applicable criteria in § 612.23. The Secretary announces the distribution through a notice in the **Federal Register.**

(Authority: 20 U.S.C. 3211)

§ 612.23 What selection criteria does the Secretary use?

(a) *Use of selection criteria.* The Secretary uses the selection criteria described in paragraph (b) of this section to evaluate applications in the competition conducted under this part. The selection criteria applicable to each competition are listed in paragraph (c) of this section.

(b) *General criteria*—(1) *Need.* The Secretary reviews each application to determine the extent to which the project meets specific needs in drug education and prevention for students enrolled in institutions of higher education that will participate, including—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs; and

(iii) The benefits to be gained by meeting those needs.

(2) *Design.* The Secretary reviews each application to determine the quality of the design of the project, including—

(i) The extent to which project activities are appropriate to and designed to meet the objectives of—

(A) The competition; and

(B) The proposed project;

(ii) The extent to which the project's design takes into account research findings, scholarly information, and information on exemplary practices; and

(iii) The extent and magnitude of the benefits that the design is likely to produce for students in the applicant's institution or student enrolled in institutions of higher education.

(3) *Methods and management plan.* The Secretary reviews each application to determine the quality of the methods and management plan proposed for implementing the design of the project, including—

(i) The extent to which the methods for implementing the design of the project and for achieving the objectives of the project are appropriate;

(ii) The extent to which the management plan is likely to be effective and will ensure proper and efficient administration of the project; and

(iii) The quality of the applicant's management plan to use its resources and personnel to achieve each objective.

(4) *Key personnel.* (i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use in the project, including—

(A) The qualifications of the project director (if one is used) and of the other key personnel to be used in the project;

(B) The extent to which key personnel can provide specialized knowledge necessary for the success of the project or have access to that knowledge; and

(C) The time that each key person will commit to the project.

(ii) In evaluating personnel qualifications under paragraph (b)(4)(i)(A) of this section, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(5) *Evaluation.* The Secretary reviews each application to determine the quality of the plan for evaluating the project, including the extent to which the applicant's methods of evaluation—

(i) Are adequate and appropriate to the project; and

(ii) Are objective and will produce quantitative and qualitative data that are valid and reliable.

(6) *Cost effectiveness and budget clarity.* The Secretary reviews each application to determine the extent to which—

(i) Costs are reasonable in relation to the objectives of the project;

(ii) The budget is adequate to support the project; and

(iii) Allocations of resources in the budget are clearly related to the objectives of the project.

(7) *Organizational commitment.* The Secretary considers the extent of the applicant's organizational commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project when Federal assistance ends.

(c) *Specific competition criteria*—(1) *Institution-wide Program competitions.*

(i) *Need.* (5 points) (see § 612.23(b)(1)).

(ii) *Design.* (20 points) (see § 612.23(b)(2)).

(iii) *Methods and management plan.* (15 points) (see § 612.23(b)(3)).

(iv) *Key personnel.* (10 points) (see § 612.23(b)(4)).

(v) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(vi) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(vii) *Organizational commitment.* (15 points) (see § 612.23(b)(7)).

(2) *Special Focus Program competitions.*

(i) *The formulation of promising new approaches to individual and institutional leadership and responsibility.*

(A) *Need.* (10 points) (see § 612.23(b)(1)).

(B) *Design.* (30 points) (see § 612.23(b)(2)).

(C) *Methods and management plan.* (15 points) (see § 612.23(b)(3)).

(D) *Key personnel.* (20 points) (see § 612.23(b)(4)).

(E) *Evaluation.* (0 points) (see § 612.23(b)(5)).

(F) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(ii) *The development and implementation of programs conducted in conjunction with national student networks or organizations.*

(A) *Design.* (20 points) (see § 612.23(b)(2)).

(B) *Methods and management plan.* (20 points) (see § 612.23(b)(3)).

(C) *Key personnel.* (15 points) (see § 612.23(b)(4)).

(D) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(E) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(F) *Organizational commitment.* (10 points) (see § 612.23(b)(7)).

(iii) *The development, implementation, operation, or improvement of programs that concentrate on specific types of drug use or alcohol abuse; specific approaches to the prevention of drug use or alcohol abuse; particular student activities or elements of campus life; or a combination of these.*

(A) *Need.* (15 points) (see § 612.23(b)(1)).

(B) *Design.* (20 points) (see § 612.23(b)(2)).

(C) *Methods and management plan.* (15 points) (see § 612.23(b)(3)).

(D) *Key personnel.* (15 points) (see § 612.23(b)(4)).

(E) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(F) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(3) *Analysis and Dissemination Program competitions.*

(i) *Design.* (30 points) (see § 612.23(b)(2)).

(ii) *Methods and management plan.* (20 points) (see § 612.23(b)(3)).

(iii) *Key personnel.* (15 points) (see § 612.23(b)(4)).

(iv) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(v) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(Authority: 20 U.S.C. 3211)

(Approved by the Office of Management and Budget under control number 1840-0587)

§ 612.24 What additional factors does the Secretary consider?

After applications are scored and placed in rank order, the Secretary, in selecting applications for funding, seeks to achieve an equitable distribution of funded projects by considering the following factors:

(a) Geographic regions.

(b) Two-year and four-year IHEs.

(c) Public and private IHEs.

(d) IHEs with limited enrollments.

(Authority: 20 U.S.C. 3211)

§ 612.25 What other information may the Secretary request?

In any competition, after applications are scored and placed in rank order, the Secretary may request of an applicant oral information related to its application. The information requested will be relevant to the applicable criteria and will be used to verify or clarify information about a project or about the applicant in the Secretary's evaluation of an application.

(Authority: 20 U.S.C. 3211)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 612.31 What shall a grantee ensure with regard to project materials?

A grantee shall ensure that any materials the grantee produces or distributes with funds provided under this part reflect the message that illicit drug use is wrong and harmful.

(Authority: 20 U.S.C. 3221)

§ 612.32 What must an Institution-wide Program project include?

A recipient of an award under the Institution-wide Program competition shall—

(a) Conduct an initial and a final assessment of the extent to which the recipient's students use illegal drugs and abuse alcohol and other drugs; and

(b) (1) Develop an institution-wide drug and alcohol policy with respect to its students; or

(2) Review and, if necessary, revise an existing policy regarding drugs and alcohol.

(Authority: 20 U.S.C. 3211)

[FR Doc. 88-14749 Filed 6-29-88; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Thursday
June 30, 1988

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Improved Survival Equipment for Inadvertent Water Landings; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25642; Notice No. 88-11]
RIN 2120-AC72

Improved Survival Equipment for Inadvertent Water Landings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes new requirements for water survival equipment carried aboard airplanes and rotorcraft. The requirements would apply, after specified dates, to U.S. certificate holders that conduct common carriage operations with airplanes and rotorcraft. This proposal is in response to the Airport and Airway Safety and Capacity Enhancement Act of 1987 (Public Law 100-223) and relates to safety recommendations by the National Transportation Safety Board. The proposed requirements are intended to increase the likelihood of aircraft passengers surviving a crash landing in water.

DATE: Comments must be received on or before November 28, 1988.

ADDRESS: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25642, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 25642. Comments may be examined in Room 915G weekdays, between 8:30 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard W. Nelson, Aircraft Engineering Division (AWS-120), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-9574.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proceeding by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available, both before and after the closing date for comments in the Rules Docket, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25642." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

This notice is in response to Public Law (Pub. L.) 100-223, entitled "Airport and Airway Safety and Capacity Enhancement Act of 1987," which was enacted December 30, 1987. Specifically, section 303(a) of Pub. L. 100-223 requires that the Secretary of Transportation, not later than 180 days after the date of enactment, initiate a rulemaking proceeding to consider requiring (1) adequate, uniform life preservers, life rafts, and flotation devices for passengers, including small children and infants, on flights of an air carrier which the Secretary determines will partly occur over water, and (2) adequate information and instructions as to the use of such preservers, rafts, and flotation devices.

This notice also addresses passenger safety during evacuations that are carried out in water, particularly those which result from inadvertent water landings. Inadvertent water landings are the most critical type of landings from the standpoint of passenger survival because of the lack of time for preparation for landing, water impact, and evacuation, and the likelihood of major cabin structural damage. This notice also contains proposals to enhance safety in planning ditchings. A planned ditching, in contrast with an inadvertent water landing, permits the crew to plan the landing for the least structural damage and affords some time for the preparation for impact and evacuation. The proposals, if adopted, would improve passenger survivability by improving survival equipment and are based on studies by the FAA and a study and recommendations by the National Transportation Safety Board (NTSB).

The likelihood of at least some part of passenger-carrying flights conducted under either Part 121 or Part 135 within the United States occurring over water is quite high and is sufficient to warrant applicability of the proposals to all passenger-carrying aircraft operated under those parts. However, there may be practical and operational considerations which could affect the extent to which the proposed requirements should be applied to other aircraft operations. Thus, detailed comments and relevant economic data are requested to assist the FAA in determining the extent to which the proposal should be applied.

FAA Staff Study

In August 1984, the FAA completed a staff study on inadvertent, survivable air carrier water accidents. The staff study considered a broad range of passenger survival issues, including accident statistics, analysis of the potential hazards associated with water type accidents, and the feasibility of various means of addressing these potential hazards. The study concluded that water survival equipment requirements in the regulations for the U.S. air carrier fleet were adequate. The study did acknowledge the potential for improvement in individual flotation seat cushions, life preservers, and inflatable evacuation slides.

National Transportation Safety Board Study and Recommendations

Subsequent to the FAA staff study, the NTSB conducted an independent study on water survival from the unique point of view of accident experience, taking into consideration the findings of the FAA study and the survival scenarios of several recent aircraft water accidents which the NTSB had investigated. The NTSB study is presented in Report No. NTSB/SS-85/

02, Safety Study—Air Carrier Overwater Emergency Equipment and Procedures, dated June 12, 1985. The report is available from the National Technical Information Service, Springfield, Virginia 22161. (The Government Accession Number of the report is PB85-917006.) In addition, a copy of the report can be found in the docket for this rulemaking proceeding.

The NTSB issued a series of safety recommendations based largely on the findings of its study. The NTSB recommended that Parts 121 and 135 be amended to require, for passenger-carrying aircraft operating under these parts, the installation of both life preservers and flotation seat cushions for passengers, and that life preservers be equipped with automatically activated survivor locator lights. The NTSB also recommended that Part 121 be amended to require quick release girts and handholds on emergency evacuation slides to increase their usefulness as flotation devices in the event of a water landing.

These recommended equipment improvements place greater emphasis on the inadvertent water impact type of accident which experience has shown has a greater likelihood of occurrence and is potentially more hazardous than the planned ditching. The requirement to install both life preservers and flotation seat cushions would virtually eliminate the consequences of confusion and uncertainty among occupants concerning the type of flotation equipment available in the event of an inadvertent water landing. Confusion has arisen on occasion when passengers, who mistakenly believed that all seat cushions are intended for flotation, attempted to use non-flotation cushions for buoyancy rather than the life preservers which had been provided for them beneath their seats. These new requirements would ensure that each occupant is provided a life preserver which provides the basic benefits of high buoyancy and water stability. In addition, each occupant would be afforded the back-up flotation means provided by seat cushions in the event of a severe water impact accident. Many of the seat cushions would likely float free following impact and structural break up. In such case, those seat cushions could become an additional and vital means of emergency flotation for some occupants.

The quick release girt and handhold provisions for slides would provide occupants with a mass platform-type flotation means (in other words, a form of life raft) for use following a sudden and unexpected water impact. Although the life rafts are mentioned in Pub. L. 100-223, the modified slides with quick release girts are potentially the most effective mass flotation device for use in an inadvertent water landing. Retrieval from stowage and deployment of life rafts require a degree of team effort and preplanning and, at times, may involve difficulty and some delay.

The NTSB has recommended that the life preservers installed in aircraft be required to meet the most current revision of Technical Standard Order (TSO)-C13. While there is no need for mandatory replacement of serviceable life preservers with those that would meet current TSO-C13, there is merit in seeking the highest practical equipment performance level reflected in the various TSO revisions. Technical Standard Order-C13e, adopted April 23, 1986, specified a cut-off date of April 23, 1988, after which all newly manufactured life preservers identified as being approved under the TSO system would be required to meet the most current TSO. The cutoff date was established to promote the eventual upgrading of life preservers in the fleet to the higher performance level specified in TSO-C13e by assuring that replacement articles manufactured under the TSO system met the higher standards. The FAA has since rescinded the cutoff date (53 FR 6913; March 3, 1988) to provide the opportunity for public comment on the issue of fleet retrofit in context with this notice of proposed rulemaking. Accordingly, by this notice, the FAA requests comments, technical analyses, economic data, and other information relevant to the quality of retrofit life preservers to determine if the original objective of the cut-off date specified when TSO-C13e was adopted is appropriate, or whether alternative action should be pursued. Based on the comments received in response to this notice, the FAA will determine the appropriate action regarding revision of the TSO without further soliciting additional public comments.

The NTSB has recommended that Part 121 and Part 135 be amended to require that stowage compartments for passenger life preservers be located where the life preservers will not be susceptible to impact damage and seat collapse, or to cabin flooding.

In general, with regard to the current Part 121 and Part 135 fleet, whenever a life preserver is provided for a passenger, it is usually stowed just beneath the passenger seat. To retrieve a life preserver, the passenger leans forward and reaches beneath the forward edge of the passenger seat. In some aircraft, the underseat stowage compartment is equipped with a retaining closure or pocket flap which must be released or unsnapped, thus necessitating an additional motion on the part of the passenger retrieving the life preserver. Accident experience and research testing have demonstrated that typical airline passengers have difficulty in retrieving life preservers stowed in such a manner, and that such stowage beneath a passenger seat makes the life preservers vulnerable to water impact damage, seat collapse, and post-impact flooding, all of which might occur in inadvertent water impacts.

Although improvement in accessibility and retrieval of life preservers is possible and would substantially enhance passenger water survival in general, the advantages that would be gained by prohibiting underseat stowage of life preservers would not outweigh the disadvantages. In view of the limited available space around a passenger seat for the installation of personal safety equipment items such as life preservers, passenger information cards, and supplemental oxygen masks, stowage of life preservers beneath the seat is a reasonable location. There are problems with alternative stowage locations. Space is especially scarce in smaller sized cabins. Due to the added risk of passenger injury during crash landings, seat back stowage space should not be used for hard objects. Stowage in that location could also make life preservers vulnerable to pilferage, which service experience has shown to be a serious problem. Pilfered equipment is unavailable to passengers when needed in an emergency and creates a large, unwarranted expense for the operators. The adverse conditions of impact damage, seat collapse, and cabin flooding are addressed in the basic structural design of an airplane. The FAA currently has underway a major regulatory program to improve structural impact protection and seat strength for airplanes and rotorcraft. There is insufficient basis to conclude that passenger safety under severe water impact conditions involving major structural failures and cabin flooding can be improved to any significant degree by relocating life preserver stowage location. However, as mentioned before, there is merit in the objective of improving life preserver accessibility and retrievability. The FAA proposes in this notice new requirements that would improve accessibility and retrievability of life preservers.

The NTSB has also recommended that Parts 121 and 135 be amended to require that airplanes carry approved life preservers designed specifically for infants and children. This proposal

includes requirements for such life preservers.

In TSO-C13e life preserver categories are determined by minimum buoyant force. For example, the infant category of preserver having a weight of wearer criteria of under 35 pounds would be required to have a minimum buoyant force of 20 pounds in fresh water at 70° F. ± 5°.

Current Emergency Equipment Requirements

For extended overwater flights, current Parts 121 and 135 contain extensive equipment requirements to be used in the event of planned ditching. Part 121 also requires for any overwater operation that a life preserver or an approved flotation means be provided each occupant of the airplane. Typically, in current practice, an approved flotation device may be a life preserver, an inflatable device, or a flotation seat cushion approved under an applicable TSO. For extended overwater operations, Parts 121 and 135 require that a life preserver be provided for each occupant of the airplane. This requirement is contained in §§ 121.339 and 135.167, respectively.

Discussion of the Proposals

This notice addresses air carrier operations, as called for by Pub. L. 100-223. It also covers commercial operations involving intrastate common carriage. In addition, the FAA invites the public to express views and submit information regarding passenger safety, including water survival equipment, for all commercial operators. By this notice, the FAA solicits views, technical information, economic data, and any other information which might be useful in an assessment of the safety requirements established for commercial operators which conduct operations under Part 125 for possible future rulemaking.

The FAA proposes to amend various regulations to address, from the standpoint of improved individual survival equipment, the survivability of passengers following an accident in which an airplane inadvertently contacts a body of water during a phase of flight, such as during an overwater approach to landing or a departure overwater. The specific proposals are based to a large extent on service experience, feasibility analysis, and the accident survivability scenarios of aircraft operated under both Parts 121 and 135. The proposals would be applicable to both airplanes and rotorcraft, including those equipped with floats for water landings. The notice addresses survival equipment for all passengers, including non-revenue passengers carried onboard cargo aircraft.

The current equipment inspection requirements in § 135.177(b) would be placed in a more appropriate location in proposed new § 135.166. Proposed new § 135.166 contains requirements similar to the requirements of current § 121.309 (a) and (b) and also includes proposals similar to the changes proposed to that section. Current § 121.309 contains general emergency equipment requirements. The proposed revisions to this section include requirements for life preserver retention, retrieval, donning procedures, and inflation actuation means. The proposed changes would incorporate compliance dates for these new requirements.

Life Preservers

Sections 121.339 and 135.167 would be revised to make it clear that after 3 years after the effective date of the rule, the life preserver requirements would be deleted and those requirements would be placed in revised § 121.340 and new § 135.168.

After 3 years after the effective date of the rule, § 121.340 and new § 135.168 would require that both an approved flotation seat cushion and a life preserver with an automatically activated survivor locator light be provided for each occupant. Current § 121.340 requires that each airplane be equipped with either a life preserver or an approved flotation seat cushion for each occupant.

The provision in § 121.340(b) for deviation to operate an airplane without the required life preservers would be eliminated since life preservers would be required regardless of whether the airplane is involved in overwater operation.

Proposed revisions to § 121.340 and new § 135.168 would further require that in the event infants and children are carried aboard the aircraft, each infant and child must be provided with a life preserver. These preservers would be required to be designed specifically for infants and children and must be equipped with an automatically activated survivor locator light. The life preservers would be required to be designed to raise the wearer's upper torso (i.e., from the waist up) out of the water to cope with the detrimental effects of hypothermia. Adults accompanying infants and children would be provided with the life preserver prior to flight. The requirements for infant and child life preservers would become effective 1 year after the effective date of the final rule. The 1-year period is considered necessary to allow operators sufficient lead time to obtain and install the infant and child life preservers.

Proposed revisions to § 121.309 and new § 135.166 would require that the stowage pocket for each passenger life preserver must be an approved pocket which allows the passenger, using only one hand, to readily locate the pocket, open it, grasp the life preserver, and retrieve it. Many underseat life preserver compartments currently in service are designed for one hand retrieval. For other stowage compartments, such as overhead compartments, this requirement could entail the pushing or pulling open a compartment and grasping the device with one hand. For those existing compartments that would not meet the proposed requirement, the modifications to the compartments necessary to meet the proposed requirement are expected to be minor. The FAA recognizes, however, that because of design characteristics and space limitations of small cabins, there could be problems for certain Part 135 aircraft operators to provide and stow life preservers. Therefore, the FAA solicits relevant comments, technical analyses, economic data, and other information to assist in determining the extent to which the proposal should be applied. Each passenger life preserver other than an infant or child life preserver must be stowed in an approved pocket.

The proposed requirements for life preservers and improved life preserver stowage compartments would become effective 3 years after the effective date of the final rule. The 3-year period is considered necessary to allow operators sufficient lead time to redesign and modify equipment storage provisions if necessary, procure and install the equipment items, and revise related maintenance programs.

To improve passenger familiarity with life preserver donning and to enhance the effectiveness of the information provided on passenger safety information cards regarding donning, proposed § 121.309 and new § 135.166 would require that each life preserver installed in an aircraft intended for passenger use have, respectively by life preserver category, the same type of retention means, donning procedures, and inflation means. These provisions would not require that all passenger life preservers in the same aircraft be of the same specific make and model, since some differences between individual models do not necessarily affect retention means, donning procedures, or inflation means. The proposal reflects the general current practice throughout

the airline industry, although there have been reports of life preservers with significantly different donning features installed in the same cabin. The proposed requirements concerning the type of retention means, donning procedures, and inflation means would become effective 1 year after the effective date of the final rule. The 1-year period would allow operators sufficient lead time to examine life preserver installations in service and, if necessary, to replace some life preservers to bring the aircraft into compliance with the regulation.

Flotation Seat Cushions

Proposed changes to § 121.340 and new § 135.168 would require that a flotation seat cushion be provided for each occupant. Flotation seat cushions are currently carried in many airplanes operated under Part 121 and the feasibility of installing this type of cushion has been demonstrated in service. In typical passenger seats, the bottom seat cushion can be constructed to serve as a flotation cushion. Because the proposal would require the flotation equipment regardless of whether the airplane is involved in overwater operation, the provision for a deviation to operate an airplane without the required flotation means currently provided for in § 121.340(b) would be eliminated. Currently, there are no airplanes operating under the deviation authority provided by § 121.340(b).

The proposed requirement for flotation seat cushions would become effective 3 years from the effective date of the final regulations. The 3-year period is considered necessary to allow operators sufficient lead time for procurement and installation of the equipment and to revise related maintenance programs.

Emergency Evacuation Slides

Section 121.310(a) would be revised to require that inflatable emergency evacuation slides installed at certain main deck floor level exits be designed to have positive buoyancy when extended, with quick release girts and handholds along the sides, to permit their use as emergency flotation devices. Evacuation slide/life raft combination devices installed at exits would satisfy these requirements. The proposed requirements of § 121.310 would be applicable to airplanes operating under Part 135 by reference in § 135.177.

The FAA recognizes that not all aircraft operated under Parts 121 and 135 have slides and that on those that do have slides, the slides may not accommodate all passengers. Comments, technical analyses, economic data, and other information regarding this aspect of the proposal are requested. This information would assist the FAA in determining the feasibility of supplemental platform-type flotation devices or other flotation means similar to slides and life rafts.

The proposed requirements in § 121.310(a) for emergency evacuation slides would become effective 3 years from the effective date of the final rule. The 3-year period is considered necessary to allow the operators sufficient lead time to procure and install the modified slides and revise related maintenance programs.

Briefing Passengers

Sections 121.571 and 135.117 would be revised to require that before each take-off passengers be briefed on the location and use of required flotation equipment. In addition, a demonstration of the method of donning and inflating the life preservers would have to be given.

Regulatory Evaluation

Introduction

Executive Order 12291, dated February 17, 1981, requires an evaluation of proposed rules to assure that the benefits of a proposal exceed the costs that the proposal imposes on society and the lowest net cost (costs less benefits) is imposed on society. In addition, the Regulatory Flexibility Act of 1980 requires that each regulatory action be analyzed for its impact on small business.

While this rulemaking action is required by law (Pub. L. 100-223), the FAA has exercised as much discretion as the statute permits in order to make the proposal as cost effective as possible. The preliminary evaluation indicates that the costs of this proposal would exceed the benefits. Commenters are invited to suggest alternate compliance methods to those proposed in this notice if such alternate methods can produce the benefits discussed below at lower costs. Commenters also are asked to address the costs and benefits, as well as the applicability, of each of the proposed requirements affecting Part 121 operations separately from those affecting Part 135 operations in order to give the FAA the information necessary to insure that the most cost-beneficial solution is used in any final rule.

Benefits

The benefits expected if this proposal is adopted would be the prevention of drowning of persons who survived an initial water impact and who evacuated the aircraft before it was flooded. The additional equipment requirements would not reduce fatalities that would result from impact injuries or drownings of victims who are unable to evacuate the aircraft because of unconsciousness or impact injuries. In this evaluation, benefits are defined as elimination of preventable drownings. A preventable drowning is any fatality that results from an aircraft accident in which the flight terminates in water where the victim dies of a drowning that occurs outside the aircraft and no other cause.

The number of drowning that may be prevented in the future if this proposal is adopted has been estimated by reviewing available U.S. air carrier accident records for the past 25 years, by determining the rate of drownings per year, and by projecting this rate into the future. In reviewing the accident data for Part 121 operations, the FAA recognizes that the 25-year average may not be the most applicable estimate of future accidents. The data indicate a significant drop in the number of preventable drownings since the mid 1970's. For the purpose of this evaluation, the FAA is assuming that the future rate of preventable drownings is equal to the average rate over the past 25 years. The FAA estimates that the total preventable drownings for operations conducted under Parts 121 and 135 would be 6.07 per year. Commenters should be aware, however, that this evaluation is sensitive to that assumption and if the analysis assumed the rate of future preventable drownings is equivalent to, for example, the average over the past 10 years, the expected benefit estimate would be much lower.

One million dollars is used as the minimum value of a statistical life for the purposes of this evaluation. If it is assumed that 6.07 drownings would be prevented annually over a 15-year period should this proposal be adopted, the present value of benefits (using 1988 dollars with a 10 percent discount rate) is determined to be $46.1 million. A more detailed description of the methodology used to calculate benefits is shown in the full regulatory evaluation contained in the docket, including a separate breakdown of the benefits associated with the proposed amendment to Part 121 and those proposed for Part 135.

Costs

The present value cost of this proposal, if adopted, is estimated to be $62.13 million. Most of this cost ($48.19 million or 77.6 percent of the total costs) would be attributed to Part 121 operations. Costs associated with Part

135 air taxi operations would be $9.59 million or 15.4 percent while Part 135 commuter costs are estimated to be $4.35 million or 7.0 percent. Again, a complete description of costs is contained in the regulatory evaluation.

Benefit/Cost Comparison

Commuter and air taxi estimated benefits were added together to calculate the estimated benefits of this proposed rule when applied to Part 135 operations. The same procedure was used to calculate costs. Commenters, however, are asked to address commuter air carriers and air taxis separately when providing their views on this proposal. The projected benefits would exceed the costs for Part 135 operations by a ratio of 2.48 to 1. Commenters should be aware that the comparison assumes that the proposed rule would be 100 percent effective in eliminating preventable drownings during Part 135 operations. Commenters should address the appropriateness of this assumption and provide any available data to support an alternate assumption about the effectiveness of this proposal.

The benefit/cost ratio for the Part 121 proposals would be 0.24 to 1. While this ratio would normally support an FAA decision not to make such proposals, the statute does not give the FAA such discretion. Commenters are invited to suggest alternate methods for Part 121 compliance with Pub. L. 100-223 that could result in a more favorable ratio. Again, commenters should be aware that this ratio assumes that the proposal would be 100 percent effective in eliminating preventable drownings during Part 121 operations. As discussed previously, to the extent that different assumptions or data are used (e.g., 60 percent effectiveness, most recent 10-year average) this ratio would become even less favorable.

International Trade Impact Analysis

The proposed rule is unlikely to have any impact on international trade because the proposal, if adopted, would mainly affect U.S. air carriers that provide domestic service. The major cost of this proposal would be the requirement that all aircraft operators that provide passenger-carrying operations must be equipped with life preservers. This proposal would impose additional costs on certificate holders that conduct domestic passenger-carrying operations, since they generally do not equip their aircraft with life preserves. However, these operators do not compete with foreign operators in the domestic market. Aircraft used by certificate holders to provide international passenger service generally are equipped with life preservers. Since this is also true for aircraft operated by foreign carriers, they would not enjoy a cost advantage over the U.S. carriers.

The other provisions of this rule would impose a negligible cost on U.S. operators. These costs would not have a significant impact on U.S. operators that provide international passenger service, and they would not significantly affect international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires each agency to review rules which have "a significant economic impact on a substantial number of small entities." The FAA determined that a small aircaft operator is one which operates nine or fewer aircraft. The annualized cost thresholds for small operators are $95,300 for scheduled carriers with all aircraft over 60 seats, $53,300 for other scheduled operators, and $3,700 for unscheduled operators.

The annualized cost that would be imposed on scheduled operators is approximately $5,920 per wide-body airplane if the airplane is not equipped with life preservers. The annualized cost of this proposal, if adopted, would be $53,280 for a small scheduled operator to equip nine wide-body airplanes with life preservers. The cost of the proposed rule is below the threshold for both the above categories for scheduled operators. The annualized cost that would be imposed on unscheduled Part 135 operators is approximately $1,240 per aircraft with 25 passenger seats assuming these aircraft are currently without life preservers. Small unscheduled Part 135 operators are not expected to suffer a significant adverse economic impact because no small unscheduled Part 135 carriers operate three or more aircraft with a passenger seating capacity of 25 or more (the fleet size whereby the cost, by definition, becomes significant).

There are six small unscheduled Part 121 operators that carry passengers on charter flights. The annualized cost that this proposed rule would impose on these operators would be approximately $2,600 per narrow-body airplane that currently is not equipped with life preservers, and $5,920 per wide-body airplane that is not currrently equipped with life preservers. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, September 16, 1986, defines a "substantial number of small entities" as more than one-third of the small entities subject to the proposed rule, but not less than 11. Because small unscheduled Part 121 operators number less than 11, the proposal, if adopted, will not impact a substantial number of small unscheduled operators.

Thus, a substantial number of small unscheduled operators would not be adversely affected in a significant way by the proposed rule. Therefore, the proposed rule, if adopted, would not impose a significant economic impact on a substantial number of small entities and, thus, a regulatory flexibility analysis is not required.

Federalism Implications

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 121

Aviation safety, Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Common carriers, Crashworthiness, Emergency evacuation, Safety, Smoking, Transportation.

14 CFR Part 135

Aviation safety, Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Common carriers, Crashworthiness, Emergency evacuation, Safety, Smoking, Transportation.

The Proposed Amendments

Accordingly, the FAA proposes to amend Parts 121 and 135 of the Federal Aviation Regulations, 14 CFR Parts 121 and 135 as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATIONS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1374(d) (as amended by Pub. L. 100-202), 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. Section 121.309 is amended by redesignating paragraphs (c), (d), (e), and (f) as (d), (e), (f), and (g) respectively; and by adding a new paragraph (c) as follows:

§ 121.309 Emergency equipment.

* * * * *

(c) In addition to the general requirements and flotation equipment requirements prescribed in paragraphs (a) and (b) of this section, the following requirements must be met—

(1) After [3 years after the effective date of the rule], each passenger life preserver, other than an infant or child life preserver, must be located in an approved pocket which allows the passenger, while seated and using only one hand, to readily locate the pocket, open it, grasp the life preserver, and retrieve it. The means of retrieval of the life preserver must be simple and obvious to the passenger; and

(2) After [1 year after the effective date of the rule], each life preserver of a specified category installed on a given airplane must have the same type of retention means, donning procedure, and inflation actuation means. Life preserver categories are: adult, adult-child combination, child, and infant. These life preserver categories are futher defined in Technical Standard C13e.

* * * * *

3. Section 121.310 is amended by amending paragraph (a) to add the following at the end of the paragraph:

§ 121.310 Additional emergency equipment.

(a) * * * After [3 years from the effective date of the rule], inflatable evacuation slides installed at main deck floor level exits (other than wing-to-ground, fillet mounted, tail cone, or ventral slides) must be designed to have positive buoyancy when extended; must have handholds on the sides; and must have a means to readily disconnect the device from the airplane for use as an emergency flotation device. The means of disconnecting the device shall be marked and readily apparent and shall be capable of being operated by an untrained person. Approved slide/raft combinations are not subject to the requirements of this paragraph.

* * * * *

4. Section 121.339 is amended by redesignating paragraphs (a) (1), (2), (3), and (4), as (a) (4), (1), (2), and (3), respectively; and by revising newly redesignated paragraph (a)(4) to read as follows:

§ 121.339 Emergency equipment for extended over-water operations.

(a) * * *

(4) Until [3 years after the effective date of the rule], a life preserver equipped with an approved survivor locator light for each occupant of the airplane.

* * * * *

5. Section 121.340 is revised to read as follows:

§ 121.340 Emergency flotation means.

(a) Until [3 years after the effective date of the rule], no person may operate a large airplane in any overwater operation unless it is equipped with life preservers in accordance with § 121.339(a)(4), or with an approved flotation means for each occupant. This means must be within easy reach to each seated occupant and must be readily removable from the airplane.

(b) Notwithstanding the requirements in paragraph (a) of this section, no person may operate an airplane unless it contains the following equipment—

(1) After [1 year after the effective date of the rule], an approved life preserver for each infant and child. The approved life preserver must be located at the passenger seat, or in the immediate vicinity of the seat, occupied by the individual responsible for the infant or child. Provisions for stowage of the life preserver shall be approved by the Administrator. The approved life preserver must be equipped with an approved survivor locator light which automatically activates upon contact with water. These preservers must be designed specifically to raise the wearer's upper torso (i.e., from the waist up) out of the water;

(2) After [3 years after the effective date of the rule], an approved adult or adult/child combination life preserver for each adult occupant. A passenger life preserver must be located at each passenger seat, or in the immediate vicinity of the seat. The life preserver must be equipped with an approved survivor locator light which automatically activates upon contact with water; and

(3) After [3 years after the effective date of the rule], an approved flotation seat cushion for each occupant.

6. Section 121.571 is amended by adding a new paragraph (d) as follows:

§ 121.571 Briefing passengers before takeoff.

* * * * *

(d) Before each flight, each certificate holder shall ensure that all passengers are orally briefed by the appropriate crewmember on the location and operation of life preservers, including a demonstration of the method of donning and inflating the life preserver.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

7. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1374(d) (as amended by Pub. L. 100-202), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

8. Section 135.117(a) is amended by redesignating paragraphs (a) (7) and (8) as (a) (8) and (9), respectively; by adding a new paragraph (a)(7); and by revising paragraph (a)(6) to read as follows:

§ 135.117 Briefing of passengers before flight.

(a) * * *

(6) If the flight involves extended overwater operation, ditching procedures;

(7) Location and operation of—

(i) Life preservers, including a demonstration of the method of donning and inflation;

(ii) Life rafts, when applicable;

(iii) Other flotation means;

9. Section 135.166 is added to read as follows:

§ 135.166 Emergency equipment.

(a) *General.* No person may operate an aircraft unless it is equipped, as applicable, with the emergency equipment listed in §§ 135.155, 135.167, and 135.177.

(b) Each item of emergency and flotation equipment listed in §§ 135.155, 135.167, and 135.177—

(1) Must be inspected regularly in accordance with inspection periods established in the operations specifications to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purposes;

(2) Must be readily accessible to the crew and, with regard to equipment

located in the passenger compartment, to passengers;

(3) Must be clearly identified and clearly marked to indicate its method of operation; and

(4) When carried in a compartment or container, must be carried in a compartment or container marked as to contents and the compartment or container, or the item itself, must be marked as to date of last inspection.

(c) In addition to the flotation equipment requirements prescribed in paragraph (b) of this section, the following requirements must be met:

(1) After [3 years after the effective date of the rule], each passenger life preserver, other than an infant or child life preserver, must be located in an approved pocket which allows the passenger, while seated and using only one hand, to readily locate the pocket, open it, grasp the life preserver, and retrieve it. The means of retrieval of the life preserver must be simple and obvious to the passenger; and

(2) After [1 year after the effective date of the rule], each life preserver of a specific category installed on a given aircraft must have the same type of retention means, donning procedure, and inflation actuation means. Life preserver categories are: adult, adult-child combination, child, and infant. These life preserver categories are further defined in Technical Standard Order C13e.

10. Section 135.167 is amended by revising paragraph (a)(1) to read as follows:

§ 135.167 Emergency equipment: Extended overwater operations.

(a) * * *

(1) Until [3 years after the effective date of the rule], an approved life preserver equipped with an approved survivor locator light for each occupant of the aircraft. The life preserver must be easily accessible to each seated occupant.

* * * * *

11. Section 135.168 is added to read as follows:

§ 135.168 Emergency flotation equipment.

After [3 years after the effective date of the rule], no person may operate an aircraft unless it contains the following equipment—

(a) After [1 year after the effective date of the rule], an approved life preserver for each infant and child. The approved life preserver must be located at the passenger seat, or in the immediate vicinity of the seat occupied by the individual responsible for the infant or child. Provisions for stowage of the life preserver shall be approved by the Administrator. The approved life preserver must be equipped with an approved survivor locator light which automatically activates upon contact with water. These life preservers must be designed specifically to raise the wearer's upper torso (i.e., from the waist up) out of the water;

(b) After [3 years after the effective date of the rule], an approved adult or adult/child combination life preserver for each adult occupant. A passenger life preserver must be located at each passenger seat, or in the immediate vicinity of the seat. The life preserver must be equipped with an approved survivor locator light which automatically activates upon contact with water; and

(c) After [3 years after the effective date of the rule], an approved flotation seat cushion for each occupant.

§ 135.177 [Amended]

12. Section 135.177 is amended by removing paragraph designator (a) and paragraph (b); by redesignating paragraphs (a)(1), (2), (3), and (4) as (a), (b), (c), and (d); by redesignating former paragraph (a)(1)(i), (ii), and (iii) as new paragraphs (a)(1), (2), and (3).

Issued in Washington, DC, on June 27, 1988.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 88-14793 Filed 6-27-88; 5:09 pm]

BILLING CODE 4910-13-M

federal register

Thursday
June 30, 1988

Part VII

Department of Justice

Immigration and Naturalization Service

Department of State

Bureau of Consular Affairs

8 CFR Parts 212, 214, 217, 236, 242, 245, 248, and 299

Visa Waiver Pilot Program; Final Rule

22 CFR Part 41

Visas; Passports and Visas Not Required for Certain Nonimmigrants; Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 214, 217, 236, 242, 245, 248, and 299

[INS Number 1109-88]

Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule establishes the Visa Waiver Pilot Program provided at section 313 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) which added the pilot program as section 217 of the Immigration and Nationality Act (8 U.S.C. 1187). Under this program, the nonimmigrant visa requirement can be waived for certain aliens applying for admission as nonimmigrant visitors for a period not to exceed ninety days.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Yanghe Peggy Wong, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7123, Washington, DC 20536, Telephone: (202) 633-4033.

SUPPLEMENTARY INFORMATION: The Visa Waiver Pilot Program was established by Congress to determine if a visa waiver provision could facilitate international travel and promote the more effective use of the resources of affected government agencies while not posing a threat to the welfare, health, safety, or security of the United States. In furtherance of this aim, this rule contains provisions designed to facilitate travel, streamline or reduce the work of affected agencies, and ensure that vital national interests are protected. The Department of State concurs only in 8 CFR 212.1(i) of this rule, since other parts pertain to the responsibilities of the Immigration and Naturalization Service.

The proposed rule to implement the Visa Waiver Pilot Program, as authorized by section 313 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1187), was published in the **Federal Register** on May 12, 1988 (53 FR 16972). The comment period for the proposed rule ended on June 13, 1988.

Each of the comments received has been reviewed, analyzed, and considered. Generally, all of the comments were supportive, at least in concept, of the Visa Waiver Pilot Program. Many urged the Immigration and Naturalization Service (INS) and the Department of State to expand the program by designating additional qualifying countries to the maximum of eight allowed by section 217 of the Immigration and Nationality Act (Act). Some comments focused on possible increase in carrier liability; others raised questions on the waiver of rights required of those applying for entry into the United States under this program. The following discussion addresses each concern raised in the written comments. Although INS received twelve such letters, many concerns were duplicative.

(1) *Waiver of rights.* Several commentors noted that the waiver described in section 217(b)(4) of the Immigration and Nationality Act was, in their opinion, a waiver of the right to a review or appeal of an exclusion or deportation hearing, rather than of the hearings themselves. One commentor explains that "Under the basic inspection provision, an alien 'who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer.' 'The 'further inquiry' is called an exclusion proceeding. At this *de novo* hearing there is no attempt to review the earlier inspection which was accomplished without record or formal decision."

The section of the Act in question, section 217(b)(4), states that "An alien may not be provided a waiver under the pilot program unless the alien has waived any right (a) to review or appeal under this Act of *an immigration officer's determination* as to the admissibility of the alien *at the port of entry* into the United States * * * " (Emphasis added). Section 217(b)(4)(A) makes no reference to "further inquiry" stipulated in section 235 of the Act. The statutory language is clear, then, that when an alien chooses to apply for admission into the United States under the pilot program, he or she is waiving the right to a review or appeal of a decision on admissibility made by an immigration officer at the port of entry.

In addition, section 217(b)(4)(B) states that "An alien may not be provided a waiver under the pilot program unless the alien has waived any right * * * (B) to contest, other than on the basis of an application for asylum, *any* action for deportation against the alien" (Emphasis added). Section 217(b)(4)(B) of the Act makes no reference to other sections of the Act. The only statutory clause in that section which makes an exception to "*any* action for deportation" is "* * * other than on the basis of an application for asylum."

However, in recognition of the finality of the immigration officer's determination as to the alien's admissibility at the port of entry, the proposed rule has been changed to reflect that the action taken at the port of entry would be a refusal of admission. This procedure would permit the alien to apply for a visa and to reapply for admission without being barred from entry for one year, as would be the case after a formal order of exclusion. Further, the refusal of admission of an alien under this program shall be made at the level of the port director or of the officer-in-charge (or officer acting in either capacity), thereby ensuring at least two levels of supervisory review of the primary officer's recommendation.

(2) *Transportation ticket.* The statute's language on transportation tickets, that they be "issued by participating carriers, be roundtrip, nontransferable, nonrefundable, and valid for one year", was considered by many commenters to be too restrictive, thereby possible denying the pilot program to a great number of potential visitors to the United States and increasing the burden on carriers. First of all, travel industry representatives pointed out that most transportation tickets are issued by travel agencies, and sometimes, by more than one carrier. Second, comments indicate that many travelers choose to travel to a place and return home by a different mode of travel, such as by car or by rail after starting on aircraft or vessel. Third, one particular comment advised, "* * * under the carrier's tariffs, the ticket may actually be refundable." Fourth, another commentor wrote that many travelers on excursion fares had tickets which were valid for less than one year. Fifth, requiring the carriers to check for the various types of tickets would have placed a continuing burden on its agents, another commented. Finally, representatives of the travel industry urged that the pilot program be simplified on the issue of transportation tickets to make the program work on a practical level.

The definition of the term "roundtrip ticket" has been broadened to include travelers who may return to a place close to their country and who choose to travel by a different mode of transportation. The broader definition will enable many potential visitors for business to include a last-minute business meeting in the United States, for example. In addition, to include the myriad ticket issuing authorities, tariffs and travel procedures in practice, the final rule reflects that a roundtrip ticket, in possession of an alien arriving on a

carrier participating in the pilot program, will be considered statutorily qualifying.

(3) *Designation of countries.* One commentor specifically suggested that the "* * * criteria for selection of the United Kingdom as the first designated country" be published in the **Federal Register.** Another wrote that the selection seemed "* * * a natural choice * * * given the close cultural ties * * *" Others urged that additional countries be designated to participate in the program. The Secretary of State and the Attorney General, acting jointly, designated Japan and the United Kingdom to participate in the Visa Waiver Pilot Program, based upon the statutory criteria and the high volume of nonimmigrant visitors to the United States from those two countries. Japan had close to two million visitors to the United States during each of fiscal years 1986 and 1987; the United Kingdom had over one million visitors to the United States during the same time period. The two countries sent 3.5 million visitors to the United States in fiscal year 1987, which represent over 35% of the total 12.4 million nonimmigrant arrivals for that year.

Designation of the countries by volume of nonimmigrant traffic into the United States, within the statutory criteria, is consistent with the goal of reaching as many potential visitors to the United States as possible and of mitigating the demand for nonimmigrant visas at United States consular posts in Japan and the United Kingdom. However, since reciprocity is one of the statutory criteria, Japan is not yet eligible to participate until visa requirements are waived for United States citizens entering Japan. It is anticipated that additional countries will be designated up to the maximum of eight allowed by statute.

(4) *Discretionary Authority.* Several commentors asked why INS was reducing the discretionary authority of the Attorney General by precluding in the proposed rule the acceptance of "an application for waiver of grounds of excludability." Another commentor voiced concern that the Attorney General's parole authority under section 212(d)(5) not be "supplanted" under this program.

Section 217.4(a) of the proposed rule has been amended to reflect that the discretionary authority of the Attorney General to grant waivers and paroles under section 212(d) of the Act will be retained. For example, one member of a family group from a designated country may arrive with a passport from a non-designated country. In such an instance, provided that the nonimmigrant is not excludable under other sections of 212(a) of the Act, a waiver of the nonimmigrant visa may be granted by the Attorney General (with the concurrence of the Secretary of State).

However, when an alien is deported, he or she is barred from reapplying for admission without first obtaining the consent to apply for admission from the Attorney General. Such consent requires the review of the deportation record on file at offices of the Immigration and Naturalization Service. Such adjudicative procedures are beyond the normal responsibilities of a port of entry and therefore cannot be considered for a program designed to facilitate international travel. Thus, § 217.4(a) of the rule reflects that aliens who require the prior consent of the Attorney General to apply for admission after deportation cannot apply for admission as visitors under the pilot program; such applicants are required to apply for visas at American consulates abroad.

(5) *Visa Waiver Pilot Program Information Form (Form I-791).* Several commentors were concerned that the Form I-791 would not sufficiently inform the visitor of the limitations placed on the visitor applying under the program. For example, a visitor for business or pleasure applying for admission with a visa may be admitted for six months, with additional extensions of stay. Under the pilot program, the visitor is limited to 90 days, with no extensions allowed. With a visa, a visitor may apply for a change of nonimmigrant status, to that of a student or to an intra-company transferee, for example. Under the pilot program, the statute prohibits a change of nonimmigrant status, as well as adjustment of status to permanent resident, unless applying as spouse, parent or child of United States citizen.

The information and waiver of rights contained in Form I-791 carefully explains the eligibility criteria for admission under the pilot program, the conditions of admission, the grounds for exclusion under the Act, and the waiver of the right to an exclusion or deportation hearing. Much has been done to explain these provisions in the United Kingdom, and the form is being distributed to travel agents so that visitors can read and complete the form prior to purchase of tickets to the United States. Anyone who may think that he or she may be subject to exclusion may contact that American Embassy for advice. To further minimize any confusion, senior immigration officers have been detailed to London to train those in the travel industry and to be available at the airports.

(6) *Risk of fines.* Some comments articulated fears of "increased exposure to INS fines and penalties" and requested clarification on carrier liability under the program. Would a fine be imposed, one questioner asked, for example, if a carrier fails to check for proper ticketing of a passenger arriving under the program. Most commentors urged that no fines be imposed during the course of the pilot program to allay fears of carrier liability.

Failure to comply with the terms of the Visa Waiver Pilot Program Agreement (Form I-775) will result in a warning notice to the carrier that the agreement may be canceled. The carrier will be given fifteen days to correct the problem. Liability to fines would be limited to cases amenable to section 273 of the Act, which states that it is unlawful to bring to the United States "* * * any alien who does not have an unexpired visa." For example, under the pilot program, if a carrier boards an alien from a non-designated country, such action may result in a fine under section 273 of the Act. Yet, just as carriers cannot project how many instances of boarding ineligible applicants for admission will occur, INS cannot project how many violations will be cited.

However, to reassure carriers that the pilot program is not designed to increase their liability to fines, specific guidelines for immigration officers will include examples of cases subject to fine proceedings. In addition, in recognition of the need for a period of adjustment to this new program, the Immigration and Naturalization Service has decided, as a matter of policy, to impose no fines under the pilot program during fiscal year 1988. Violations will be tracked, and the carriers notified on a weekly basis of the specific instances to help improve procedures set by the individual carriers. INS is sensitive to the carriers' concerns on liability, yet it recognizes the need for the government to retain a measure of protection against unnecessary administrative and financial burdens caused by carriers that may transport aliens who are ineligible under the program.

(7) *Inspection procedures.* Some of the written comments addressed concerns that INS would use designated lines at ports of entry to inspect pilot program applicants; others were concerned that INS would not use special lines.

Plans are in place for the use of designated lines for pilot program applicants at many ports of entry. If used, the designated lines are designed to inspect passengers in the most efficient manner possible. If such special lines prove inefficient, depending upon the port of entry and the staffing at time

of consideration, other line or queuing procedures will be used.

With regard to the effective date of this rule, the Immigration and Naturalization Service has decided to invoke the "good cause" exception to the thirty day effective date requirement of 5 U.S.C. 553(d) making the final regulation effective July 1, 1988.

The Service has made extensive efforts to permit interested parties to comment and provide input in implementing the visa waiver programs. The Service published the proposed rule in the **Federal Register** on May 12, 1988. The public was given a thirty-day comment period. A number of changes have been made in light of the public comments. Moreover, the Service has gone through great efforts to publicize the program in the United Kingdom. Service officers have been detailed to London to brief and provide assistance to airline carriers and travel agencies.

If the Service were forced to wait thirty days before implementing the regulations, potentially millions of citizens from the United Kingdom would be adversely affected to the extent that they would not be able to take advantage of the visa waiver program. Accordingly, it is also in the public interest to commence the visa waiver program on July 1, 1988.

In addition to the comments already addressed, editorial and technical changes have been made in the final rule.

This rule adds a new Part 217 of 8 CFR, and amends existing Parts 212, 214, 236, 242, 245, 248, and 299, to conform with new section 217 of the Immigration and Nationality Act (Act).

Section 217.2 sets forth the elgibility criteria for individual participation in the program based on the provisions of section 217 of the Act and other applicable provisions of the Act.

Section 217.3 provides the limits on eligibility for immigration benefits which are provided in the Act, but makes provision for a brief period of satisfactory depature under emergent circumstances and for readmission to the United States after brief departures to foreign contiguous territory.

Section 217.4(a) provides that persons who have been deported from the United States may not be admitted as Visa Waiver Pilot Program visitors. It is consistent with the provisions of section 217(a)(5) of the Act that persons who are known to be deportable be required to secure a consent to reapply for admission and a visa in order to apply for admission to the United States.

Section 217.4(b) provides that applicants for admission under section 217 of the Act who are determined to be inadmissible as visitors shall be refused admission and removed from the United States without a hearing before an immigration judge other than in connection with an application for asylum in the United States.

Section 217.4(c) provides that aliens who have been admitted under Part 217 who are found to be deportable from the United States shall be removed from the United States without a hearing before an immigration judge other than in connection with an application for asylum. Section 217.4 (b) and (c) implement section 217(b)(4) of the Act which requires that persons who wish to utilize the visa waiver provisions of section 217 of the Act must waive their rights to normal procedures of inquiry, review, and appeal regarding admissibility and deportability.

Section 217.5 lists designated countries for the Visa Waiver Pilot Program. The United Kingdom has been designated as the initial Visa Waiver Pilot Program country in that it meets the criteria set forth in section 217(c)(2) of the Act, and in that it generates a significant portion of the total number of nonimmigrant visitors to the United States. The selection of the United Kingdom as a Visa Waiver Pilot Program country is designed to mitigate the demand for nonimmigrant visas at United States consular facilities in Great Britain. For this reason, a distinction is made concerning various categories of British residents, nationals or citizens based on the British nationality laws. Citizens of British Commonwealth countries or British dependent territories are not eligible for the visa waiver. This rule provides that only British citizens who have full and unrestricted permission to reside in the United Kingdom will be eligible to apply for admission as Visa Waiver Pilot Program applicants.

Section 217.6 provides the criteria for carrier agreements under section 217 of the Act. These criteria are based on the provisions of sections 217(a)(4) and 217(d) of the Act.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under § 299.5 of this chapter.

List of Subjects

8 CFR Parts 212, 214, 236, 242, 245, 248

Administrative practice and procedures, Aliens, Passports and visas.

8 CFR Part 217

Administrative practice and procedures, Aliens, Reporting and recordkeeping requirements, Passports and visas.

38 CFR Part 299

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252.

2. In § 212.1, paragraph (i) is added to read as follows:

§ 212.1 Documentary requirements for nonimmigrant.

* * * * *

(i) *Visa Waiver Pilot Program.* A visa is not required of any alien who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant pursuant to the provisions of section 217 of the Act and Part 217 of this chapter if such alien is a national of a country designated under the Visa Waiver Pilot Program, who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187.

4. In § 214.2, paragraph (b)(3) is redesignated as paragraph (b)(4) and a new paragraph (b)(3) is added to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(3 *Visa Waiver Pilot Program.* Special requirements for admission and maintenance of status for visitors

admitted to the United States under the Visa Waiver Pilot Program are set forth in section 217 of the Act and Part 217 of this chapter.

* * * * *

5. A new Part 217 is added to read as follows:

PART 217—VISA WAIVER PILOT PROGRAM

Sec.
217.1 Scope.
217.2 Eligibility.
217.3 Maintenance of status.
217.4 Excludability and deportability.
217.5 Designated countries.
217.6 Carrier agreements.

Authority: 8 U.S.C. 1187.

§ 217.1 Scope.

The Visa Waiver Pilot Program is established solely pursuant to the provisions of section 217 of the Act and subject to all conditions and restrictions stipulated in that section, including those relating to the length of the program and the number of countries which may be designated as Visa Waiver Pilot Program countries.

§ 217.2 Eligibility.

(a) *General.* Notwithstanding the provisions of section 212(a)(26)(B) of the Act, a nonimmigrant visa may be waived for an alien who is a national of a country enumerated in § 217.5 of this part who:

(1) Is classifiable as a visitor as defined in section 101(a)(15)(B) of the Act;

(2) Seeks admission to the United States for a period not to exceed ninety days;

(3) Is in possession of a valid passport issued by a designated country;

(4) Is in possession of a round-trip, nontransferable transportation ticket valid for a period of not less than one year, which is nonrefundable other than in the country in which issued or in the country of the alien's nationality or residence, and which was issued by a carrier or its authorized agent or subcontractor which has entered into an agreement as provided in § 217.6 of this part;

(5) Is in possession of a completed and signed Form I-791, Visa Waiver Pilot Program Information Form;

(6) Arrives in the United States on a carrier which has entered into an agreement as provided in § 217.6 of this part;

(7) Waives any right otherwise provided in the Act to administrative or judicial review or appeal of an immigration officer's determination as to his or her admissibility other than on the basis of an application for asylum in the United States as provided in section 208 of the Act; and

(8) Waives any right to contest any action for deportation, other than on the basis of an application for asylum in the United States as provided in section 208 of the Act.

(b) *Round-trip transportation ticket.* The term "round-trip ticket" as used in this part means a return ticket or combination of tickets which will transport the traveler out of the United States to any other foreign port or place, as long as the trip does not terminate in contiguous territory or an adjacent island; or will transport the traveler to contiguous territory or an adjacent island, if the traveler is a resident of the country of destination.

(c) *Comprehensive nature of Visa Waiver Pilot Program criteria.* An alien is eligible for a visa waiver under this part only if he or she meets all of the eligibility criteria set forth in paragraph (a) of this section.

§ 217.3 Maintenance of status.

(a) *Eligibility for immigration benefits.* An alien admitted to the United States under this part may be admitted as a visitor for business or pleasure for a period not to exceed ninety days. An alien admitted under this part must maintain his or her status as a visitor as defined in section 101(a)(15)(B) of the Act and must not engage in activities in the United States which are inconsistent with that status. An alien admitted under this part is not eligible for extension of his or her authorized period of temporary stay in the United States; is not eligible for adjustment of his or her status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of the Act, other than as an immediate relative as defined in section 201(b) of the Act; and is not eligible for change of nonimmigrant status pursuant to section 248 of the Act.

(b) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed thirty days. If departure is accomplished during this period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(c) *Readmission after departure to contiguous territory.* An alien admitted to the United States under this part may be readmitted to the United States in the status of a Visa Waiver Pilot Program visitor after a departure to foreign contiguous territory provided that:

(1) His or her authorized period of temporary stay has not expired,

(2) He or she intends to depart the United States prior to the expiration of his or her authorized period of temporary stay,

(3) He or she presents a valid, unexpired passport which reflects admission to the United States as a Visa Waiver Pilot Program visitor, and

(4) He or she continues to meet all criteria set forth in § 217.2(a) of this part with the exception of arrival on a signatory carrier.

An alien who applies for admission under the provisions of this section may be admitted to the United States only for the remainder of the authorized period of temporary stay which he or she was granted upon arrival in the United States in accordance with the provisions of § 217.2(a) of this part. A Visa Waiver Pilot Program visitor who applies for admission under the provisions of this section is subject to exclusion from the United States pursuant to section 212 of the Act and this part. Departure from and readmission to the United States of an alien under this subsection does not relieve any obligations and responsibilities of the carrier which initially transported such alien to the United States for admission under the provisions of this part.

§ 217.4 Excludability and deportability.

(a) *Consent to apply for admission.* Aliens who have been deported from the United States require the consent of the Attorney General to apply for admission to the United States pursuant to section 212(a)(17) of the Act and may not be admitted to the United States under the provisions of this part notwithstanding the fact that the required consent of the Attorney General may have been secured. Such aliens must secure a visa in order to be admitted to the United States as nonimmigrants.

(b) *Determinations of excludability and inadmissibility.* An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be excludable from the United States under one or more of the grounds of excludability listed in section 212 of the Act (other than section 212(a)(26)(B)) shall be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an

immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act, who applies for asylum in the United States must be referred to an immigration judge for further inquiry. The removal of an alien under this section may be deferred if the alien is paroled into the custody of Federal, state, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Attorney General enumerated in section 212(d) of the Act.

(c) *Determination of deportability.* An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the deportation grounds listed in section 241 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal for deportation shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be referred to an immigration judge for a determination of deportability.

(d) *Removal of excludable and deportable aliens.* The carrier which transported to the United States an alien who is to be removed pursuant to this section shall be immediately notified of the determination to remove such alien. Removal from the United States under this section may be effected through use of the return portion of the round-trip ticket presented by the alien at the time of entry to the U.S. as required in § 217.2(a)(4) of this part. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any excludable or deportable alien at carrier expense, as provided in § 217.6(b) of this part.

§ 217.5 Designated countries.

(a) *Countries.* The United Kingdom has been designated as a Visa Waiver Pilot Program country based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

(b) *Definitions.* For the purposes of this part the term "national of a Visa Waiver Pilot Program country" as used in section 217(a)(2) of the Act when applied to the United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, Channel Islands, and the Isle of Man); it does not refer to British overseas citizens, British dependent territories citizens, or citizens of British Commonwealth countries.

§ 217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(d) of the Act shall be made by the Commissioner in behalf of the Attorney General and shall be on Form I-775, Visa Waiver Pilot Program Agreement. The term "carrier", as used in this part refers to the owner, charterer, lessee or authorized agent of any commercial vessel or commercial aircraft engaged in the transportation of passengers to the United States from a foreign place.

(b) *Agreement provisions.* (1) To be authorized to transport an alien to the United States pursuant to section 217 of the Act and this part, a carrier must enter into an agreement on Form I-775 to transport as an applicant for admission under section 217 of the Act and this part, only an alien who:

(i) Is a national of and in possession of a valid passport issued by a country listed in § 217.5 of this part;

(ii) Has been provided with a Visa Waiver Information Form;

(iii) Seeks admission into the United States for 90 days or less;

(iv) Has a roundtrip, nontransferable, nonrefundable ticket (except in the country of issuance or his or her nationality or residence), that is valid for one year for purposes of deportation and exclusion, issued by a carrier signatory on Form I-775, Visa Waiver Pilot Program Agreement, or by authorized agents who are subcontractors to such a carrier, and guaranteeing transportation from the United States;

(v) Agrees that the return portion of such ticket may be used to effect his or her removal from the United States based on a finding of excludability or deportability under § 217.4 of this part;

(vi) Appears otherwise admissible.

(2) The carrier further agrees to:

(i) Submit to the Immigration and Naturalization Service the Arrival-Departure Records (Form I-94) as required by § 231 and section 217(d)(1)(B) of the Act;

(ii) Remove from the United States any alien transported by the carrier to the United States for admission under the Visa Waiver Pilot Program, in the event that the alien is determined by an immigration officer at the port of entry to be inadmissible or is determined to have remained unlawfully beyond the 90-day period of admission under the program;

(iii) Reimburse within 30 days of notice (not pay as a penalty) the Immigration and Naturalization Service of any and all expenses incurred in the transportation (from the point of arrival in the United States) of any alien found inadmissible or deportable under this program;

(iv) Retain the responsibilities and obligations enumerated in this part should the alien under the Visa Waiver Pilot Program depart temporarily for a visit to foreign contiguous during the period of authorized stay in the United States;

(v) Transport an alien found inadmissible to the United States or deportable from the United States after admission under the Visa Waiver Pilot Program, by accepting as full payment for return passage the return portion of the transportation ticket as required in § 217.6(b)(1)(v) from the original port of arrival in the United States to point of embarkation.

(3) For the purposes of this part, a period of validity of one year need not be reflected on the ticket itself, provided that the carrier agrees that it will honor the return portion of the ticket at any time, as provided in § 217.6(b)(2)(v) of this part. In addition, for the purposes of this part, a roundtrip ticket in possession of an applicant for admission under the Visa Waiver Pilot Program will be considered qualifying in every respect, as long as the arrival in the United States under the pilot program is on a participating carrier.

(c) *Termination of agreements.* The Commissioner, in behalf of the Attorney General, may terminate any carrier agreement under this part with five days notice to a carrier for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed fifteen days within which the carrier may bring itself into compliance with the terms of the carrier agreement. The agreement shall be subject to cancellation by either party for any reason upon fifteen days' written notice to the other party.

PART 236—EXCLUSION OF ALIENS

6. The authority citation for Part 236 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1187, 1224, 1225, 1226, 1252, 1255, 1362.

7. In Part 236, a new § 236.9 is added to read as follows:

§ 236.9 Visa Waiver Pilot Program

Pursuant to section 217(b)(4)(A) of the Act, an alien who applies for admission to the United States under the provisions of that section must waive any right to review or appeal an immigration officer's determination as to the admissibility of the alien at a port of entry, other than on the basis of an application for asylum. An alien applicant for admission under section 217 of the Act shall be removed from the United States upon a determination by an immigration officer (port director, officer-in-charge, or officer acting in either capacity) that the alien is inadmissible in accordance with procedures in § 217.4(b) of this chapter except that such an alien who applies for asylum in the United States shall be referred to an immigration judge for further inquiry as provided in section 235 of the Act and § 236.3 of this part.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES; APPREHENSION, CUSTODY, HEARING, AND APPEAL

8. The authority citation for Part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1187, 1252, 1254, 1362.

9. Section 242.1(a) introductory text is amended by inserting before the period at the end of the first sentence the following: ", except an alien who has been admitted to the United States under the provisions of section 217 of the Act and Part 217 of this chapter other than such an alien who has applied for asylum in the United States".

10. In § 242.1, a new paragraph (d) is added to read as follows:

§ 242.1 Order to show cause and notice of hearing.

* * * * *

(d) *Visa Waiver Pilot Program.* Pursuant to section 217(b)(4)(B) of the Act, an alien who has been admitted to the United States under the provisions of that section has waived any right to contest any action against him or her for deportation, other than on the basis of an application for asylum. An alien admitted to the United States under section 217 of the Act shall be taken into custody and removed from the United States upon a determination by an immigration officer (district director who has jurisdiction over the place where the alien is found) that the alien is deportable in accordance with procedures in § 217.4(c) of this chapter, and without commencement of a proceeding under this part, except that such an alien who applies for asylum in the United States shall be brought into proceedings as otherwise provided in this part.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

11. The authority citation for Part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1159, 1182, 1187, 1255.

12. In § 245.1, a new paragraph (b)(15) is added to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(15) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and Part 217 of this chapter other than an immediate relative as defined in section 201(b) of the Act.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

13. The authority citation for Part 248 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258.

14. In § 248.2, a new paragraph (f) is added to read as follows:

§ 248.2 Ineligible classes.

* * * * *

(f) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and Part 217 of this chapter.

PART 299—IMMIGRATION FORMS

15. The authority citation for Part 299 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103.

16. Section 299.1 is amended by adding the following immediately before the entry "ICAO" in numerical sequence:

§ 299.1 Prescribed forms.

* * * * *

I-775 (5-26-88) Visa Waiver Pilot Program Agreement.

I-791 (5-26-88) Visa Waiver Pilot Program Information Form.

* * * * *

Dated: June 22, 1988.

Richard E. Norton,

Acting Commissioner, Immigration and Naturalization Service.

Concurred in only 8 CFR 212.1(i):

Dated: June 22, 1988.

Michael H. Newlin,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 88-14767 Filed 6-29-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[108.872]

Visas; Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 22 CFR 41.2 to provide a benefit upon certain classes of aliens. New paragraph (l) waives the visa requirement for certain nonimmigrants applying for admission to the United States as visitors for a period not to exceed ninety days. Under established procedures, a nonimmigrant alien who wishes to enter the United States as a visitor must obtain a nonimmigrant B-2 visa.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: A. Roy Mackay, Deputy Chief, Legislation and Regulations Division, Visa Office, Washington, DC 20520, (202) 663-1205.

SUPPLEMENTARY INFORMATION: On pages 16975-16976 of the **Federal Register** of May 12, 1988 the Department of State published proposed amendments to 22 CFR 41.2. The proposed rule contains provisions designed to facilitate the admission of nonimmigrant visitors through the use of the United States Visa Waiver Pilot Program established by section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603. The Pilot Program waives the nonimmigrant visa requirement for admission of certain aliens into the United States for a period not to exceed ninety days. Interested persons were given until June 13, 1988 to submit comments. No comments, suggestions or objections were received. Accordingly, the proposed amendments are adopted. This final rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary visitors, Waivers.

PART 41—NONIMMIGRANT CLASSES—WAIVER OF PASSPORT AND/OR VISA REQUIREMENTS

In view of the foregoing, Part 41 is amended as follows:

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 313, 100 Stat. 3435, 8 U.S.C. 1187 and 1182.

2. A new paragraph (l) is added at the end of § 41.2 to read as follows:

§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) *Visa Waiver Pilot Program.* Notwithstanding the provisions of paragraphs (a) through (k) of this section, a visa is not required of any person who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant pursuant to the provisions of section 217 of the Act, if such a person is a citizen of a country designated as a participant in the Visa Waiver Pilot Program, who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure.

Date: June 22, 1988.

Michael H. Newlin,

Acting Assistant Secretary for Consular Affairs.

Concurrence:

Date: June 22, 1988.

Richard E. Norton,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 88-14768 Filed 6-29-88; 8:45 am]

BILLING CODE 4710-06-M

federal register

Thursday
June 30, 1988

Part VIII

Pension Benefit Guaranty Corporation

29 CFR Part 2610
Payment of Premiums; Interim Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This interim rule revises the regulation of the Pension Benefit Guaranty Corporation (the "PBGC") on Payment of Premiums, 29 CFR Part 2610. The primary purpose of this revision is to reflect and to implement changes made by the Pension Protection Act, which amends section 4006 of the Employee Retirement Income Security Act of 1974 to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. In order to facilitate the changeover to these new premium rules, the PBGC, on January 22, 1988, suspended certain of the premium due dates in Part 2610 with respect to 1988 plan years (53 FR 1907, January 22, 1988). The effect of this interim regulation is to establish premium due date for plan years beginning on or after January 1, 1988, and to prescribe the rules for computing single-employer plan premiums under the law. The interim regulation also restructures Part 2610 in its entirety.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8823. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, (the "Budget Act") includes the Pension Protection Act, which amends the pension plan funding and plan termination and related provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). One of the major changes under the law is in the premium rules applicable to single-employer plans covered under Title IV of ERISA. Under section 9331 of the Budget Act (amending ERISA section 4006), the single-employer plan premium for plan years beginning on or after January 1, 1988, is composed of a flat rate per capita assessment (as under prior law) and a new variable rate assessment that is based on the value of a plan's unfunded vested benefits and is also determined on a per participant basis (section 4006(a)(3)(A) and (a)(3)(E)). The flat rate assessment has been increased to $16 per participant.

Amended ERISA section 4006(a)(3)(E) provides the basic formula for computing the variable rate assessment for each participant: $6 for each $1,000 (or fraction thereof) of a plan's "unfunded vested benefits" (determined as of the last day of the preceding plan year) with that product divided by the number of participants in the plan as of the last day of the preceding plan year.

The variable rate assessment is subject to a statutory ceiling (amended ERISA section 4006(a)(3)(E)(iv)(I)) of $34 per participant, resulting in a maximum per participant premium of $50. This $34 statutory ceiling is reduced, for each of the five consecutive plan years commencing with the first plan year beginning on or after January 1, 1988, by the product of $3 multiplied by the number of plan years during the last five plan years commencing before January 1, 1988, with respect to which an employer made contributions to the plan in an amount not less than the maximum amount allowable as a deduction under section 404 of the Internal Revenue Code (amended ERISA section 4006(a)(3)(E)(iv)(II)). A plan may qualify for this reduction in the statutory ceiling without having made any contribution for a plan year, if, because of the full funding limitation, the maximum amount allowable as a deduction with respect to that plan year was zero.

The formula for computing the variable rate assessment for each participant is based, in large part, on the determination of the plan's "unfunded vested benefits." This term is defined in the statute (amended ERISA section 4006(a)(3)(e)(iii)) as the amount which would be the plan's "unfunded current liability" (within the meaning of amended ERISA section 302(d)(8)(A)) as of the close of the preceding plan year, subject to two qualifications: (1) Only vested benefits are taken into account in the calculation (amended ERISA section 4006(a)(3)(E)(iii)(I)); and (2) the interest rate used in valuing vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins (amended ERISA section 4006(a)(3)(E)(iii)(II)). Thus, the concept of unfunded vested benfits is closely related to, but distinguishable from, the concept of unfunded current liability.

Amended ERISA section 302(d)(8)(A) defines unfunded current liability as the excess of the plan's "current liability" (defined in amended ERISA section 302(d)(7)) over the value of the plan's assets (determined under ERISA section 302(c)(2)) reduced by any credit balance in the plan's funding standard account.

Current liability includes all liabilities to employees and their beneficiaries under the plan (although, as noted above, only vested benefits are taken into account in determining unfunded vested benefits for premium purposes); does not include liability for "unpredictable contingent event benefits" (benefits contingent on certain events, such as a facility shutdown or a reduction or contraction in a workforce, that cannot reliably and reasonably be predicted) until the event on which the benefit is contingent occurs; and disregards specified percentages of certain pre-participation service.

The value of a plan's assets is determined under ERISA section 302(c)(2), which requires valuation "on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury."

Finally, under amended ERISA section 4007(e), with respect to plan years beginning on or after January 1, 1988, both the plan administrator and the contributing sponsor of a single-employer plan are liable for premium payments and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums.

Interim Regulation

The new statutory premium rules for single-employer plans obviously add complexity to the premium payment process, both for plans and for the PBGC. In developing the regulatory provisions implementing these rules, the PBGC has sought to minimize this complexity and to keep costs for plans and for itself at the lowest possible levels consistent with the pertinent statutory requirements. To this end, the interim regulation permits plans to use data collected for other purposes as the starting point for determining unfunded vested benefits, includes a number of exemptions and special rules for small plans, and establishes a later due date for the variable rate portion of the premium. Since these rules require significant modifications to the PBGC's existing Payment of Premiums regulation, 29 CFR Part 2610, the PBGC is revising that regulation in its entirety, as set forth below.

Because of the urgent need to provide plans with the rules for computing and paying premiums for 1988 plan years, the revised regulation is being issued as an interim rule. In the very near future, the PBGC will issue a notice of proposed rulemaking for public comment on a revised Part 2610 (substantially similar to the interim regulation). The PBGC hopes to complete that rulemaking early in 1989 and to make that regulation effective for plan year 1989 premium payments.

Organization

Under the interim regulation, Part 2610 is divided into three subparts. Subpart A contains general provisions that apply both to single-employer plans and to multiemployer plans with respect to all plan years (except where a particular provision indicates otherwise). Subpart B contains premium rates and due dates and computational rules for single-employer plans under the new variable rate premium structure. These new rules apply to single-employer plans with respect to plan years beginning on or after January 1, 1988, and are discussed fully below. Subpart C contains the premium rates and due dates for single-employer plans with respect to all plan years.

Subpart A restates all of the provisions that were contained in the previous regulation, except for § 2610.3 ("Filing Requirement") and § 2610.5 ("Premium Rate"). The PBGC has made certain necessary structural changes and other editorial changes to these provisions in an effort to clarify the regulation. However, the PBGC has not made any substantive changes in these general provisions except as discussed below.

Interim § 2610.2, "Definitions," defines "new plan" and "newly covered plan" for premium purposes. Both of these terms were used in the previous regulation, but were not defined therein. These definitions in the interim regulation are largely codifications of the definitions that the PBGC used operationally under the previous regulation. It is important to note that the definition of "new plan" includes a plan formed from the consolidation of two or more plans (*i.e.*, Plan A and Plan B join to become Plan C) and a plan formed by the spinoff of assets and liabilities from an ongoing plan (*i.e.*, Plan A undergoes a spinoff creating new Plan B). The definition also includes a plan that constitutes a "successor plan" under section 4021(a) of ERISA.

Section 2610.2 also adds two definitions that serve only to make the regulation more readable. "Premium payment year" is defined as the plan year for which the premium is being paid, and "Code" is defined as the Internal Revenue Code of 1986, as amended.

The PBGC has modified the late payment penalty waiver provision (interim § 2610.8(b)(4)) dealing with large plans (500 or more participants) that pay (generally) 90% of the premium due by the due date and the remainder by the reconciliation deadline. This rule has been modified to reflect the new single-employer premium structure, and it excludes the amount of a plan's variable rate assessment in determining whether a plan qualifies for a waiver of the penalty under that provision.

Section 2610.10 provides a new special rule governing the date as of which participants will be counted and unfunded vested benefits determined for premium computation purposes in the event of certain merger and spinoff transactions. This special rule (which applies to both single-employer plans and multiemployer plans for premium payment years beginning on or after January 1, 1988) applies only to the transferor plan in a spinoff and the transferee plan in a merger, in cases where the transaction is effective on the first day of such plan's premium payment year. (A plan that is created by a consolidation of two or more plans or by the transfer of assets and liabilities from, *i.e.*, a spinoff from, an existing plan is treated as a new plan and is unaffected by this new special rule.)

Generally under Part 2610, a plan must compute its premium as of the last day of the plan year preceding the premium payment year. Under the special rule, however, the premium computation date, *i.e.*, the date for determining the number of plan participants and the plan's unfunded vested benefits, is the first day of the premium payment year. The purpose of this rule is to avoid double-counting of participants and unfunded vested benefits in spinoff transactions and non-counting of participants and unfunded vested benefits in merger cases.

In the case of a spinoff effective on the first day of the transferor plan's premium payment year, if that plan based its premium on the data for the last day of its preceding plan year, it would be paying a premium based in part on those participants and any related unfunded vested benefits with respect to whom the new spunoff plan is paying its premium for its first plan year. In the case of a merger effective on the first day of the premium payment year of the transferee plan, if that plan based its premium on the data for the last day of the preceding plan year, its premium would not reflect the paticipants and associated unfunded vested benefits it acquires through the merger. Because the transferor plan has ceased to exist, there is no premium paid on those participants and unfunded liabilities. This potential loss of premium income to the PBGC is particularly severe for the 1988 plan year, because this is the first year for the higher premium (including the variable rate assessment). (Whether the PBGC would lose a full year's premium or somewhat less in such circumstances depends, of course, on when during the transferor's plan year the merger occurs.)

Section 2610.10 exempts from this special rule transferor plans in *de minimis* spinoffs and transferee plans in *de minimis* mergers. A spinoff or merger is *de minimis* if it meets the requirements therefor pursuant to the regulations under section 414(1) of the Code with respect to single-employer plans, or pursuant to Part 2672 of the PBGC's regulations with respect to multiemployer plans.

Finally, the PBGC has included in this interim regulation a new section on record-keeping requirements and audits. In the PBGC's judgment, it would be unduly burdensome to require plans routinely to submit all documentation and computations on which the variable rate assessment is based. Plan administrators are expected to comply with the premium regulation and to pay the required premium in a timely manner. The record-keeping requirements in the interim regulation are expected to facilitate the PBGC's efforts to ensure and to monitor such compliance.

This new section (§ 2610.11) requires the plan administrator (with respect to plan years beginning on or after January 1, 1988) to retain, for a period of six years after the premium due date, certain documentation needed to support or to validate premium payments; provides for PBGC audits of premium payments; and provides further that if the PBGC determines that the plan's records fail to support its determination of unfunded vested benefits, the variable rate premium may be deemed to be the maximum $34 per participant amount.

The record-keeping requirement is not expected to impose any significant additional burden on plan administrators, since most of the records covered by this requirement must already be retained under ERISA section 107.

It should be noted that the scope of § 2610.11 is not limited to record-keeping and PBGC audits relating to the variable rate assessment. While the PBGC's

auditing efforts under § 2610.11 are likely to focus on the variable rate assessment applicable to single-employer plans for post-1987 plan years, the audit provisions of § 2610.11 apply generally with respect to all single-employer and multiemployer premium payments, for post-1987 plan years. Moreover, the PBGC has always had audit authority in connection with premium payments as part of its general enforcement authority under section 4003 of ERISA, and may thus conduct audits with respect to pre-1988 premium payments as well. The six-year record-keeping requirement of § 2610.11, however, is applicable only with respect to post-1987 plan years.

Subpart C restates, with minor structural and editorial revisions, the rules in §§ 2610.3 and 2610.5 of the previous regulation governing premium rates and due dates with respect to pre-1988 plan years for single-employer plans and multiemployer plans. In addition, Subpart C contains rules governing premium rates and due dates for multiemployer plans with respect to post-1987 plan years. There are only two substantive changes affecting multiemployer plans with respect to post-1987 plan years.

First, the date on which participants in new and newly covered plans are counted for purposes of computing the premium due has been changed from the first day of coverage (under previous § 2610.5(c)) to the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service (under interim § 2610.33(b)). This change corresponds to an analogous change (discussed below under "Amount of Premium") for single-employer plans.

Second, the premium due date for small multiemployer plans (*i.e.*, plans with fewer than 500 participants) and the reconciliation date for large multiemployer plans (*i.e.*, those with 500 or more participants)—both previously set at the last day of the seventh month following the close of the prior plan year—have been changed to the fifteenth day of the eight full calendar month following the month in which the premium payment year begins (§ 2610.34 (a)(7)(i) and (b)(6)). The PBGC has made these changes in order to bring these multiemployer plan due dates in line with the new due dates applicable to single-employer plans.

New Premium Computation Rules for Single-Employer Plans

Amount of Premium

Section 2610.22(a) restates the new premium rates for single-employer plans. Under that section, the amount of the premium due for each participant is the sum of the $16 flat rate assessment (§ 2610.22(a)(1)) plus the variable rate assessment (§ 2610.22(a)(2)) of $6 for each $1,000 (or fraction thereof) of a plan's unfunded vested benefits (as determined under § 2610.23), with that product divided by the number of participants in the plan as of the last day of the plan year preceding the premium payment year, and with the resulting amount rounded to the nearest cent. (Certain plans, however, are not required to compute the variable rate portion of the premium, and others may do so without determining unfunded vested benefits; see section on "Variable Rate Exemptions and Special Rules.")

Under § 2610.22(a)(3), the variable rate assessment is subject to the statutory ceiling of $34 per participant, which may be reduced in accordance with the statutory rules discussed above. Thus, the total premium due for each participant may not exceed $50.

The number of plan participants for purposes of computing the amount of the premium is generally determined as of the last day of the plan year preceding the premium payment year. In the case of a new plan or a newly covered plan, a different rule is necessary, because such plans were not in existence as covered plans before the premium payment year. Accordingly, under § 2610.22(c), the number of plan participants for purposes of computing the premium owed with respect to a new plan or a newly covered plan is determined as of the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service.

This rule differs from the rule under the prior regulation (§ 2610.5(c)). Under that provision, the participant count date for "newly covered plans" (which, in the context of § 2610.5(c), encompassed new plans as well) was the date on which the plan became covered by Title IV of ERISA. In the case of a new plan, this rule led to some confusion as to what the date of coverage was if the plan became effective for benefit accruals for future service on a date other than the first day of its first plan year. The new rule in § 2610.22(c) clarifies that the participant count date in such circumstances is the date on which the plan became effective for benefit accruals for future service. The PBGC has decided, in the interest of simplicity, to use this same participant count rule for new covered plans.

Determination of Unfunded Vested Benefits

The formula for computing a plan's variable rate portion of the premium is based on the determination of the plan's unfunded vested benefits as of the close of the plan year preceding the premium payment year. Thus, for a calendar year plan paying its 1988 premium, the plan would need to determine its unfunded vested benefits as of December 31, 1987.

In the normal course of events, most plans will not have an actuarial valuation of the plan's liabilities and assets done as of that date. Plan valuations for purposes of section 302(c)(9) of ERISA and section 412(c)(9) of the Code are typically done as of the first day of a plan year. Thus, a valuation for the 1987 plan year is done as of January 1, 1987. Further, a valuation for the 1988 plan year is not required to be filed until July 31, 1989 (seven months after the end of the plan year), with this deadline frequently extended until September 15, 1989 (eight and one-half months after the end of the plan year). Finally, plan valuations pursuant to section 302(c)(9) of ERISA and section 412(c)(9) of the Code are required only triennially (although many plans do more frequent valuations).

Thus, if the PBGC were to require a full valuation as of the statutory date in order to determine a plan's unfunded vested benefits for premium payment purposes, most plans would be forced to obtain, and to incur the expense of, a separate additional valuation. In the PBGC's judgment, this would be unduly burdensome, particularly for small plans. Accordingly, the PBGC has decided to permit under this interim regulation the determination of unfunded vested benefits to be based on plan valuations performed as of certain dates other than the last day of the plan year preceding the premium payment year. (The PBGC is considering whether it should require a more up-to-date valuation as the basis for determining unfunded vested benefits in large plans and will address this issue in the notice of proposed rulemaking.)

The interim regulation requires, as the general rule for determining unfunded vested benefits under § 2610.23, that plans determine unfunded vested benefits as of the last day of the plan year preceding the premium payment year, based on the plan's population and plan provisions as of the date. A plan's actuary may determine the plan's population on the basis of either an actual census or a representative sample of the plan's population. The determination of vested benefits must be

based on a plan valuation that meets the requirements imposed by section 302(c)(9) of ERISA and section 412(c)(9) of the Code, and that was performed as of the first day of the premium payment year or that is the most recent valuation performed (by the due date for paying the variable rate portion of the premium) for a plan year within the the three plan years immediately preceding the premium payment year. In determining the value of vested benefits as of the last day of the plan year preceding the premium payment year, the plan's actuary must adjust assumptions in the underlying valuation to reflect the occurrence, between the date of the valuation and the last day of the preceding plan year, of a significant event (listed in § 2610.23(d)) or other event that has a material impact on the value of vested benefits.

If the plan valuation on which the determination is based was performed as of the first day of the premium payment year, the amount of the plan's unfunded vested benefits reported in that valuation will be deemed to be the amount of the plan's unfunded vested benefits as of the last day of the plan year preceding the premium payment year, unless the plan's enrolled actuary determines that there is a material difference between those amounts. When there is a material difference, the actuary will have to determine the unfunded vested benefits as of the last day of the preceding plan year.

The enrolled actuary of a plan that determines the amount of its unfunded vested benefits under the general rule must certify, in accordance with the Premium Payment Package, that the determination was made in a manner consistent with generally accepted actuarial principles and practices.

The definition of unfunded vested benefits is set forth in § 2610.23(b) and applies generally for all purposes under Part 2610. Under that provision, the amount of a plan's unfunded vested benefits is the excess of the value of the plan's vested benefits (determined under § 2610.23(b)(1)) over the actuarial value of the plan's assets (determined under § 2610.23(b)(2)).

Section 2610.23(b)(1) provides that a plan's vested benefits equal the plan's current liability determined by taking into account only vested benefits and by using the statutorily mandated interest rate for valuing the vested portion of a plan's current liability: 80% of the annual yield for 30-year Treasury constant maturities for the calendar month preceding the month in which the premium payment year begins. These rates are reported in Federal Reserve Statistical Release G.13 and H.15. (As a convenience, the PBGC is setting forth the statutorily mandated interest rates in Appendix B to this interim regulation and plans to update this information on a periodic basis.) If the plan's interest rate (or rates) used to value vested benefits differs from the statutory rate, the value of the vested benefits at the plan rate (or rates) must be converted to a value using the required rate.

Section 2610.23(b)(2) restates the statutory rule that the value of the plan's assets is determined in accordance with ERISA section 302(c)(2), and also provides that the value of the assets is not reduced by the amount of any credit balance in the plan's funding standard account. As noted by the PBGC in its guidelines on premium due dates (53 FR 1907, January 22, 1988), this reduction has significance only for purposes of the minimum funding standards, and it would unduly increase the amount of unfunded vested benefits, thus increasing the variable rate portion of the premium. Finally, § 2610.23(b)(2) provides that the value of the assets includes contributions owed for a plan year preceding the premium payment year only to the extent these contributions have been paid into the plan by the due date for the variable rate portion of the premium. In this manner, contribution obligations that may never be satisfied will not be permitted to increase the value of assets and thereby to reduce the variable rate portion of the premium.

Interim § 2610.23(c) provides an optional alternative method for determining unfunded vested benefits. While this alternative method is likely to produce a somewhat less accurate measure than under the general rule of a plan's unfunded vested benefits as of the end of the preceding plan year, it is also a less costly method for plans. The PBGC believes that, on balance, this lower cost outweighs the lesser precision of the alternative method. As a protection against large losses in premium revenue because of the use of this alternative method, its use by large plans (500 or more participants) is subject to certain restrictions (§ 2610.23(d)) as discussed hereafter.

Under the alternative method, a plan administrator may calculate the amount of a plan's unfunded vested benefits by using certain data from the plan's Form 5500, Schedule B, for the plan year preceding the premium payment year and the formulae prescribed in the regulation. The Schedule B data used under the alternative method are the vested benefits figures entered on lines 6d(i) and 6d(ii), the retirement age assumption related thereto (line 12d) and, generally, the value of assets entered on line 8b, relating to the funding standard account.

The plan administrator must adjust the value of vested benefits, as stated in lines 6d(i), 6d(ii) and 6d(iii), to reflect the required statutory interest rate stated in § 2610.23(b)(1). This adjustment must be performed in accordance with a formula set out in § 2610.23(c)(1). Under this formula, separate interest adjustments are made to the value of vested benefits for retired participants and beneficiaries receiving payments (line 6d(i)) and the value of vested benefits for active and other participants (line 6d(ii)), and the two adjusted values are then added together. The sum of these two values is the "adjusted vested benefits amount" as of the date of the Schedule B entries, *i.e.*, the first day of the plan year preceding the premium payment year.

The interest adjustment formula uses two actuarial assumptions. The first assumption takes into account the effect that a change in the valuation rate has on the value of vested benefits for retired participants and beneficiaries who are receiving benefits. The factor is derived from the cost of purchasing life annuities payable monthly for participants at ages 65, 68, 70 and 75 at annuity interest rates of 5% to 10%. The PBGC's experience shows that for each 1% change in the interest rate, the value of each $1 vested benefits changes by a factor of .94. The PBGC believes that the .94 factor is a reasonable factor to measure this relation between interest rates and the value of vested benefits for a participant at any age.

The second assumption discounts the value of the vested benefits to reflect the period of deferral for benefits of active and deferred vested participants. While the assumed average retirement age for the plan is readily available to the plan administrator (line 12d on the Schedule B), the average age of active and deferred vested participants may not be. In order to keep the alternative method easy to use, the formula provides an assumed age for all active and deferred vested praticipants of 50. Thus, the formula in § 2610.23(c)(1) uses a deferral period of the difference between the assumed average retirement age under the plan with respect to the vested benefits reported in line 6d of the Schedule B (item 12d (Part A) of Schedule B) and age 50.

This assumption is based on the PBGC's experience with terminating plans. In those plans, the average age of the active and deferred vested participants, weighted by the present value of benefits, is age 50. The PBGC recognizes that the average age of participants in terminating plans is

likely to be greater than that of participants in all single-employer plans covered under Title IV of ERISA. However, the PBGC has no data on what that overall average age might be and has, therefore, decided to use the average age for terminating plans.

In order to determine the value of the plan's unfunded vested benefits as of the date of the Schedule B entries, the plan administrator must subtract from the adjusted vested benefits the adjusted value of plan assets. Under the alternative method, the assets value used is normally that on line 8b of the Schedule B. However, in order to ensure consistent treatment of all plans using the alternative method with respect to the contributions that are included in the calculation, and to simplfy the time adjustment formula discussed below, § 2610.23(c)(2)(i) provides that if the value of assets reported on line 8b was determined as of a date other than the first day of the plan year preceding the premium payment year, then the value of assets shall be the amount reported on line 6c of the Schedule B. The line 6c assets fiqure must be determined as of the first day of the plan year. The PBGC emphasizes that permitting the use in this situation of a market value figure for assets (which is what the line 6c assets figure is) is a limited exception to the general requirement that an actuarial value of assets must be used to determine unfunded vested benefits under this part. Finally, whichever assets value is used, it must be adjusted in accordance with § 2610.23(b)(2).

This adjusted value of unfunded vested benefits (which is as of the first day of the plan year preceding the premium payment year) is then brought forward to the last day of the plan year preceding the premium payment year in accordance with the formula in § 2610.23(c)(2). This formula accounts only for the passage of time from date of the Schedule B data to the end of the preceding plan year.

Section 2610.23(d) imposes certain restrictions on the use of the alternative method by plans with 500 or more participants as of the last day of the plan year preceding the premium payment year. Such plans may use the alternative method only if no "significant event" (as described in § 2610.23(d)(1)–(d)(7)) has occurred between the first day and the last day of the plan year preceding the premium payment year, and the plan's enrolled actuary certifies to that fact. If a significant event has occurred between those dates, the alternative method may be used only if the plan's enrolled actuary makes appropriate adjustments to reflect the occurrence of the significant event and certifies to that fact. The events designated as significant events are occurrences that would be likely to have a significant impact on a plan's unfunded vested benefits.

Section 2610.23(e) requires that all actuarial assumptions and methods used to determine or to calculate the amount of a plan's unfunded vested benefits be identical to or consistent with the actuarial assumptions and methods used to prepare the plan valuation and actuarial report or Form 5500, Schedule B, underlying the determination or calculation, except to the extent that other acturaial assumptions are specifically prescribed by § 2610.23 or are necessary in order to reflect the occurrence of a significant event.

Under § 2610.23(f), the determination or calculation of a plan's unfunded vested benefits with respect to a new plan or a newly covered plan (as defined in § 2610.2) must be made as of the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, and all references in § 2610.23(a)–(e) to the last day of the plan year preceding the premium payment year are deemed to refer to such day or date. This rule is necessary because new and newly covered plans were not in existence as covered plans before the premium payment year, yet may well have unfunded vested benefits for the premium payment year. The PBGC believes that a new or newly covered plan should not be exempt from computing and paying the variable rate portion of the premium for its first (or first covered) plan year. New and newly covered plans have never been exempt from premium payments for their first plan year. (However, as discussed below, a new plan may be exempt from having to determine its unfunded vested benefits and to compute the variable rate portion of the premium.)

Variable Rate Exemptions and Special Rules

As noted above, the PBGC has sought in this interim regulation to minimize complexity and to reduce costs to the extent consistent with the pertinent statutory requirements. Toward these ends, the PBGC has developed a number of exemptions and special rules regarding the variable rate portion of the premium. These exemptions and special rules, set forth in § 2610.24, apply to certain plans with fewer than 100 participants, to plans having no participants with vested benefits, and to fully insured plans.

Section 2610.24(a)(1) and (b) provides relief for certain plans with fewer than 100 participants on the last day of the plan year preceding the premium payment year. As noted above, plans are generally required to determine their unfunded vested benefits as of the last day of the plan year preceding the premium payment year in order to compute the variable rate portion of the premium. The costs associated with the general rule, however, are likely to be substantial for many small plans. While the PBGC has decided to permit the use of an alternative method (discussed above) for determining unfunded vested benefits that is expected to involve lower costs, this method is based on certain entries in the plan's Form 5500, Schedule B, for a previous plan year; plans with fewer than 100 participants are not required under the instructions for the Schedule B to make such entries and may thus be unable to use the alternative method. Accordingly, the PBGC is providing two additional options for plans with fewer than 100 participants that are unable to use the alternative method for calculating unfunded vested benefits set forth in § 2610.23(c) because they do not have the requisite Schedule B data.

One option (§ 2610.24(a)(1)) that may be cost effective for well funded small plans requires that the plan's enrolled actuary certify that the plan had no unfunded vested benefits as of the last day of the plan year preceding the premium payment year. If this certification is provided, the plan is not required to determine its unfunded vested benefits and does not owe a variable rate amount.

Under the second option (§ 2610.24(b)), the plan administrator may elect to pay, in lieu of the variable rate assessment otherwise required under § 2610.22(a)(2), an amount of $5 per participant, resulting in a total premium of $21 per participant. If the plan administrator so elects, the variable rate assessment owed for each plan participant for the premium payment year is deemed to be $5, and the plan administrator is not required to determine the amount of the plan's unfunded vested benefits for the premium payment year. Whether this second option or the first option (or the general rule under § 2610.23(a)) is the most cost effective for a plan will depend, of course, on the circumstances.

The PBGC chose an amount of $5 per participant under the second option based on projections that this will be the approximate average variable rate assessment for all plans. While some small plans electing to use this special

payment rule will pay a higher variable rate assessment than if they determined the amount due under the general rule, these plans will be saving the costs associated with the determination. Other small plans will choose to use this special rule because it will result in payment of a lower premium than they would otherwise owe. However, because small plans account for a very small percentage of the PBGC's total premium income, the PBGC estimates that the impact of this special rule on its 1988 premium income would be negligible: approximately 1% of the income attributable only to the premium increase. The PBGC believes that, on balance, this potential slight loss in revenue is outweighed by the benefit of enabling small plans to avoid the potentially burdensome determination of unfunded vested benefits under the general rule.

In addition, these special rules for small plans will be in effect for only a limited period of time. Beginning with the Form 5500, Schedule B filing for the 1988 plan year, small plans will be required to complete lines 6d (i)–(iii) of Schedule B. It will then be possible for these plans to use the alternative method set forth in § 2610.23(c) or something similar to that method. The PBGC will propose a new rule for small plans in the forthcoming notice of proposed rulemaking. As soon as that rulemaking is completed, both the actuarial certification option in § 2610.24(a)(1) and the $5 per participant rule in § 2610.24(b) will be dropped.

Section 2610.24(a)(2) provides a special rule for plans with no vested benefit liabilities. If a plan did not have any participants with vested benefits as of the last day of the plan year preceding the premium payment year, and the plan administrator certifies to that fact, the plan is not required to determine its unfunded vested benefits and does not owe a variable rate amount. This special rule is available to all plans regardless of size.

Section 2610.24(a)(3) provides a special rule for "fully insured plans." In order to qualify for this special rule, the plan must be a plan described in section 412(i) of the Code at all times during the plan year preceding the premium payment year and the plan administrator must certify to that fact. (If the plan is a new or newly covered plan, the certification is made as of the due date for the premium and must certify to the plan's status at all times during the premium payment year through that due date.) If a plan qualifies for this special rule, the plan is not required to determine its unfunded vested benefits and does not owe a variable rate amount. The PBGC has provided this exemption in recognition of the fact that a fully insured plan meeting the requirements of Code section 412(i) will by definition have no unfunded vested benefits. Moreover, such plans typically do not have actuaries, and the PBGC does not want to require these plans to incur the cost of retaining actuaries simply to fill out the premium payment form.

Consistent with the other rules in this regulation for new and newly covered plans, the determination of whether a variable rate exemption or special rule applies to a new plan or a newly covered plan is made as of the first day of the premium payment year or, if later, the date on which the plan became effective for future benefit accruals (§ 2610.24(c)).

New Filing Due Dates for Single-Employer and Multiemployer Plans

Under the previous premium regulation, the premium due date for large single-employer and multiemployer plans, *i.e.*, those with 500 or more participants, was the last day of the second month following the close of the prior plan year. However, because an accurate participant count for the prior plan year was frequently not available by the due date, large plans also made a reconciliation filing (paying an additional amount or requesting a refund of an overpayment) no later than the last day of the seventh month following the close of the prior plan year. For small plans, i.e., those with fewer than 500 participants, the premium was due by the last day of the seventh month following the end of the prior plan year.

This payment schedule is not well-suited to the new variable rate assessment for single-employer plans. As described above in the section on the "Determination of Unfunded Vested Benefits," the PBGC has devised premium computation rules that rely heavily on existing plan data, particularly on the Form 5500, Schedule B. For this reason, the due date, for at least the variable rate portion of the premium, must fit with the Schedule B filing due date. Accordingly, under § 2610.25 (b)(1) and (b)(2)(ii), the variable rate portion of the premium must be paid (regardless of the number of plan participants) by the fifteenth day of the eighth full calendar month following the month in which the plan year began. (This will result in a deadline of September 15 for all single-employer plans with plan years starting in the month of January, October 15 for all such plans with plan years starting in the month of February, and so on.)

The deadline for the flat rate portion of the premium for single-employer plans (and for the multiemployer plan premium) will not change for large plans. Under §§ 2610.25(b)(2)(i) (for single-employer plans) and 2610.34(a)(7)(ii) (for multiemployer plans), that deadline is the last day of the second month following the close of the plan year preceding the premium payment year. However, in order to avoid unnecessary confusion resulting from multiple deadlines, the PBGC has decided to defer the deadline for the flat rate portion of the premium for small single-employer plans (§ 2610.25(b)(1)) (and for the premium for small multiemployer plans, § 2610.34(a)(7)(i)) to the new variable rate assessment filing deadline. Similarly, the reconciliation date for the flat rate portion of the premium for large single-employer plans (§ 2610.25(b)(2)(iii)) (and for large multiemployer plans, § 2610.34(b)(6)) is also moved to the fifteenth day of the eighth full calendar month following the month in which the premium payment year began. Thus, in the case of calendar year plans paying their 1988 premiums, the flat rate portion of the premium for large single-employer plans (and the premium for large multiemployer plans) was due on February 29, 1988. All other premiums and filings for calendar year plans paying their 1988 premiums (*i.e.*, the flat rate portion of the premium for small single-employer plans, the reconciliation filing for large single-employer and multiemployer plans, and the variable rate assessment for both small and large single-employer plans) will be due on September 15, 1988.

Liability for Premiums

Section 2610.26(a) clarifies the fact that the designation under Subpart B of the plan administrator as the person required to file the applicable forms and to submit the premium payment is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of the Act. Pursuant to section 4007(e) of the Act, both the plan administrator and the plan's contributing sponsor are liable for premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

Section 2610.26(b) imposes a special rule for premium payments when the termination of an underfunded plan has been initiated. This special rule is necessary because, in these circumstances, paying premiums from plan assets is generally tantamount to PBGC paying itself; *i.e.*, using plan assets for premium payments will increase PBGC's liability for guaranteed benefits. In order to avoid this anomaly, § 2610.26(b) provides that, for any plan year in which a plan administrator issues notices of intent to terminate in a distress termination or the PBGC initiates a termination proceeding under section 4042 of ERISA, and for each plan year thereafter, the obligation to pay the premiums (and any interest or penalties thereon) imposed by ERISA and this regulation is an obligation solely of the contributing sponsor and the members of its controlled group, if any. The PBGC may treat as legally ineffective any payment made from plan assets in violation of § 2610.26(b), and reserves its right in such circumstances to obtain payment from the plan's contributing sponsor and members of the contributing sponsor's controlled group.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this rule is a "major rule" within the meaning of Executive Order 12291, February 17, 1981 (46 FR 13193) because the single-employer plan premium increase implemented in this regulation will have an annual effect on the economy of more than $100 million. In accordance with E.O. 12291, the PBGC has prepared a Regulatory Impact Analysis. Interested persons may obtain copies of the Regulatory Impact Analysis from the PBGC's Communications and Public Affairs Department (Code 38000), 2020 K Street NW., Washington, DC 20006.

Because of the urgent need to provide plans with the rules for computing and paying premiums for 1988 plan years, the PBGC has determined that it would be impracticable and contrary to the public interest to provide for notice of and public comment on this regulation prior to issuance. Accordingly, the PBGC finds that good cause exists for issuing this regulation in interim form without notice and opportunity for public comment. See 5 U.S.C. 553(b). For these same reasons, the PBGC finds that good cause exists for making this regulation effective immediately. See 5 U.S.C. 553(d)(3).

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby revised as follows:

PART 2610—PAYMENT OF PREMIUMS

Subpart A—General Provisions

Sec.
2610.1 Purpose and scope.
2610.2 Definitions.
2610.3 Form.
2610.4 Mailing address.
2610.5 Date of filing.
2610.6 Computation of time.
2610.7 Late payment interest charges.
2610.8 Late payment penalty charges.
2610.9 Coverage for guaranteed basic benefits.
2610.10 Special rule for certain mergers and spinoffs.
2610.11 Record-keeping requirements; PBGC audits.

Subpart B—Single-Employer Premiums for Post-1987 Plan Years

2610.21 Purpose and scope.
2610.22 Premium rate.
2610.23 Determination of unfunded vested benefits.
2610.24 Variable rate exemptions and special rules.
2610.25 Filing requirement.
2610.26 Liability for premiums.

Subpart C—Single-Employer Premiums for Pre-1988 Plan Years; Multiemployer Premiums

2610.31 Purpose and scope.
2610.32 Single-employer premium rates.
2610.33 Multiemployer premium rates.
2610.34 Filing requirement.

Appendix A—Late Payment Interest Charges

Appendix B—Interest Rates for Valuing Vested Benefits

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by secs. 403(1), 105, 402(a)(3), 403(b), Pub. L. 96–364, 94 Stat. 1208, 1302, 1264, 1298, 1300; sec. 11005, Pub. L. 99–272, 100 Stat. 82, 240, and by sec. 9331, Pub. L. 100–203, 101 Stat. 1330.

Subpart A—General Provisions

§ 2610.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to provide rules for computing and procedures for paying the premiums imposed by sections 4006 and 4007 of the Employee Retirement Income Security Act of 1974, as amended. Subpart A contains the rules that apply both to single-employer and multiemployer plans with respect to all plan years. These general rules cover such matters as the definitions of terms under this part, procedural requirements, and late payment interest and penalty charges. Subpart B contains the premium rates and due dates and computational rules for single-employer plans under the new variable rate premium structure enacted as part of the Pension Protection Act. These new rules apply to single-employer plans for plan years beginning on or after January 1, 1988. Subpart C contains the premium rates and due dates for single-employer plans with respect to all prior plan years and for multiemployer plans with respect to all plan years.

(b) *Scope.* This part applies to all plans that are covered by Title IV of the Act pursuant to section 4021 of the Act.

§ 2610.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974, as amended.

"Code" means the Internal Revenue Code of 1986, as amended.

"Multiemployer Plan" means a plan defined in section 4001(a)(3) of the Act.

"New Plan" means a plan that became effective within the premium payment year and includes a plan resulting from a consolidation or spinoff. A plan that meets this definition is considered to be a new plan for purposes of this part even if the plan constitutes a successor plan within the meaning of section 4021(a) of the Act.

"Newly Covered Plan" means a plan that is not a new plan and that was not covered by Title IV of the Act pursuant to section 4021 of the Act immediately prior to the premium payment year.

"Participant" means any individual who is included in one of the categories below:

(a) *Active.* (1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan. This category includes any individual who is considered covered under the plan for purposes of meeting the minimum coverage requirements, but because of offset or other provisions (including integration with Social Security benefits), the individual does not have any accrued benefits.

(2) Any non-vested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan. This category does not include a non-vested former employee who has incurred a break in service the greater of one year or the break in service period specified in the plan.

(b) *Inactive*—(1) *Inactive receiving benefits.* Any individual who is retired or separated from employment covered

by the plan and who is receiving benefits under the plan. This category does not include an individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(2) *Inactive entitled to future benefits.* Any individual who is retired or separated from employment covered by the plan and who is entitled to begin receiving benefits under the plan in the future. This category does not include an individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(c) *Deceased.* Any deceased individual who has one or more beneficiaries who are receiving or entitled to receive benefits under the plan. This category does not include an individual if an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan. *Provided that,* for plan years beginning before September 2, 1975, a retiree or former employee for whom a fully paid-up immediate or deferred annuity has been purchased shall be treated as a "participant" if such individual retains a legal claim against the plan for benefits or if the plan retains a participating interest in the annuity policy.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Plan Year" means the calendar, policy or fiscal year on which the records of the plan are kept.

"Premium Payment Year" means the plan year for which the premium is being paid.

"Short Plan Year" means a plan year that is less than twelve full months.

§ 2610.3 Form.

The estimation, declaration, reconciliation and payment of premiums shall be made using the forms prescribed by and in accordance with the instructions in the PBGC Annual Premium Payment Package.

§ 2610.4 Mailing address.

Plan administrators shall mail all forms required to be filed under this part and all payments for premiums, interest and penalties required to be made under this part to: Pension Benefit Guaranty Corporation, P.O. Box 105655, Atlanta, GA 30348-5655.

§ 2610.5 Date of filing.

(a) Any form required to be filed under the provisions of this part and any payment required to be made under the provisions of this part shall be deemed to have been filed or made on the date on which it is mailed.

(b) A form or payment shall be presumed to have been mailed on the date on which it is postmarked by the United States Postal Service, or three days prior to the date on which it is received by the PBGC if it does not contain a legible United States Postal Service postmark.

§ 2610.6 Computation of time.

In computing any period of time prescribed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal holiday. For purposes of computing late payment interest charges under § 2610.7 and late payment penalty charges under § 2610.8, a Saturday, Sunday or federal holiday referred to in the previous sentence shall be included.

§ 2610.7 Late payment interest charges.

(a) If any premium payment due under this part is not paid by the due date prescribed for such payment by § 2610.25 or § 2610.34, as applicable, an interest charge will accrue on the unpaid amount at the rate imposed under section 6601(a) of the Code for the period from the date payment is due to the date payment is made. Late payment interest charges accrue as simple interest before January 1, 1983, and thereafter are compounded daily. (The interest rates for specified time periods are set forth in Appendix A to this part.)

(b) When PBGC issues a bill for premium payments necessary to reconcile the premiums paid with the actual premium due, interest will be accrued on the unpaid premium until the date of the bill if paid no later than 30 days after the date of such bill. If the bill is not paid within the 30-day period following the date of such bill, interest will continue to accrue throughout such 30-day period and thereafter, until the date paid.

(c) PBGC bills for interest assessed under this section will be deemed paid when due if paid no later than 30 days after the date of such bills. Otherwise, interest will accrue in accordance with paragraph (a) of this section on the amount of the bill from the date of the bill until the date of payment.

§ 2610.8 Late payment penalty charges.

(a) *Penalty charge.* If any premium payment due under this part is not paid by the due date prescribed for such payment by §§ 2610.25 or 2610.34, as applicable, the PBGC will, unless a waiver is granted pursuant to paragraph (b) of this section, assess a late payment charge on the unpaid premium at the rate provided in paragraphs (a)(1), (a)(2), (a)(3) or (a)(4) of this section, as applicable:

(1) If the due date for the premium is prior to October 2, 1975, the late payment charge shall be at the rate specified in the following table:

Days late from due date	Late payment charge (percent)
1 to 60	0
61 to 90	25
91 to 120	50
121 to 180	75
More than 180	100

(2) If the due date for the premium is on or after October 2, 1975, and before July 31, 1984, the late payment charge shall be at the rate specified in the following table:

Days late from due date	Late payment charge (percent)
1 to 30	5
31 to 60	10
61 to 90	20
91 to 120	40
121 to 150	60
151 to 180	80
More than 180	100

(3) If the due date for the premium is on or after July 31, 1984, the late payment charge (not to exceed 100% of the unpaid premium) shall be equal to the greater of—

(i) 5% per month (or fraction thereof) of the unpaid premiums; or

(ii) $25.

(b) *Waiver of penalty charge.* The late payment penalty charge will be waived, in whole or in part—

(1) With respect to any premium payment made within 60 days after the due date prescribed for such payment in § 2610.25 or § 2610.34, as applicable, if, before such due date, the PBGC grants a waiver upon a showing of substantial hardship arising from the timely payment of the premium and a showing that the premium will be paid within such 60-day period;

(2) If the PBGC grants a waiver based on any other demonstration of good cause;

(3) If the PBGC, on its own motion, waives the application of paragraph (a) of this section;

(4) With respect to any premium payment (excluding any variable rate portion of the premium under § 2610.22(a)(2)), if a plan that is required to make a reconciliation filing described in § 2610.25(b)(2)(iii) or § 2610.34(b)—

(i) Paid at least 90 percent of the flat rate portion of the premium due for the premium payment year by the due date specified in § 2610.25(b)(2)(i) or § 2610.34(b); or

(ii) Paid by the due date specified in § 2610.25(b)(2)(i) or § 2610.34(b) an amount equal to the premium that would be due for the premium payment year, computed using the flat per capita premium rate for the premium payment year and the participant count upon which the prior year's premium was based; and

(iii) Pays 100 percent of the premium due for the premium payment year under § 2610.22 (excluding any variable rate portion of the premium under § 2610.22(a)(2)), § 2610.32, or § 2610.33, as applicable, on or before the due date for the reconciliation filing under § 2610.25(b)(2)(iii) or § 2610.34(b), as applicable.

(5) With respect to any PBGC bills for the premium payment necessary to reconcile the premium paid with the actual premium due, if such bills are paid no later than 30 days after the date of such bills.

§ 2610.9 Coverage for guaranteed basic benefits.

(a) The failure by a plan administrator to pay the premiums due under this part will not result in that plan's loss of coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of the Act.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of the Act for plans not covered under Title IV of the Act pursuant to section 4021 of the Act.

§ 2610.10 Special rule for certain mergers and spinoffs.

(a) With respect to a plan described in paragraph (b) of this section that is paying its premium for a premium payment year beginning on or after January 1, 1988, all references in §§ 2610.22, 2610.23, 2610.24 and 2610.33, as applicable, to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year.

(b) A plan is described in this paragraph if—

(1) The plan engages in a merger or spinoff that is not *de minimis* pursuant to the regulations under section 414(l) of the Code (in the case of single-employer plans) or pursuant to Part 2672 of this chapter (in the case of multiemployer plans), as applicable;

(2) The merger or spinoff is effective on the first day of the plan's premium payment year; and

(3) The plan is the transferee plan in the case of a merger or the transferor plan in the case of a spinoff.

§ 2610.11 Record-keeping requirements; PBGC audits.

(a) *Retention of records to support premium payments.* With respect to plan years beginning on or after January 1, 1988, all plan records, including calculations and other data prepared by the plan's enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurance company from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator at the plan's principal place of business for a period of six years after the premium due date.

(b) *PBGC audit.* Premium payments under this part are subject to audit by the PBGC. If any premium due under this part is determined by PBGC audit to be underpaid, the late payment interest charges under § 2610.7 and the late payment penalty charges under § 2610.8 shall apply to the unpaid balance from the premium due date to the date of payment. If, in the judgment of the PBGC, the plan's records fail to establish that the plan's unfunded vested benefits were of the amount reported by the plan for the premium payment year, the variable rate portion of the premium owed by the plan with respect to that premium payment may be deemed to be the maximum $34 per participant charge, pursuant to § 2610.22(a)(3).

Subpart B—Single-Employer Premiums for Post-1987 Plan Years

§ 2610.21 Purpose and scope.

This subpart provides rules for computing and procedures for paying premiums for single-employer plans with respect to plan years beginning on or after January 1, 1988.

§ 2610.22 Premium rate.

(a) *General rule.* For plan years beginning on or after January 1, 1988, the premium paid by a single-employer plan for basic benefits guaranteed under section 4022(a) of the Act shall equal the sum of the amounts in paragraphs (a)(1) and (a)(2) of this section (subject to the limitation in paragraph (a)(3) of this section), multiplied by the number of participants in the plan on the last day of the plan year preceding the premium payment year.

(1) *Flat rate amount.* The amount under this paragraph is $16.

(2) *Variable rate amount.* Except for plans covered by an exemption or special rule pursuant to § 2610.24, the amount under this paragraph is $6 for each $1,000 (or fraction thereof) of a plan's unfunded vested benefits, as determined under § 2610.23, with that product divided by the number of participants in the plan on the last day of the plan year preceding the premium payment year. The resulting amount shall be rounded to the nearest cent, with a fraction of one-half cent or more rounded up and a fraction of less than one-half cent rounded down.

(3) *Cap on variable rate amount.* Except as modified by the next sentence, in no event shall the variable rate amount determined under paragraph (a)(2) of this section exceed $34 per participant. For each of the five consecutive premium payment years commencing with the first premium payment year beginning on or after January 1, 1988, the $34 maximum shall be reduced by the product of $3 multiplied by the number of plan years during the last five plan years commencing before January 1, 1988, with respect to which the contributing sponsor or contributing sponsors made contributions to the plan in an amount not less than the maximum amount allowable as a deduction under section 404 of the Code.

(b) *Special computation date for new and newly covered plans.* For purposes of this section, the number of plan participants for purposes of computing the premium owed with respect to a new plan or a newly covered plan (as defined in § 2610.2) shall be determined as of the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, and also references in paragraphs (a) and (b) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to such day or date.

(c) *Plans that change plan years.* A plan that changes its plan year shall pay the premium prescribed by this section for the short plan year.

§ 2610.23 Determination of unfunded vested benefits.

(a) *General rule.* Except as permitted by paragraph (c) of this section or as provided in the exemptions and special

rules under § 2610.24, the amount of a plan's unfunded vested benefits (as defined in paragraph (b) of this section) shall be determined as of the last day of the plan year preceding the premium payment year, based on the plan provisions and the plan's population as of that date. The determination of the vested benefits shall be based on a plan valuation that meets the requirements imposed by section 302(c)(9) of the Act and section 412(c)(9) of the Code, and that was performed as of the first day of the premium payment year or that was the most recent valuation performed (by on or before the date the variable rate portion of the premium for the premium payment year is due under § 2610.25) for a plan year within the three plan years immediately preceding the premium payment year. If a significant event described in paragraph (d) of this section or other event that has a material impact on the value of vested benefits occurred between the date of the plan valuation and the last day of the plan year preceding the premium payment year, the value of vested benefits shall be determined using assumptions that reflect the occurrence of such significant event. If the plan valuation on which the determination of vested benefits is based was performed as of the first day of the premium payment year, the amount of the plan's vested benefits as of such date shall be deemed to equal the amount of the plan's vested benefits as of the last day of the plan year preceding the premium payment year unless the plan's enrolled actuary determines that there is a material difference between such amounts. The enrolled actuary of any plan determines the amount of its unfunded vested benefits under the general rule described in this paragraph must verify, in accordance with the Premium Payment Package, that the determination was made in a manner consistent with generally accepted actuarial principles and practices.

(b) *Unfunded vested benefits.* The amount of a plan's unfunded vested benefits under this section shall be the excess of the plan's vested benefits amount (determined under paragraph (b)(1) of this section) over the actuarial value of the plan's assets (determined under paragraph (b)(2) of this section).

(1) *Vested benefits amount.* A plan's vested benefits amount under this section shall be the plan's current liability (within the meaning of section 302(d)(7) of the Act) determined by taking into account only vested benefits and by using an interest rate equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins. (Appendix B to this part sets forth the required interest rates.) If a different interest rate (or rates) was used in the plan's valuation to determine the value of vested benefits, such value shall be converted to a value using this interest rate.

(2) *Actuarial value of assets.* The actuarial value of a plan's assets under this section shall be determined in accordance with section 302(c)(2) of the Act. Such value is not reduced by a credit balance in the funding standard account. Contributions owed for any plan year preceding the premium payment year shall be included only to the extent such contributions have been paid into the plan on or before the earlier of the due date for payment of the variable rate portion of the premium under § 2610.25 or the date that portion is paid. Contributions for the premium payment year may not be included.

(c) *Alternative method for calculating unfunded vested benefits.* In lieu of determining the amount of the plan's unfunded vested benefits pursuant to paragraph (a) of this section, a plan administrator may calculate the amount of a plan's unfunded vested benefits under this paragraph using the plan's Form 5500, Schedule B, for the plan year preceding the premium payment year. Pursuant to this paragraph, unfunded vested benefits shall be determined from the entries in lines 6d(i), 6d(ii), and, usually, 8b of the Plan's Schedule B. The value of the vested benefits shall be adjusted in accordance with paragraph (c)(1) of this section to reflect the interest rate prescribed in paragraph (b)(1) of this section, and the value of the assets shall be adjusted in accordance with paragraph (c)(2) of this section. The resulting unfunded vested benefits amount shall be adjusted in accordance with paragraph (c)(3) of this section to reflect the passage of time from the date of the Schedule B data to the last day of the plan year preceding the premium payment year.

(1) The value of vested benefits as entered on the Schudule B shall be adjusted in accordance with the following formula to reflect the interest rate prescribed in paragraph (b)(1) of this section:

$$VB_{adj} = VB_{6d(i)} \times .94^{(RIR-BIR)} + VB_{6d(ii)} \times .94^{(RIR-BIR)} \times ((100+BIA)/(100+RIR))^{(ARA-50)}; \text{ where—}$$

(i) VB_{adj} is the adjusted vested benefits amount (as of the first day of the plan year preceding the premium payment year) under the alternative calculation method;

(ii) $VB_{6d(i)}$ is the amount entered in line 6d(i) of the Schedule B;

(iii) $VB_{6d(ii)}$ is the amount enter in line 6d(ii) of the Schedule B;

(iv) RIR is the required interest rate set forth in Appendix B to this part;

(v) BIR is the interest rate entered on line 12c (post-retirement) of the Schedule B that was used to determine the entry on line 6d(i) of the Schedule B;

(vi) BIA is the interest rate entered on line 12c (pre-retirement) of the Schedule B that was used to determine the entry in line 6d(ii) of the Schedule B; and

(vii) ARA is the assumed retirement age entered on line 12d of the Schedule B that was used to determine the entries on lines 6d(i) and 6d(ii) of the Schedule B.

(2) *Adjusted value of plan assets.* The value of plan assets shall be the amount reported on line 8b of the Schedule B, unless that amount was determined as of a date other than the first day of the plan year preceding the premium payment year. In that event, the value of plan assets shall be the amount entered in line 6c of the Schedule B. The value of assets reported on line 8b (or 6c) of the Schedule B shall be adjusted in accordance with paragraph (b)(2) of this section.

(3) *Adjustment for passage of time.* The amount of the plan's unfunded vested benefits shall be adjusted to reflect the passage of time between the date of the Schedule B data (the first day of the plan year preceding the premium payment year) and the last day of the plan year preceding the premium payment year in accordance with the following formula:

$$UVB_{adj} = (VB_{adj} - A_{adj}) \times (1 + RIR/100)^{Y}; \text{ where—}$$

(i) UVB_{adj} is the amount of the plan's adjusted unfunded vested benefits;

(ii) VB_{adj} is the value of the adjusted vested benefits calculated in accordance with paragraph (c)(1) of this section;

(iii) A_{adj} is the adjusted asset amount calculated in accordance with paragraph (c)(2) of this section;

(iv) RIR is the required interest rate set forth in Appendix B to this part; and

(v) Y is deemed to be equal to 1 (unless the plan year preceding the premium payment year is a short plan year, in which case Y is the number of years between the first day and the last day of the short plan year, expressed as a decimal fraction of 1.0 with two digits to the right of the decimal point).

(d) *Restrictions on alternative calculation method for large plans.* A plan with 500 or more participants as of

the last day of the plan year preceding the premium payment year may use the alternative calculation method described in paragraph (c) of this section only if no significant event, as described in this paragraph, has occurred between the first day and the last day of the plan year preceding the premium payment year and the plan's enrolled actuary so certifies in accordance with the Premium Payment Package. If a significant event has occurred between those dates, the alternative method may be used only if the plan's enrolled actuary makes appropriate adjustments to reflect the occurrence of the significant event and certifies to that fact in accordance with the Premium Payment Package. Significant events described in this paragraph are—

(1) An increase in the plan's actuarial costs (consisting of the plan's normal cost under section 412(b)(2)(A) of the Code, amortization charges under section 412(b)(2)(B) of the Code, and amortization credits under section 412(b)(3)(B) of the Code) attributable to a plan amendment, unless the cost increase attributable to the amendment is less than 5 percent of the actuarial costs determined without regard to the amendment;

(2) The extension of coverage under the plan to a new group of employees resulting in an increase of 5 percent or more in the plan's liability for accrued benefits;

(3) A plan merger, consolidation or spinoff that is not *de minimis* pursuant to the regulations under section 414(1) of the Code;

(4) An increase in the average age of plan participants by more than two years;

(5) The shutdown of any facility, plant, store, etc., that creates immediate eligibility for benefits that would not otherwise be immediately payable for participants separating from service;

(6) The offer by the plan for a temporary period to permit participants to retire at benefit levels greater than that to which they would otherwise be entitled; and

(7) A cost-of-living increase for retirees resulting in an increase of 5 percent or more in the plan's liability for accrued benefits.

(e) *Actuarial assumptions used for valuation.* All actuarial assumptions and methods used under this section to determine or to calculate the amount of a plan's unfunded vested benefits shall be identical to or consistent with the actuarial assumptions and methods used to prepare the plan valuation and actuarial report or Form 5500, Schedule B, underlying the determination or calculation, except to the extent that other actuarial assumptions are specifically prescribed by this section or are necessary in order to reflect the occurrence of a significant event under paragraph (d) of this section.

(f) *Special calculation date for new and newly covered plans.* For purposes of this section, the determination or calculation of a plan's unfunded vested benefits with respect to a new plan or a newly covered plan (as defined in § 2610.2) shall be made as of the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, and all references in paragraphs (a) through (d) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to such day or date.

§ 2610.24 Variable rate exemptions and special rules.

(a) *Exemptions.* A plan described in paragraphs (a)(1), (a)(2) or (a)(3) of this section is not required to determine its unfunded vested benefits under § 2610.23 and does not owe a variable rate amount under § 2610.22(a)(2).

(1) *Certain fully funded small plans.* A plan is described in this paragraph if—

(i) The plan had fewer than 100 participants on the last day of the plan year preceding the premium payment year;

(ii) The plan is not eligible to use the alternative method for determining unfunded vested benefits under § 2610.23 because the plan does not have a Form 5500, Schedule B, meeting the requirements of that section; and

(iii) The plan's enrolled actuary certifies, in accordance with the Premium Payment Package, that the plan had no unfunded vested benefits as of the last day of the plan year preceding the premium payment year.

(2) *Plans without vested benefit liabilities.* A plan is described in this paragraph if it did not have any participants with vested benefits as of the last day of the plan year preceding the premium payment year, and the plan administrator so certifies in accordance with the Premium Payment Package.

(3) *Section 412(i) plans.* A plan is described in this paragraph if the plan was a plan described in section 412(i) of the Code and the regulations thereunder at all times during the plan year preceding the premium payment year and the plan administrator so certifies, in accordance with the Premium Payment Package. If the plan is a new plan or a newly covered plan (as defined in § 2610.2), the certification under this paragraph shall be made as of the due date for the premium under § 2610.25(d) and shall certify to the plan's status at all times during the premium payment year through such due date.

(b) *Special $5 rule for certain small plans.* The plan administrator of a plan described in this paragraph may elect to pay, in lieu of the amount described in § 2610.22(a)(2), an amount of $5 per participant, resulting in a total premium under § 2610.22 of $21 per participant. In this event, the variable rate amount owed for such plan for the premium payment year pursuant to § 2610.22(a) shall be deemed to be $5 per participant, and the plan administrator is not required to determine the plan's unfunded vested benefits under § 2610.23. A plan is described in this paragraph if—

(1) the plan had fewer than 100 participants on the last day of the plan year preceding the premium payment year; and

(2) the plan is not eligible to use the alternative method for determining unfunded vested benefits under § 2610.23 because the plan does not have a Form 5500, Schedule B, meeting the requirements of that section.

(c) *New and newly covered plans.* In the case of a new plan or a newly covered plan, all references in paragraphs (a) or (b) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service.

§ 2610.25 Filing requirement.

(a) *General rule.* The plan administrator of each plan shall file the form or forms prescribed by this part and any premium payments due, in accordance with the instructions in the Premium Payment Package. The premium forms and payments shall be filed no later than the applicable due date specified in paragraph (b) or, for new plans or newly covered plans, paragraph (d) of this section.

(b) *Due dates.* For plan years beginning on or after January 1, 1988, the due date for small plans is prescribed in paragraph (b)(1) of this section and the due dates for large plans are prescribed in paragraph (b)(2) of this section.

(1) *Plans with fewer than 500 participants.* If the plan has fewer than 500 participants, as determined under paragraph (c) of this section, the due date is the fifteenth day of the eighth full calendar month following the month in which the plan year began.

(2) *Plans with 500 or more participants.* If the plan has 500 or more

participants, as determined under paragraph (c) of this section—

(i) The due date for the flat rate portion of the premium required by § 2610.22(a)(1) is the last day of the second full calendar month following the close of the plan year preceding the premium payment year; and

(ii) The due date for the variable rate portion of the premium required by § 2610.22(a)(2) is the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins.

(iii) If the number of plan participants on the last day of the plan year preceding the premium payment year is not known by the date specified in paragraph (b)(2)(i) of this section, a reconciliation filing (on the form prescribed by this part) and any required premium payment or request for refund shall be made by the date specified in paragraph (b)(2)(ii) of this section.

(3) *Plans that change plan years.* For any plan that changes its plan year, the premium form or forms and payment or payments for the short plan year shall be filed by the applicable due date or dates specified in paragraph (b)(1) or (b)(2) of this section. For the plan year that follows a short plan year, the due date or dates for the premium forms and payments shall be, with respect to each such date, the later of—

(i) The applicable due date or dates specified in paragraph (b)(1) or (b)(2) of this section; or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *Participant count rule for purposes of determining filing due dates.* For purposes of determining under paragraph (b) of this section whether a plan has fewer than 500 participants, or 500 or more participants, the plan administrator shall use the number of participants for whom premiums were payable for the plan year preceding the premium payment year.

(d) *Due dates for new and newly covered plans.* Notwithstanding the provisions of paragraph (b) of this section, the premium form and payment for both the flat rate portion and the variable rate portion of the premium for the first plan year of coverage of any new plan or newly covered plan (as defined in § 2610.2) shall be filed on or before the latest of—

(1) The fifteenth day of the eighth full calendar month following the month in which the plan year began or, if later, in which the plan became effective for benefit accruals for future service;

(2) 90 days after the date of the plan's adoption; or

(3) 90 days after the date on which the plan became covered by Title IV of the Act pursuant to section 4021 of the Act.

(e) *Continuing obligation to file.* The obligation to file the form or forms prescribed by this part and to pay any premiums due continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of the Act, whichever occurs earlier.

(f) *Improper filings.* Any form not filed in accordance with this part, not filed in accordance with the instructions to the form, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned with any payment accompanying the form to the plan administrator, and such payment shall be treated as not having been made. If on the form or forms filed with the PBGC, any of the items necessary to establish the correct variable rate premium owed by the plan are omitted, the variable rate portion of the premium owed by the plan with respect to that premium payment may be deemed to be the maximum $34 per participant charge, pursuant to § 2610.22(a)(3).

§ 2610.26 Liability for premiums.

(a) The designation under this subpart of the plan administrator as the person required to file the applicable forms and to submit the premium payment is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of the Act. Pursuant to section 4007(e) of the Act, both the plan administrator and the plan's contributing sponsor are liable for premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) For any plan year in which a plan administrator issues (pursuant to section 4041(a)(2) of the Act) notices of intent to terminate in a distress termination under section 4041(c) of the Act or the PBGC initiates a termination proceeding under section 4042 of the Act, and for each plan year thereafter, the obligation to pay the premiums (and any interest or penalties thereon) imposed by the Act and this Part shall be an obligation solely on the contributing sponsor and the members of its controlled group, if any.

Subpart C—Single-Employer Premiums for Pre-1988 Plan Years; Multiemployer Premiums

§ 2610.31 Purpose and scope.

This subpart provides rules for calculating and procedures for paying premiums for single-employer plans with respect to plan years beginning before 1988, and for multiemployer plans with respect to all plan years.

§ 2610.32 Single-employer premium rates.

(a) For plans other than multiemployer plans, the premium rate for basic benefits guaranteed under section 4022(a) of the Act is as follows:

(1) For plan years beginning before September 2, 1976: one dollar for each individual who is a participant in the plan at any time during the plan year;

(2) For plan years beginning on or after September 2, 1976, up to and including plan years beginning on December 31, 1977: one dollar for each individual who is a participant in the plan on the last day of the preceding plan year;

(3) For plan years beginning on or after January 1, 1978, up to and including plan years beginning on December 31, 1985: two dollars sixty cents for each individual who is a participant in the plan on the last day of the preceding plan year;

(4) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987: eight dollars fifty cents for each individual who is a participant in the plan on the last day of the preceding plan year.

(b) *Newly covered plans.* For any plan not previously covered by section 4021 of the Act, the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on the date the plan becomes covered by section 4021(a) of the Act.

(c) *Changes in plan years.* For the first full plan year beginning after a plan changes its plan year, the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on the last day of the short plan year.

§ 2610.33 Multiemployer premium rates.

(a) For multiemployer plans, the premium rate for basic benefits guaranteed under section 4022A(a) is as follows:

(1) For plan years beginning after September 26, 1980, multiemployer plans shall pay premiums at the rate set forth in the following table for each individual

who is a participant in such plan on the last day of the plan year preceding the premium payment year.

For premium payment years	Rate
After Sept. 26, 1980, and before Sept. 27, 1984	$1.40
After Sept. 26, 1984, and before Sept. 27, 1986	1.80
After Sept. 26, 1986, and before Sept. 27, 1988	2.20
After Sept. 26, 1988	2.60

(2) For the plan year in which September 26, 1980, falls (the "enactment year"), multiemployer plans shall pay a premium for each individual who is a participant in the plan on the last day of the preceding plan year at the rate set forth in the following table:

For premium payment years beginning in	Rate
September 1979	$.50
October 1979	.54
November 1979	.58
December 1979	.62
January 1980	.67
February 1980	.71
March 1980	.75
April 1980	.79
May 1980	.83
June 1980	.88
July 1980	.92
August 1980	.96
September 1980 (on or before Sept. 26)	1.00

(b) *New and newly covered plans.* For any new plan or newly covered plan (as defined in § 2610.2), the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on—

(1) The date the plan becomes covered by section 4021(a) of the Act, if the premium payment year begins before January 1, 1988; or

(2) The first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, if the premium payment year begins on or after January 1, 1988.

(c) *Changes in plan years.* For the first full plan year beginning after a plan changes its plan year, the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on the last day of the short plan year.

§ 2610.34 Filing requirement.

(a) The plan administrator of each covered plan shall file the form prescribed by this part and any premium payments due, in accordance with the premium declaration instructions accompanying the form. Due dates for new or newly covered plans and plans with short plan years are in paragraphs (a)(8) and (a)(9) of this section. For other plans, the premium form and payments shall be filed no later than the date specified in the applicable paragraph (a)(1) through (a)(7)(ii) as follows:

(1) For plan years beginning before and in progress on September 2, 1974: October 2, 1974;

(2) For plan years beginning on or after September 2, 1974, up to and including plan years beginning on December 31, 1977: 30 days after the beginning of the plan year;

(3) For plan years beginning on or after January 1, 1978, up to and including plan years beginning on December 31, 1980: seven months after the close of the prior plan year;

(4) For plan years beginning on or after January 1, 1981, up to and including plan years beginning on December 31, 1984: the last day of the seventh month following the close of the prior plan year;

(5) For plan years beginning on or after January 1, 1985, up to and including plan years beginning on December 31, 1985:

(i) If the plan has fewer than 10,000 participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the seventh month following the close of the prior plan year; or

(ii) If the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second full month following March 29, 1985 or, if later, the last day of the second month following the close of the prior plan year; and

(6) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987:

(i) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the seventh month following the close of the prior plan year; or

(ii) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second month following close of the prior plan year.

(7) For plan years of multiemployer plans beginning on or after January 1, 1988—

(i) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section, the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins; or

(ii) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second month following close of the prior plan year.

(8) Notwithstanding the provisions of paragraphs (a)(1) through (a)(7) of this section, for any new plan or plan newly covered by section 4021 of the Act, the first premium form and payments due for the first year of coverage shall be filed on or before latest of—

(i) In the case of plan years beginning before January 1, 1988:

(A) The last day of the seventh month following the beginning of the plan year;

(B) 90 days after the date of plan's adoption;

(C) 90 days after the date on which the plan became effective for benefit accruals for future service; or

(D) 90 days after the date on which the plan became covered by section 4021 of the Act; and

(ii) In the case of plan years beginning before January 1, 1988:

(A) The fifteenth day of the eighth full calendar month following the month in which the plan year began or, if later, in which the plan became effective for benefit accruals for future service;

(B) 90 days after the date of the plan's adoption; or

(C) 90 days after the date on which the plan became covered by Title IV of the Act pursuant to section 4021 of the Act.

(9) For any plan that changes its plan year, the premium form and payments for the short plan year are due in accordance with the provisions of paragraphs (a)(1) through (a)(7) of this section. Premiums forms and payments for the plan year that follows a short plan year shall be filed on or before the later of 30 days after the date on which the amendment to change the plan year was adopted, or the date specified in the applicable paragraph as follows:

(i) For plan years beginning before January 1, 1985, the last day of the seventh month following the close of the preceding short plan year; and

(ii) For plan years beginning on or after January 1, 1985, up to and including plan years beginning on December 31, 1985—

(A) If the plan has fewer than 10,000 participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the preceding short plan year; or

(B) If the plan has 10,000 or more participants for the plan year, as

determined under paragraph (a)(10) of this section: the last day of the second month following the close of the preceding short plan year; and

(iii) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987—

(A) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the preceding short plan year; or

(B) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the second month following the close of the preceding short plan year.

(iv) For plan years of multiemployer plans beginning on or after January 1, 1988—

(A) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section, the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins; or

(B) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second month following the close of the prior plan year.

(10) For purposes of paragraphs (a)(5), (a)(6), (a)(7), (a)(9), (b)(4), (b)(5), and (b)(6) of this section, the number of participants in a plan year is determined as of the following dates:

(i) If the plan year is the plan's second plan year, the first day of the first plan year; or

(ii) If the plan year is the plan's third or a subsequent plan year, the last day of the second preceding plan year.

(b) *Reconciliation due date.* The plan administrator of each covered plan shall file the premium reconciliation form prescribed by this part, in accordance with the instructions accompanying the form, no later than the date specified in the applicable paragraph as follows:

(1) For plan years beginning before September 2, 1976: two years and 30 days after the beginning of the plan year;

(2) For plan years beginning on or after September 2, 1976, up to and including plan years beginning on December 31, 1976: one year and 30 days after the beginning of the plan year;

(3) For plan years beginning on or after January 1, 1977, up to and including plan years beginning on December 31, 1977: seven months after the close of the plan year; or

(4) For plan years beginning on or after January 1, 1985, up to and including plan years beginning on December 31, 1985, if the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the prior plan year.

(5) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987, if the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the prior plan year.

(6) For plan years of multiemployer plans beginning on or after January 1, 1988, if the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the eighth full calendar month following the month in which the premium payment year begins.

(c) *Continuing obligation to file.* The obligation to file the form prescribed by this subpart and to pay any premiums due continues until plan assets are distributed under a termination procedure or until a trustee is appointed under section 4042 of the Act, whichever occurs earlier.

(d) *Improper filings.* Any form not filed in accordance with this subpart, not filed in accordance with the instructions contained in the form, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned in whole or in part to the plan administrator and treated as not having been filed.

(e) *Transitional rule for multiemployer plans.* For the plan year in which September 26, 1980, falls ("the enactment year"), the premium determined under § 2610.33 is due on the date determined under paragraphs (a)(3) or (a)(4) of this section, unless the enactment year begins before July 1, 1980. If the enactment year begins before July 1, 1980, the premium is due in two installments as follows:

(1) The multiemployer plan shall pay, on the date determined under paragraph (a)(3) or (a)(4) of this section, a premium of fifty cents for each individual who is a participant in the plan on the last day of the preceding plan year; and

(2) The plan shall pay, within 30 days after PBGC issues a notice of the additional premium due under § 2610.33, such additional premium. However, if the plan fails to pay the amount described in paragraph (e)(1) before January 31, 1981, the additional premium shall be due on the earlier of 30 days after the PBGC issues a notice of the additional premium or March 31, 1981.

Issued in Washington, DC this 27th day of June, 1988.

Ann McLaughlin,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth pursuant to a resolution of the Board of Directors authorizing its chairman to issue this interim rule.

Gary M. Ford,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

Appendix A—Late Payment Interest Charges

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From—	Through—	Interest rate (percent)
Sept. 2, 1974	June 30, 1975	6
July 1, 1975	Jan. 31, 1976	9
Feb. 1, 1976	Jan. 31, 1978	7
Feb. 1, 1978	Jan. 31, 1980	6
Feb. 1, 1980	Jan. 31, 1982	12
Feb. 1, 1982	Dec. 31, 1982	20
Jan. 1, 1983	June 30, 1983	16
July 1, 1983	Dec. 31, 1984	11
Jan. 1, 1985	June 30, 1985	13
July 1, 1985	Dec. 31, 1985	11
Jan. 1, 1986	June 30, 1986	10
July 1, 1986	Sept. 30, 1987	9
Oct. 1, 1987	Dec. 31, 1987	10
Jan. 1, 1988	Mar. 31, 1988	9
April 1, 1988		10

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
Jan. 1988	7.30
Feb. 1988	7.06
Mar. 1988	6.74
Apr. 1988	6.90
May 1988	7.16

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

[FR Doc. 88-14792 Filed 6-29-88; 8:45 am]

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1044/Pub. L. 100-348

San Francisco Maritime National Historical Park Act of 1988. (June 27, 1988; 102 Stat. 654; 5 pages) Price: $1.00

H.R. 2652/Pub. L. 100-349

To revise the boundaries of Salem Maritime National Historic Site in the Commonwealth of Massachusetts, and for other purposes. (June 27, 1988; 102 Stat. 659; 1 page) Price: $1.00

H.R. 4621/Pub. L. 100-350

To provide Congressional approval of the Governing International Fishery Agreement between the United States and the Government of the German Democratic Republic. (June 27, 1988; 102 Stat. 660; 1 page) Price: $1.00

H.R. 4638/Pub. L. 100-351

To amend the effective date provision of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. (June 27, 1988; 102 Stat. 661; 1 page) Price: $1.00

S. 952/Pub. L. 100-352

To improve the administration of justice by providing greater discretion to the Supreme Court in selecting the cases it will review, and for other purposes. (June 27, 1988; 102 Stat. 662; 3 pages) Price: $1.00

S. 1901/Pub. L. 100-353

To designate the Federal Building located at 600 Las Vegas Boulevard in Las Vegas, Nevada, as the "Alan Bible Federal Building." (June 27, 1988; 102 Stat. 665; 1 page) Price: $1.00

S. 1960/Pub. L. 100-354

To designate the Federal Building located at 215 North 17th Street in Omaha, Nebraska, as the "Edward Zorinsky Federal Building." (June 27, 1988; 102 Stat. 666; 1 page) Price: $1.00